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Contents

Federal Register

Vol. 58, No. 27

Thursday, February 11, 1993

Agricultural Marketing Service
RULES
Avocados grown in Florida, 7972
Mushroom promotion, research, and consumer information order, 8194
Oranges (navel and Valencia) grown in Arizona and California, 7964
PROPOSED RULES
Milk marketing orders:
Great Basin, 7996

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Meetings:
Agricultural Biotechnology Research Advisory Committee, 8034

Alcohol, Tobacco and Firearms Bureau
NOTICES
Organization, functions, and authority delegations:
Compliance Operations, Associate Director, 8090

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Fruits and vegetables from Hawaii et al., 7953

Antitrust Division
NOTICES
National cooperative research notifications:
Petrotechnical Open Software Corp., 8062

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Rock Island Arsenal, IL, 8045
Meetings:
Science Board, 8045

Bonneville Power Administration
NOTICES
Billing credits contracts:
Intent to sign, 8048

Centers for Disease Control and Prevention
NOTICES
Aerosol samplers sampling efficiency; NIOSH meeting, 8054

Children and Families Administration
NOTICES
Meetings:
President's Committee on Mental Retardation, 8053

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 8036
Laos, 8037

Consumer Product Safety Commission
PROPOSED RULES
Hazardous substances:
Balloons; choking hazards; withdrawn, 8023
Marbles; choking hazards; withdrawn, 8020
Small balls; choking hazards; withdrawn, 8016
Toys and other articles for children over 3 years; small parts presenting choking, aspiration, or ingestion hazards; withdrawn, 8013

Defense Department
See Army Department
NOTICES
Agency information collection activities under OMB review, 8038
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 8045, 8046

Education Department
NOTICES
Administrative Law Judges Office hearings:
Claim compromises—
Arizona Department of Library, Archives and Public Records, 8047

Employment and Training Administration
NOTICES
Adjustment assistance:
American Optical Corp., 8062
Bird Products Corp. et al., 8063
Tubeco Steel Manufacturing, Inc., et al., 8063
UNOCAL Corp., 8064
Wayne H. Mullin Shoe Patterns, 8064

Energy Department
See Bonneville Power Administration
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Pittsburgh Energy Technology Center, 8047
Natural gas exportation and importation:
Enron Gas Marketing, Inc., 8051
Indeck-Yerkes Limited Partnership, 8051

Energy Research Office
NOTICES
Meetings:
Fusion Energy Advisory Committee, 8051

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Labeling requirements, 8136
Water pollution control:
Clean Water Act—
Indian tribes; qualification for treatment as States under Section 404 State program regulations, 8172

PROPOSED RULES
Environmental radiation protection standards; spent nuclear fuel, high-level and transuranic radioactive wastes, management and disposal; hearings and dockets, 8028
Hazardous waste:
Hazardous waste management system; recycling regulatory program, 8102
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic and radioactive wastes; management and disposal, 8029

Federal Aviation Administration
RULES
Airworthiness directives:
Fokker, 7982
Short Brothers, 7983
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Portable electronic devices aboard aircraft, 8088

Federal Communications Commission
RULES
Television broadcasting:
Cable television systems—
Cable Consumer and Protection and Competition Act; implementation; indecent programming, etc., on cable access channels, 7990

Federal Election Commission
NOTICES
Special elections; filing dates:
Mississippi, 8052

Federal Emergency Management Agency
NOTICES
Meetings:
Emergency Management Institute Board of Visitors, 8053

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Natural gas data collection system—
Electronic media; expansion of listing, 7985
NOTICES
Hydroelectric applications, 8050
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 8050
JMC Ocean State Corp., 8050
NW Energy (Williams Lake) Limited partnership, 8051

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 8097

Federal Maritime Commission
RULES
Maritime carriers in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
United States/Korea trade, 7988
NOTICES
Freight forwarder licenses:
Zerda Forwarding et al., 8053

Federal Reserve System
RULES
Membership of State banking institutions (Regulations H and Y):
Capital adequacy guidelines, 7973
PROPOSED RULES
Bank holding companies and change in bank control, and membership of State banking institutions (Regulations H and Y):
Capital adequacy guidelines, 8007

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Century Surety Co., 8092
Star Insurance Co., 8092

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Coastal California gnatcatcher, 8032

Food and Drug Administration
NOTICES
Animal drugs, feeds, and related products:
Dairy and beef cattle; uniform labeling of drugs; guideline availability, 8054
Grant and cooperative agreement awards:
Shellfish and seafood safety assistance project, 8054

Forest Service
NOTICES
Appeal exemptions; timber sales:
Sequoia National Forest, CA, 8034
Environmental statements; availability, etc.:
Gallatin National Forest, MT, 8035

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 8045, 8046

Harry S. Truman Scholarship Foundation
NOTICES
Meetings; Sunshine Act, 8097

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Poverty-level population; undue concentration areas determination; withdrawn, 8186

PROPOSED RULES
Low income housing:
Housing assistance payments (Section 8)—
Poverty-level population; undue concentration areas determination, 8187
NOTICES
Agency information collection activities under OMB review, 8057
Organization, functions, and authority delegations:
Agency ethics officials; designation, 8057

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
NOTICES
Air pollution; adverse impact determinations:
Denali National Park and Preserve, AK, 8058

Internal Revenue Service
RULES
Income taxes:
Enhanced oil recovery credit; correction, 7987
Nuclear decommissioning fund qualification requirements; correction, 7988
Policy acquisition expenses; capitalization; correction, 7987
Real estate mortgage investment conduits; correction, 8098
Related foreign persons; owed amounts deductions Correction, 8098
PROPOSED RULES
Excise taxes:
Ozone layer depleting chemicals; exports Correction, 8098
Income taxes:
Consolidated return regulations—
Alternative minimum tax; correction, 8027
Debt instruments with original issue discount; imputed interest on deferred payment sales or exchanges of property; correction, 8098
Partnerships; treatment as qualified tax exempt organization; correction, 8027
Points paid on residential mortgages; recipient reporting requirements; correction, 8027
Qualified retirement plans—
Cash or deferred arrangements; correction, 8098

International Trade Commission
NOTICES
Import investigations:
Bulk bags and process for making same, 8061

Interstate Commerce Commission
PROPOSED RULES
Contracts and exemptions:
Rail transportation of commodity groups, 8030
NOTICES
Railroad operation, acquisition, construction, etc.:
Ozark Mountain Railroad, 8061

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Dana Corp., Perfect Circle Division, 8062

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Burley District Grazing Advisory Board, 8058
Cedar City District Grazing Advisory Board, 8058
Northern Alaska Advisory Council, 8058
Realty actions; sales, leases, etc.:
California, 8058
California; correction, 8060
Survey plat filings:
Colorado, 8060
Withdrawal and reservation of lands:
Colorado, 8060

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Flame-resistant conveyor belts; requirements for approval, 8028
NOTICES
Safety standard petitions:
Headache Coal Co., Inc., et al., 8065

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 8045, 8046

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 8065

National Science Foundation
NOTICES
Meetings:
Biological Instrumentation and Resources Special Emphasis Panel, 8066
Human Resource Development Special Emphasis Panel, 8066
Information, Robotics, and Intelligent Systems Special Emphasis Panel, 8067
Integrative Biology and Neuroscience Special Emphasis Panel, 8067
Science Resources Studies Special Emphasis Panel, 8067

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Toledo Edison Co. et al., 8068
Applications, hearings, determinations, etc.:
Carolina Power & Light Co. et al., 8068

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Agency information collection activities under OMB review, 8056

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 8072

Securities and Exchange Commission
RULES
Investment companies:
Financial statements; safe harbor rule, 7984
NOTICES
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 8072
New York Stock Exchange, Inc., 8075
Options Clearing Corp., 8077
Pacific Stock Exchange, Inc., 8078
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 8080
Applications, hearings, determinations, etc.:
Bull & Bear Capital Growth Fund, Inc., 8083
Bull & Bear Equity-Income Fund, Inc., 8084
Canada Life Insurance Co. of America et al., 8081
Gintel Capital Appreciation Fund, 8084
North American Security Life Insurance Co. et al., 8085
Travelers Growth and Income Stock Account for Variable Annuities et al., 8087

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

Transportation Department
See Federal Aviation Administration
RULES
Ethical conduct standards; executive branch employees, 7993

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 8089
Organization, functions, and authority delegations:
Secret Service, Director, 8090

Truman, Harry S., Scholarship Foundation
See Harry S. Truman Scholarship Foundation

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and private non-profit organizations in support of international educational and cultural activities, 8092
Summer institute for English-as-foreign language educators from Albania et al., 8094

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 8096

Separate Parts In This Issue

Part II
Environmental Protection Agency, 8102

Part III
Environmental Protection Agency, 8136

Part IV
Environmental Protection Agency, 8172

Part V
Housing and Urban Development Department, 8186

Part VI
Agriculture Department, Agricultural Marketing Service, 8194

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

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
318.....7953
907.....7964
908.....7964
915.....7972
1209.....8194
Proposed Rules:
1139.....7996
12 CFR
208.....7973
225.....7973
Proposed Rules:
208.....8007
225.....8007
14 CFR
39 (2 documents).....7982, 7983
16 CFR
Proposed Rules:
Ch. II (4 documents).....8013–8023
17 CFR
270.....7984
18 CFR
154.....7985
385.....7985
24 CFR
770.....8186
882.....8186
889.....8186
890.....8186
941.....8186
Proposed Rules:
770.....8187
882.....8187
889.....8187
890.....8187
941.....8187
26 CFR
1 (5 documents).....7987, 7988, 8098
602 (2 documents).....7987, 7988
Proposed Rules:
1 (5 documents).....8027, 8098
52.....8099
30 CFR
Proposed Rules:
14.....8028
18.....8028
75.....8028
40 CFR
82.....8136
232.....8172
233.....8172
Proposed Rules:
144.....8028
191.....8028
194.....8029
260.....8102
261.....8102
262.....8102
264.....8102
265.....8102
268.....8102
270.....8102
273.....8102
46 CFR
586.....7988
47 CFR
76.....7990
49 CFR
99.....7993
Proposed Rules:
1039.....8030
50 CFR
Proposed Rules:
17.....8032

Rules and Regulations

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91–094–2]

Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. This amendment provides growers and shippers in Hawaii, Puerto Rico, and the Virgin Islands additional cargo routes to foreign destinations, without significantly increasing the risk of introducing plant diseases and pests into the continental United States.

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Permit Unit, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 318, among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insects infestations that are not widely prevalent or distributed within and throughout the United States. The two subparts we are amending are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*) and "Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*) We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, Puerto Rico, and the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. The Puerto Rico-Virgin Islands regulations also govern the movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, and the continental United States.

Of the articles governed by the Hawaii regulations and the Puerto Rico-Virgin Islands regulations, some are absolutely prohibited movement into the continental United States. Others are prohibited such movement if they fail to meet certain qualifying criteria. Before the effective date of this final rule, the prohibition on movement into the continental United States included a ban on movement through the continental United States in transit to another country.

On July 14, 1992, we published in the **Federal Register** (57 FR 31130–31142, Docket No. 91–094) a proposal to allow fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met.

Comments Received

Comments on the proposed rule were required to be received by the Animal and Plant Health Inspection Service (APHIS) on or before August 13, 1992. We received 11 comments by that date. The comments were from State departments of agriculture, agricultural associations, local governments, and other members of the public.

Four of the commenters supported the proposal as written. One commenter opposed the proposal, based on specified concerns. The remainder of the commenters supported the proposal but recommended certain changes. We discuss below each of the issues raised by the commenters.

One commenter expressed concern about whether APHIS would have sufficient personnel to carry out both the supervision required under the proposed rule and other essential duties. We are making no changes based on this comment. The proposal as written clearly provides that issuance of a transit permit for shipments through the continental United States under the proposed provisions is contingent on the availability of APHIS personnel at the port of arrival, port of export, any locations at which transloading of the cargo will take place, and, in the case of air shipments, any interim stop in the continental United States.

One commenter expressed concern that the safeguards in the proposal against unauthorized diversion of shipments that are transiting the United States might not be adequate to prevent such diversion. We disagree that the safeguards included in the proposal would be inadequate to prevent diversion. We consider the requirements (1) That the shipment move to APHIS-staffed ports within a designated corridor; (2) that APHIS be notified of the estimated time necessary to accomplish exportation; (3) that copies of the limited permit accompanying the shipment be presented at the port of entry, transloading port (if any), and port of exit; and (4) that the movement of the shipment be by the most direct route to its final destination to be adequate to guard against diversion.

The proposed rule stated that transportation of articles through the continental United States under the proposed provisions would have to be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. In our background information to the proposed rule, we explained that the most direct route to the final destination might not include the shortest route through the United States. As an example, we stated that it would

be possible that a shipment that enters the United States at an east coast port for ultimate shipment to western Canada could move to that destination more directly across the United States to its west coast, then to western Canada, than it could by moving from the east coast port to eastern Canada, then across Canada.

One commenter expressed concern with our interpretation that the most direct route to the final destination of the shipment in the country to which it is exported might not always include the shortest route through the United States. The commenter stated that this policy was more liberal than that for shipments transiting the continental United States from foreign sources, which requires movement from the United States in the "shortest practicable interval of time." We are making no changes based on this comment. We consider requiring movement by the most direct route and requiring movement in the shortest practicable time to be equivalent with regard to what is achieved. While we acknowledge that there would sometimes be less risk involved in requiring shipments to take the shortest route out of the United States than in allowing them to move by the shortest practicable route to their final destination, the difference in the risks involved is minimal. We consider the provision as proposed, combined with the other safeguards in the proposal—particularly the restriction of movement to a specified corridor—to be sufficient to minimize pest risk.

One commenter stated that the proposed provisions would place the United States in what the commenter called "double jeopardy" by allowing prohibited material that transited the continental United States under the proposed regulations, and that was rejected by the destination foreign country, to transit the United States again under 7 CFR part 352, which allows articles otherwise prohibited importation from foreign countries to transit the United States for export under certain conditions. We are making no changes based on this comment. Shipments that are returned from the destination country and that are shipped through the United States under 7 CFR part 352 will be handled as foreign cargo, and as such will be subject to the safeguards set forth in 7 CFR part 352. APHIS is under no obligation to accept returned cargo that does not meet the requirements of 7 CFR part 352.

The provisions in the proposal regarding shipments by sea state that such shipments must remain in the original sealed container during the transiting, except under extenuating circumstances and when authorized by an inspector. The definition is the proposal of "sealed container" read, in part; "A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal."

One commenter stated that this definition, combined with the requirement that shipments by sea remain in their original container while transiting, would create problems for certain shipments by sea. The commenter stated that the major ocean transportation companies use their own containers on their ships and do not release their containers when they reach their ports of destination. According to the commenter, the normal operating practice is to open the containers and transfer the cargo to trucks or other modes of transportation.

We are making no changes based on this comment. The proposed regulation was developed in response to numerous requests for industry representatives, who indicated that closed-container shipping throughout the transit process would be acceptable. While we acknowledge it might be more convenient for certain shipping companies to transload from containers, our research indicates that the bulk of containerized sea cargo can remain within the original container until it reaches its foreign destination.

One commenter stated that the proposal failed to define whether a sealable container would be permitted to have airholes for ventilation. The definition of "sealed (sealable) container" states that the container must be "completely enclosed" and be made of an "impenetrable material." We believe this wording makes it clear that the container may not have airholes.

One commenter asked whether the smaller packages in air shipments would be required to be completely enclosed to qualify for transloading. One commenter recommended that it be required that these containers be taped shut. We did not intend that the smallest units used for shipment would have to be completely enclosed to qualify for transloading. Such tight packing is often detrimental to the quality of fruits and vegetables. Because of the relatively short time normally taken to transload air shipments, and because of the other safeguards regarding transloading of such shipments in this rule, we do not consider it necessary to require that the smallest units in air shipments be completely enclosed.

Several commenters suggested that the definition of "sealed container" be revised to include a sealed shipping carton or box. We are not making the change recommended by the commenters. In recent years, we have reviewed a variety of possible shipping boxes. While many of these appear to offer an attractive alternative to sealed containers as set forth in the proposal–which essentially are relatively large shipping containers containing smaller containers—they have not yet been proven to offer the security of the sealed containers described in the proposal. However, we will continue to review this issue and will take whatever action is appropriate in the future.

One commenter expressed concern that some shippers might not be deterred by existing penalties from violating the new transiting provisions. We are making no changes based on this comment. In addition to being subject to the assessment of civil penalties, or being subject to criminal prosecution, persons violating the regulations may have their transit permit and limited permits withdrawn. Further, transit permits, which are required for shipments under the new transiting provision, will not be issued if, during the 12 months prior to receipt by APHIS of the application for the transit permit, the applicant has had such a permit withdrawn, unless it was reinstated on appeal. We consider these additional deterrents to potential violators.

One commenter expressed concern that the proposed regulations contained no requirement that each of the smallest units containing fruits and vegetables for transit through the continental United States be marked in such a way that they could be traced if they were smuggled back into the United States or illegally diverted. We disagree with this interpretation of the proposed regulations. Among other information, each of the smallest units must have a printed label that is marked with the transit permit number.

The proposal included the requirement that each of the smallest containers used for in-transit shipments be marked to read "Distribution in the United States is Prohibited." One commenter recommended that, because the shipments will have originated in the United States, the marking should read instead "Distribution in the Continental United States is Prohibited." Marking the containers as the commenter suggested would not address the need to keep certain articles

from being moved from one "non-continental" United States locality to another. Certain plant pests exist in some of these localities but not others. Therefore, we are making no changes based on the comment.

One commenter stated that the air cargo containers he has used are neither sealable nor lockable in the sense that they generally don't have hinged metal doors that can be locked and sealed securely. Because of this, the commenter recommended that shipments by air container be prohibited. We are making no changes based on this comment. Our experience enforcing the current Hawaii and Puerto Rico-Virgin Islands regulations indicates that the type of sealed containers required by this rule are commonly used for air shipments.

One commenter stated that transloading of fruits and vegetables in the United States from an air container would create an unacceptable pest risk, and that, therefore, air container shipments should be prohibited. We do not agree that transloading of air shipments in accordance with the proposed regulations will create an unacceptable pest risk. The provisions in this rule contain a number of safeguards, including the restriction of movement through a specified corridor and specific transloading requirements for air shipments, that we consider adequate to minimize pest risk.

Several commenters inquired whether provision would be made for removal from the continental United States of ruined and abandoned shipments. We are making no changes based on these comments. In such cases, the Secretary of Agriculture has statutory authority to take action to prevent the spread of plant pests from the shipments.

The proposed rule included a requirement that the person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under the proposed provisions would have to ensure that the means of conveyance or container is free of materials prohibited importation into the United States under any of the regulations in 7 CFR chapter III. One commenter recommended that the regulations require instead that empty air containers be cleaned before being returned to the United States.

We are making no changes based on this comment. Our intent in wording the proposed provision as we did was to guard against the importation into the United States of materials that could lead to the spread of plant pests. We consider the wording as proposed adequate to meet that end. For the purposes of this rule, we are concerned that the means of conveyance and container be free of materials prohibited importation into the United States under the regulations in 7 CFR chapter III. If the means of conveyance or container contains material other than that prohibited by such regulations, it will not present a plant pest risk. We recognize, however, that in some cases cleaning the means of conveyance or container will be necessary to remove all prohibited materials.

One commenter was concerned about maintaining the quality of fruits and vegetables that would be shipped under the proposed provisions. The commenter expressed concern that shipping fruits and vegetables together in an enclosed container could concentrated ethylene gas generated by the commodity and cause some vegetables to change to an unmarketable color. The commenter also recommended that a minimum transit temperature be established for bananas, to ensure their quality.

We are making no changes based on this comment. The proposed regulation includes no provisions that would prohibit shippers from using standard industry practices to ensure shipment quality in these situations. Shippers may segregate articles as appropriate. Additionally, controlled atmosphere shipping is available for those wishing to minimize ripening due to ethylene gas release in transit. With regard to a minimum transit temperature for bananas, the industry is free to establish its own minimum, as long as the shipping temperature is 60° F. or lower. This maximum temperature is well within the acceptable range for bananas.

One commenter stated that, because the proposed regulations deal with perishable commodities, APHIS should adhere to a 7-day maximum time period for approving transit permits and, on weekdays, a 1-day maximum time period for approving limited permits. We are making no changes based on this comment. We consider the rule as written to be acccomodating to potential shippers. It does not require that applications for permits be submitted a specified minimum number of days prior to shipment. We make every effort to expedite all permit requests. In normal practice, the highest priority is given to perishable commodities.

One commenter stated that the potential of pest risk introduction has been demonstrated to be linked to volume and to frequency of movement, and noted that the proposed rule included no data or analysis regarding potential frequency of use of the new provisions, or potential total volume of commodities that might transit under the proposed regulations during any given period. We do not agree that the efficacy of the provisions in this rule will be contingent upon the volume and frequency of shipments made. We consider the safeguards included to be adequate to minimize pest risk in each situation. With regard to data on the total volume of potential shipments, we published in the proposal the data available to us. During the comment period on the proposal, we received no additional data from the public regarding these projections.

Notification in Case of Emergency

One commenter expressed concern that the proposed rule did not contain provisions requiring contingency plans for adequately handling potential accidents. It is impossible to anticipate and describe every contingency. However, APHIS personnel are trained to address the contingencies most often encountered in enforcement of the regulations. We agree, however, that the regulations should contain some provision for notification of APHIS personnel in case of an accident or other type of emergency. We are therefore adding at § 318.13–17(g) and § 318.58–12(g) the requirement that, in the case of an emergency such as an accident, a mechanical breakdown of the means of conveyance, or an unavoidable deviation from the prescribed route, the person in charge of the means of conveyance must, as soon as practicable, notify the APHIS office at the port where the cargo arrived in the continental United States. APHIS will then notify its office nearest the shipment.

Storage and Transloading of Cargo

Several commenters expressed concern that the regulations contained no requirement that cargo shipped by air under the proposed provisions be separated from other air cargo during transloading or storage. Although the proposal did contain the requirements that air shipments be transloaded only in the secure area of the airport, that transloading be done into sealable containers, and that air shipments stored while awaiting transloading be kept in a permanent building, and be completely surrounded by a fence or wall that is closed and either locked or guarded, the proposal contained no specific prohibition for isolation of such cargo during storage or transloading. (In contrast, the proposed rule required that, except for extenuating circumstances, sea shipments remain in

the originally sealed containers during storage and transloading. This requirement is retained in this final rule.)

We agree that, in certain storage situations, the lack of isolation of air shipments could create an unacceptable increase in the risk of plant pest spread. Therefore, we are providing in § 318.13–17(j) and § 318.58–12(j) of this final rule that, while in storage, all shipments, including air shipments, must remain in a sealed container. Keeping the cargo in a sealed container will minimize pest risk.

Because the air shipments will have to remain in sealed containers while in storage, it will no longer be necessary or practicable to require, as was set forth in the proposed rule, that air cargo held for storage be kept in a permanent building and be completely surrounded by a fence or wall that is closed and either locked or guarded. In many cases, buildings at airports are not configured to accommodate the types of sealed containers that will be used under this rule. However, keeping the air cargo in sealed containers while in storage will ensure that the cargo is not commingled with other cargo, in light of the requirement in §§ 318.13–17(d) and 318.58–12(d) that fruits and vegetables shipped into or through the continental United States in accordance with §§ 318.13–17 and 318.58–12 not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. We are therefore removing the requirement set forth in paragraph (h)(1)(iii) of both § 318.13–17 and § 318.58–12 of the proposal that the area used for any storage of air shipments be within a permanent building and that the cargo be completely surrounded by a fence or wall that is closed and locked or guarded.

We are retaining, however, the requirement proposed in paragraph (i) of both § 318.13–17 and § 318.58–12 (redesignated as paragraph (j) in this final rule) that areas in the continental United States where fruits and vegetables moved under this rule are stored be either locked or guarded at all times the fruits and vegetables are present. This requirement is necessary to keep unauthorized members of the public from tampering with the cargo. Now that we are not requiring that air cargo be stored within a building, the most effective practicable means of guarding against unauthorized handling of the cargo at an airport during storage is to require that it be stored within the secure area of the airport. We are therefore revising paragraph (h)(1)(iii) of both § 318.13–17 and § 318.58–12 (redesignated as paragraph (i)(1)(iii) in this final rule) to include this requirement.

We are not adding specific provisions prohibiting the commingling of air cargo shipped under this rule with other cargo during the transloading process. Based on our experience enforcing the current Hawaii and Puerto Rico-Virgin Islands regulations, standard industry practice will be to keep cargo from different shipments separate. In those cases where the cargo is placed in the same area as other cargo, the relatively short time necessary for transloading, along with the other safeguards prescribed in this rule, will minimize the risk of pest transfer.

Sections 318.13–17(j) and 318.58–12(j) of the proposal (redesignated as §§ 318.13–17(k) and 318.58–12(k), respectively, in this final rule) provided that, except for time spent on aircraft, and except for up to 24 hours for transloading, fruits and vegetables moved into or through the continental United States under the proposed provisions would, from the time they leave Hawaii, Puerto Rico, or the Virgin Islands, have to be kept in sealed containers, or the sealed containers be kept in facilities, in which the temperature is 60° F or lower. We explained in the proposed rule that the risk of any plant pests that might be present in the shipment maturing or propagating is reduced by chilling the cargo. Additionally, we explained that chilling the cargo generally retards the ripening of fruits and vegetables, and that ripened fruits and vegetables are more attractive to pests and more conducive to propagation of pests.

However, the requirement that we are adding in this final rule that shipments remain in sealed containers while being stored, discussed above, will make it impracticable in many cases for cooling to be carried out during storage. In most cases, air shipment containers are not self-cooled, and, as indicated above, airports generally do not have the capability to house air containers in cooled buildings. However, unchilled air shipments, which by their nature are of much shorter duration than sea shipments, do not present the same risk of pest propagation or ripening of cargo that unchilled sea shipments do. Additionally, now that we are requiring storage in sealed containers, the risk of pest spread during storage of air shipments is minimized. Therefore, we are providing in §§ 318.13–17(k) and 318.58–12(k) of this rule that refrigeration is not required during transloading and storage of air shipments.

One commenter expressed concern regarding the proposed provision allowing even up to 24 hours without refrigeration for transloading of air shipments in the continental United States. The commenter stated that such a 24-hour period, in addition to time spent without refrigeration on an aircraft, would create an unacceptable risk of third instar fruit fly larvae exiting infested fruit and beginning to pupate. The commenter also expressed concern that the proposed provisions contained no minimum pulp temperature for produce at origin prior to shipping by air.

As discussed above, we are eliminating the requirement for refrigeration during the storage and transloading of air shipments. As noted above, we agree that refrigeration helps retard the ripening process, and that ripened fruits and vegetables are more attractive to pests and more conducive to the reproduction of pests. However, also as noted above, shipments by air, including time spent in storage, are generally of a relatively short duration, and refrigeration during these shipments will not significantly reduce plant pest risk. Additionally, this rule includes safeguards—i.e., transloading only under APHIS supervision, transloading and shipment only in a specified corridor, storage in sealed containers—to minimize the risk of pest introduction or spread from air shipments. Also, as a matter of standard industry practice, commercial shipments of produce are normally harvested and packed for maximum shelf-life, so that premature ripening is further minimized.

We intended the 24-hour limitation in proposed §§ 318.13–17(j) and 318.58–12(j) to be the maximum amount of time allowed for transloading of air shipments without refrigeration. However, the proposed regulations inadvertently made it appear that non-refrigeration for 24 hours for transloading applied to shipments other than by air. This was not our intent and we are now clarifying this in the final regulation. Based on our experience enforcing the regulations, however, standard industry practice is to transload air shipments in a relatively short period of time. Therefore, in clarifying the 24-hour limitation on non-refrigeration, we are not altering the intent of the proposal with regard to the amount of time permitted for transloading.

Comments Outside the Scope of the Proposal

Several commenters addressed issues outside the scope of the proposal.

Although we are taking no action based on these comments at this time, we have reviewed each of them and will consider them in determining what action, if any, is appropriate in the future.

Language To Be Used

We are also making several changes to the regulations as proposed to clarify our intent as to the language to be used for certain information. In § 318.13–17(a)(1)(i) and § 318.58–12(a)(1)(i) of the proposed rule, we stated that an application for a transit permit would have to include the specific types of fruits and vegetables to be shipped. In order to facilitate processing of the application, it was our intent that the applicant use either the English names or the scientific names for the fruits and vegetables. We are therefore including language in this rule to clarify this intent.

We are making the same type of change in §§ 318.13–17(b) and 318.58–12(b) regarding the listing of fruits and vegetables on manifests, waybills, or bills of lading, and also in §§ 318.13–17(c) and 318.58–12(c) regarding the listing of fruits and vegetables on labels to be placed on the smallest units of the shipments. Additionally, we are requiring that the statement of the origin of the shipment that is required to be included on the labels be in English, as well as the required statement of prohibition against distribution of the shipment in the United States.

Sealed Containers

The definition of "sealed (sealable) container" as proposed in both the Hawaii and the Puerto Rico and Virgin Islands regulations contained an apparent contradiction. The definition included the following statement: "Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself."

The wording in the two sentences cited makes it unclear whether containers used for air shipments that transit the United States must be distinct and separable from the means of conveyance carrying them, or whether they can be the means of conveyance itself. Our intent in the definition of "sealed (sealable) containers" was that, *before* any transloading, including any time before such transloading that the container spends transiting the continental United States, sealed containers used for air shipments must be distinct and separable from the means of conveyance carrying them, but that after transloading, the containers could either be distinct and separable from the means of conveyance or be the means of conveyance itself. As we stated in the proposed rule, shipping air cargo arriving in the continental United States under this rule in containers distinct and separable from the aircraft would be necessary for the cargo to be segregated from other cargo that might be offloaded in the continental United States. Therefore, in this rule we are wording the definition of "sealed (sealable) container" to reflect our intent.

Miscellaneous

Sections 318.13–1 and 318.58–1 contain definitions of terms used in the Hawaii regulations, and in the Puerto Rico/Virgin Islands regulations, respectively. In § 318.13–1 of the proposed rule, the definition of "sealed (sealable) container" stated that such a container provides an enclosure that is "accessed through doors that are closed and secured with a lock or seal." The definition of sealed container in § 318.58–1 was identical to that in § 318.13–1, except that it stated that the container provides an enclosure that is "accessed through doors that can be closed and secured with a lock or seal." This difference between the two definitions was inadvertent. It was our intent that both definitions state that the doors *are* closed and secured with a lock or seal. Therefore, we are wording § 318.58–1 accordingly.

Based on the reasons set forth in the proposal and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed in this document and with nonsubstantive changes to amend paragraph designations and to set forth consistent cross-references within the rule.

Effective Date

Mr. Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon signature. This rule removes a prohibition on the importation into the continental United States of certain fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands, provided the articles transit the continental United States on their way to a foreign destination, and provided certain safeguards are met. This rule will open up additional trade routes for certain products currently not eligible to transit the continental United States. It will benefit growers in Hawaii, Puerto Rico, and the Virgin Islands, as well as shipping lines, airlines, and transport companies.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, set forth in the following paragraphs, regarding the impact of this rule on small entities.

In accordance with 7 U.S.C. 162, the Secretary of Agriculture is authorized to promulgate regulations governing the interstate movement of plants and plant products from a State or territory of the United States that is quarantined to prevent the spread of a dangerous plant disease or insect infestation new to or not widely prevalent or distributed within or throughout the United States. We are allowing the movement into and through the continental United States of fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands that would otherwise be prohibited such movement. This movement will have to be carried out under restrictions that are necessary to prevent the spread of dangerous plant diseases and insect infestations. This amendment to the regulations provides additional cargo routes to shippers in Hawaii, Puerto Rico, and the Virgin Islands, without significantly increasing the introduction of plant diseases and pests into the continental United States.

This rule primarily benefits growers and shipping businesses in Hawaii, Puerto Rico, and the Virgin Islands. Current regulations allow prohibited fruits and vegetables from foreign sources to be shipped, under certain conditions, through the United States in

transit to a third country. However, prior to the effective date of this rule, these same types of routes were closed to fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands prohibited movement into the continental United States. Currently, cargo connections are such that very limited direct flights or shipping routes exist between the locations in question and Europe and Canada. The provisions in this rule provide growers and shippers in Hawaii, Puerto Rico, and the Virgin Island access to cargo routes similar to those available to foreign growers and shippers.

Puerto Rican growers/shippers have indicated that Canada represents a significant potential market for their vegetable crops. Similarly, both Canada and Europe are potential markets for Hawaiian produce, particularly fruits. However, the current lack of economical shipping routes outside the continental United States makes shipment of certain fruits and vegetables to these destinations cost-prohibitive. The amount of produce that might transit the continental United States under these regulations is unknown. Most of the requests to APHIS have been from growers/shippers of major crops such as pineapples and papayas from Hawaii. It is anticipated that a market for other nontraditional and exotic crops will develop as regulations are relaxed.

We considered two alternatives to this rule. The first was to defer any regulatory action in anticipation of the development of more direct shipping and air cargo routes between the locations in question and Canada and Europe that would bypass the continental United States. If and when these routes were established, we would reexamine the need to allow otherwise prohibited materials to transit the continental United States. This alternative was ruled out because we believe the low risk of pest introduction from the proposed regulations does not warrant the length of time that is likely to be involved before more accessible cargo routes could be in operation. We also considered proposing no changes at any time to the regulations. In light of the low risk of pest and disease introduction under the proposed regulations, this option was deemed unduly restrictive.

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 12778

This rule allows fruits and vegetables from Hawaii, Puerto Rico, and the Virgin Islands of the United States that are otherwise prohibited movement into or through the continental United States to transit a certain corridor of the continental United States en route to a foreign destination if certain safeguards are met. All State and local laws regarding such fruits and vegetables are preempted. No retroactive effect is to be given to this rule. This rule requires administrative proceedings before parties may file suit in court with regard to the withdrawal of transit permits and limited permits as provided in §§ 318.13–16 and 318.58–16. Thus, the administrative remedies set forth in §§ 318.13–16 and 318.58–16 must be exhausted before parties may file suit in court.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 318.13–1 is amended by revising the definitions of *Inspector, Limited permit* and *Person*, and by adding the following definitions in alphabetical order to read as follows:

§ 318.13–1 Definitions.

* * * * *

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

* * * * *

Inspector. An inspector of the Plant Protection and Quarantine Programs, United States Department of Agriculture.

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or

(2) Movement into or through the continental United States in conformity with a transit permit.

* * * * *

Means of conveyance. For the purposes of § 318.13–17 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

Person. Any individual, corporation, company, society, association, or other organized group.

* * * * *

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them before any transloading in the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by this subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to

another, or from a sealable container directly into a means of conveyance.

* * * * *

3. Section 318.13–3 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c) to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(c) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.13–17 of this subpart.

* * * * *

4. Section 318.13–4 is amended by revising paragraph (c) to read as follows:

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(c) *Limited permits.* (1) Limited permits may be issued by an inspector for the movement of noncertified regulated articles designated in § 318.13–3(b) of this subpart.

(2) Limited permits may be issued by an inspector for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.13–17 of this subpart.

* * * * *

5. Section 318.13–6 is revised to read as follows:

§ 318.13–6 Container marking and identity.

Except as provided in § 318.13–17(c) of this subpart, shipments of regulated articles moved in accordance with this subpart must have the following information clearly marked on each container, or, for shipments of multiple containers or bulk products, on the waybill, manifest, or bill of lading accompanying the articles: Nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–8 [Amended]

6. In § 318.13–8, in the first sentence, the words "the port of departure and/or the port of arrival." are removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." are added in their place.

§ 318.13–10 [Amended]

7. In § 318.13–10, at the end of paragraph (f)(1), the reference "§ 318.13–3(d)" is removed and "§ 318.13–3(e)" is added in its place; and paragraph (f)(2) introductory text is revised and a new paragraph (f)(3) is added to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without a certificate attached to the cargo or a limited permit attached to the cargo if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.13–17 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

§ 318.13–16 [Amended]

8. In § 318.13–16, the heading is amended by adding "transit permits," immediately after "certificates,".

9. Section 318.13–16 is amended by adding "transmit permit," immediately after "certificate," in the first sentence and in the third sentence.

10. In § 318.13–16, the fourth sentence is amended by removing the words "certificate or limited permit" and adding in their place the words "certificate, transit permit, or limited permit".

11. A new § 318.13–17 is added to read as follows:

§ 318.13–17 Transit of fruits and vegetables from Hawaii into or through the continental United States.

Fruits and vegetables from Hawaii otherwise prohibited movement from the State of Hawaii into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Hawaii. Application for a transit permit must be made in writing.[9] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped (only scientific or English names are acceptable);

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.13–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited permit.* Fruits and vegetables shipped from Hawaii into or

[9] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. (Only scientific or English names are acceptable.) The fruits and vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has been prepared in compliance with the provisions of this section.

(c) *Making requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the locking and sealing of the container in Hawaii, with a printed label that includes a description of the specific type and quantity of the fruits and vegetables (only scientific or English names are acceptable), the transit permit number under which the fruits and vegetables are to be shipped, and, in English, the fact that they were grown in Hawaii and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Hawaii in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (h), and (i) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[10]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original shipment from that described in the limited permit is allowed. No remaking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Notification in case of emergency.* In the case of an emergency such as an accident, a mechanical breakdown of the means of conveyance, or an unavoidable deviation from the prescribed route, the person in charge of the means of conveyance must, as soon as practicable, notify the APHIS office at the port where the cargo arrived in the continental United States.

(h) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Hawaii may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the origina' sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Hawaii may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transmit permit and as provided in paragraph (i)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—*i.e.*, that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within the secure area of the airport; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (i)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that

[10] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(j) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present. Cargo shipped under this section must be kept in a sealed container while stored in the continental United States.

(k) *Temperature requirement.* Except for time spent on aircraft and except during storage and transloading of air shipments, the temperature in the sealed containers containing fruits and vegetables moved under this section must be 60° F or lower from the time the fruits and vegetables leave Hawaii until they exit the continental United States.

(l) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(m) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(n) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under this section by such a person shall be deemed to be a violation of this section.

§ 318.58 [Amended]

12. Section 318.58–1 is amended by removing the paragraph designations, placing the definitions in alphabetical order, and adding new definitions in alphabetical order to read as follows:

§ 318.58–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service authorized to act in the Administrator's stead.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

* * * * *

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

* * * * *

Interstate. From any State into or through any other State.

Limited permit. A document issued by an inspector for the interstate movement of regulated articles to a specified destination for:

(1) Consumption, limited utilization or processing, or treatment, in conformity with a compliance agreement; or

(2) Movement into or through the continental United States in conformity with a transit permit.

Means of conveyance. For the purposes of § 318.58–12 of this subpart, "means of conveyance" shall mean a ship, truck, aircraft, or railcar.

* * * * *

Person. Any individual, corporation, company, society, association, or other organized group.

* * * * *

Sealed (sealable) container. A completely enclosed container designed for the storage and/or transportation of commercial air, sea, rail, or truck cargo, and constructed of metal or fiberglass, or other similarly sturdy and impenetrable material, providing an enclosure accessed through doors that are closed and secured with a lock or seal. Sealed (sealable) containers used for sea shipments are distinct and separable from the means of conveyance carrying them when arriving in and in transit through the continental United States. Sealed (sealable) containers used for air shipments are distinct and separable from the means of conveyance carrying them before any transloading in the continental United States. Sealed (sealable) containers used for air shipments after transloading in the continental United States or for overland shipments in the continental United States may either be distinct and separable from the means of conveyance carrying them, or be the means of conveyance itself.

State. Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories and possessions of the United States.

Transit permit. A written authorization issued by the Administrator for the movement of fruits and vegetables en route to a foreign destination that are otherwise prohibited movement by this subpart into or through the continental United States. Transit permits authorize one or more shipments over a designated period of time.

Transloading. The transfer of cargo from one sealable container to another, from one means of conveyance to another, or from a sealable container directly into a means of conveyance.

13. Section 318.58–3 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 318.58–3 Conditions of movement.

* * * * *

(b) *To a foreign destination after transiting the continental United States.* Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with § 318.58–12 of this subpart.

* * * * *

14. Section 318.58–4 is amended by revising the heading and the introductory text, and by adding a new paragraph (c) to read as follows:

§ 318.58–4 Issuance of certificates or limited permits.

Under the following conditions, an inspector may issue a certificate or limited permit for the movement of regulated articles to be moved in accordance with this subpart:

* * * * *

(c) An inspector may issue a limited permit for the movement of fruits and vegetables otherwise prohibited movement under this subpart, if the articles are to be moved in accordance with § 318.58–12 of this subpart.

§ 318.58–7 [Amended]

15. In § 318.58–7, the reference "§§ 318.58–8 and 318.58–12," is removed and a reference "§ 318.58–8," is added in its place; and the designations "(a)", "(b)", and "(c)" are removed, and the word "and" is added in place of the designation "(c)".

§ 318.58–8 [Amended]

16. In § 318.58–8, in the first sentence, the words "the port of departure and/or the port of arrival." are removed, and the words "the port of departure, the port of arrival, and/or any other authorized port." are added in their place.

§ 318.58–10 [Amended]

17. In § 318.58–10, at the end of paragraph (f)(1), the reference "§ 318.58–3(c)" is removed and "§ 318.58–3(d)" is added in its place.

18. In § 318.58–10, paragraph (f)(2) introductory text is revised and a new paragraph (f)(3) is added to read as follows:

§ 318.58–10 Inspection of baggage, other personal effects, and cargo.

* * * * *

(f) * * *

(2) Cargo designated in paragraph (f)(1) of this section may be loaded without a USDA stamp or USDA inspection sticker, and without a certificate attached to the cargo or a limited permit attached to the cargo, if the cargo is moved:

* * * * *

(3) Cargo moved in accordance with § 318.58–12 of this subpart that does not have a limited permit attached to the cargo must have a limited permit attached to the waybill, manifest, or bill of lading accompanying the shipment.

* * * * *

19. Section 318.58–12 is revised to read as follows:

§ 318.58–1 Transit of fruits and vegetables from Puerto Rico and the Virgin Islands of the United States into or through the continental United States.

Fruits and vegetables from Puerto Rico and the Virgin Islands of the United States that are otherwise prohibited movement from those territories into or through the continental United States by this subpart may transit the continental United States en route to a foreign destination when moved in accordance with this section and any other applicable provisions of this subpart. Any additional restrictions on such movement that would otherwise be imposed by part 301 of this chapter and §§ 318.30 and 318.30a of this part shall not apply.

(a) *Transit permit.* (1) A transit permit is required for the arrival, unloading, and movement into or through the continental United States of fruits and vegetables otherwise prohibited by this subpart from being moved into or through the continental United States from Puerto Rico or the Virgin Islands of the United States. Application for a transit permit must be made in writing.[2] The transit permit application must include the following information:

(i) The specific types of fruits and vegetables to be shipped (only scientific or English names are acceptable);

(ii) The means of conveyance to be used to transport the fruits and vegetables into or through the continental United States;

(iii) The port of arrival in the continental United States, and the location of any subsequent stop;

(iv) The location of, and the time needed for, any storage in the continental United States;

(v) Any location in the continental United States where the fruits and vegetables are to be transloaded;

(vi) The means of conveyance to be used for transporting the fruits and vegetables from the port of arrival in the continental United States to the port of export;

(vii) The estimated time necessary to accomplish exportation, from arrival at the port of arrival in the continental United States to exit at the port of export;

(viii) The port of export; and

(ix) The name and address of the applicant and, if the applicant's address is not within the territorial limits of the United States, the name and address in the United States of an agent whom the applicant names for acceptance of service of process.

(2) A transit permit will be issued only if the following conditions are met:

(i) APHIS inspectors are available at the port of arrival, port of export, and any locations at which transloading of cargo will take place, and, in the case of air shipments, at any interim stop in the continental United States, as indicated on the application for the transit permit;

(ii) The application indicates that the proposed movement would comply with the provisions in this section applicable to the transit permit; and

(iii) During the 12 months prior to receipt of the application by APHIS, the applicant has not had a transit permit withdrawn under § 318.58–16 of this subpart, unless the transit permit has been reinstated upon appeal.

(b) *Limited Permit.* Fruits and vegetables shipped from Puerto Rico or the Virgin Islands of the United States into or through the continental United States under this section must be accompanied by a limited permit, a copy of which must be presented to an inspector at the port of arrival and the port of export in the continental United States, and at any other location in the continental United States where an air shipment is authorized to stop or where overland shipments change means of conveyance. An inspector will issue a limited permit if the following conditions are met:

(1) The inspector determines that the specific type and quantity of the fruits and vegetables being shipped are accurately described by accompanying documentation, such as the accompanying manifest, waybill, and bill of lading. (Only scientific or English names are acceptable.) The fruits and vegetables shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this section; and

(2) The inspector establishes that the shipment of fruits and vegetables has

[2] Applications for transit permits should be submitted to the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

been prepared in compliance with the provisions of this section.

(c) *Marking requirements.* Each of the smallest units, including each of the smallest bags, crates, or cartons, containing fruits and vegetables for transit into or through the continental United States under this section must be conspicuously marked, prior to the locking and sealing of the container in Puerto Rico or the Virgin Islands of the United States, with a printed label that includes, a description of the specific type and quantity of the fruits and vegetables (only scientific or English names are acceptable), the transit permit number under which the fruits and vegetables are to be shipped, and, in English, the fact that they were grown in Puerto Rico or the Virgin Islands of the United States and the statement "Distribution in the United States is Prohibited."

(d) *Handling of fruits and vegetables.* Fruits and vegetables shipped into or through the continental United States from Puerto Rico or the Virgin Islands of the United States in accordance with this section may not be commingled in the same sealed container with articles that are intended for entry and distribution in the continental United States. The fruits and vegetables must be kept in sealed containers from the time the limited permit required by paragraph (b) of this section is issued, until the fruits and vegetables exit the continental United States, except as otherwise provided in the regulations in this section. Transloading must be carried out in accordance with the requirements of paragraphs (a), (h), and (i) of this section.

(e) *Area of movement.* The port of arrival, the port of export, ports for air stops, and overland movement within the continental United States of fruits and vegetables shipped under this section is limited to a corridor that includes all States of the continental United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, and Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into the designated corridor by the shortest route. Movement through the continental United States must begin and end at locations staffed by APHIS inspectors.[3]

(f) *Movement of fruits and vegetables.* Transportation through the continental United States shall be by the most direct route to the final destination of the shipment in the country to which it is exported, as determined by APHIS based on commercial shipping routes and timetables and set forth in the transit permit. No change in the quantity of the original shipment from that described in the limited permit is allowed. No remarking is allowed. No diversion or delay of the shipment from the itinerary described in the transit permit and limited permit is allowed unless authorized by an APHIS inspector upon determination by the inspector that the change will not significantly increase the risk of plant pests or diseases in the United States, and unless each port to which the shipment is diverted is staffed by APHIS inspectors.

(g) *Notification in case of emergency.* In the case of an emergency such as an accident, a mechanical breakdown of the means of conveyance, or an unavoidable deviation from the prescribed route, the person in charge of the means of conveyance must, as soon as practicable, notify the APHIS office at the port where the cargo arrived in the continental United States.

(h) *Shipments by sea.* Except as authorized by this paragraph, shipments arriving in the continental United States by sea from Puerto Rico or the Virgin Islands of the United States may be transloaded once from a ship to another ship or, alternatively, once to a truck or railcar at the port of arrival and once from a truck or railcar to a ship at the port of export, and must remain in the original sealed container, except under extenuating circumstances and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(i) *Shipments by air.* (1) Shipments arriving in the continental United States by air from Puerto Rico or the Virgin Islands of the United States may be transloaded only once in the continental United States. Transloading of air shipments must be carried out in the presence of an APHIS inspector. Shipments arriving by air that are transloaded may be transloaded either into another aircraft or into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the port of arrival in the United States or at the second air stop within the designated corridor, as authorized in the transit permit and as provided in paragraph (i)(2) of this section. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision. Transloading of air shipments will be authorized only if the following conditions are met:

(i) The transloading is done into sealable containers;

(ii) The transloading is carried out within the secure area of the airport—*i.e.*, that area of the airport that is open only to personnel authorized by the airport security authorities;

(iii) The area used for any storage is within the secure area of the airport; and

(iv) APHIS inspectors are available to provide the supervision required by paragraph (i)(1) of this section.

(2) Except as authorized by paragraph (f) of this section, shipments that continue by air from the port of arrival in the continental United States may be authorized by APHIS for only one additional stop in the continental United States, provided the second stop is within the designated corridor set forth in paragraph (e) of this section and is staffed by APHIS inspectors. As an alternative to transloading a shipment arriving in the United States into another aircraft, shipments that arrive by air may be transloaded into a truck trailer for export by the most direct route to the final destination of the shipment through the designated corridor set forth in paragraph (e) of this section. This may be done at either the

[3] For a list of ports staffed by APHIS inspectors, contact the Administrator, c/o Permit Unit, Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

port of arrival in the United States or at the second authorized air stop within the designated corridor. No other transloading of the shipment is allowed, except under extenuating circumstances (e.g., equipment breakdown) and when authorized by an APHIS inspector upon determination by the inspector that the transloading would not significantly increase the risk of the introduction of plant pests or diseases into the continental United States, and provided that APHIS inspectors are available to provide supervision.

(j) *Duration and location of storage.* Any storage in the continental United States of fruits and vegetables shipped under this section must be for a duration and in a location authorized in the transit permit required by paragraph (a) of this section. Areas where such fruits and vegetables are stored must be either locked or guarded at all times the fruits and vegetables are present. Cargo shipped under this section must be kept in a sealed container while stored in the continental United States.

(k) *Temperature requirement.* Except for time spent on aircraft and except during storage and transloading of air shipments, the temperature in the sealed containers containing fruits and vegetables moved under this section must be 60° F or lower from the time the fruits and vegetables leave Puerto Rico or the Virgin Islands of the United States until they exit the continental United States.

(l) *Prohibited materials.* (1) The person in charge of or in possession of a sealed container used for movement into or through the continental United States under this section must ensure that the sealed container is carrying only those fruits and vegetables authorized by the transit permit required under paragraph (a) of this section; and

(2) The person in charge of or in possession of any means of conveyance or container returned to the United States without being reloaded after being used to export fruits and vegetables from the United States under this section must ensure that the means of conveyance or container is free of materials prohibited importation into the United States under this chapter.

(m) Authorization by APHIS of the movement of fruits and vegetables into or through the continental United States under this section does not imply that the fruits and vegetables are enterable into the destination country. Shipments returned to the United States from the destination country shall be subject to all applicable regulations, including "Subpart—Fruits and Vegetables" of part 319 of this chapter, and part 352 of this chapter.

(n) Any restrictions and requirements with respect to the arrival, temporary stay, unloading, transloading, transiting, exportation, or other movement or possession in the United States of any fruits or vegetables under this section shall apply to any person who, respectively, brings into, maintains, unloads, transloads, transports, exports, or otherwise moves or possesses in the United States such fruits or vegetables, whether or not that person is the one who was required to have a transit permit or limited permit for the fruits or vegetables or is a subsequent custodian of the fruits or vegetables. Failure to comply with all applicable restrictions and requirements under this section by such a person shall be deemed to be a violation of this section.

§ 318.58–16 [Amended]

20. In § 318.58–16, the heading is revised to read "Cancellation of certificates, transit permits, or limited permits."

21. In § 318.58–16, a comma and the words "transit permit, or limited permit" are added immediately following the word "certificate" in the following places:

a. The first sentence;
b. The third sentence; and
c. The fourth sentence.

Done in Washington, DC, this 5th day of February 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–3282 Filed 2–10–93; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket No. FV92–907–4]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Clarifying Regulations To Remove 1985 Amendments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action clarifies the Federal marketing orders regulating navel and Valencia oranges grown in Arizona and designated parts of California by removing the 1985 amendments to the orders and the administrative rules issued to implement those amendments. This action is taken in response to an August 21 decision by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, California (Ninth Circuit) invalidating the 1985 amendments to the Valencia orange marketing order. The decision also relates to the navel orange marketing order because that order was amended concurrently with the Valencia orange order. Accordingly, this action removes the 1985 amendments to the navel and Valencia orange marketing orders.

EFFECTIVE DATE: February 11, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This correction clarifies the navel and Valencia orange marketing orders by removing the amendments contained in the Order Amending the Orders issued on January 8, 1985, and published in the **Federal Register** on January 11, 1985 (50 FR 1429), and the administrative rules issued to implement those amendments. This action is taken in response to a decision issued by the Ninth Circuit invalidating 1985 amendments to the Valencia orange marketing order. In its decision, the Ninth Circuit ruled that the amendments were not properly enacted under the Administrative Procedure Act. The decision also is related to the navel orange marketing order because that order was amended concurrently with the Valencia orange order using the same enactment procedures. The Department has announced that it is terminating that 1985 rulemaking proceeding. However, a clarifying action is necessary to remove these 1985 amendments as required by the court decision. Accordingly, the 1985 amendments to the navel and Valencia orange marketing orders are hereby removed. Minor, nonsubstantive changes in terminology are made to properly reflect the 1988 amendments to the orders.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. In § 907.10, the first sentence is revised to read as follows:

§ 907.10 Handle.

Handle means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of Arizona. * * *

3. Section 907.17 is revised to read as follows:

§ 907.17 Carload.

Carload means a quantity of oranges equivalent to 924 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

4. Section 907.18 is revised to read as follows:

§ 907.18 Export.

Export means shipments of oranges to points outside the continental United States, Canada, and Alaska.

5. In § 907.20, paragraph (a) is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections are made pursuant to § 907.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower member there shall be one additional alternate. Ten of the members and their respective alternates and, for grower members, additional alternates, shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member or alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

* * * * *

6. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate grower member of the committee shall be for a period of two years, and such terms shall begin October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate grower members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified.

7. In § 907.22, paragraphs (a) introductory text, (c), (d), (e), and (i) are revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate grower member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

* * * * *

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made	Number of members which may be nominated (an alternate member shall be nominated for each member and an additional alternate shall be nominated for each grower member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 and above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceed 50 percent, the percentage figures in the preceding table applicable to the other nominating entities shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and, for grower members, one additional alternate member.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made	Number of members which may be nominated (an alternate member shall be nominated for each member and an additional alternate shall be nominated for each grower member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.00	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and, for grower members, one additional alternate member.}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate, and additional alternate grower, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus

alternate, and additional alternate grower, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a) (1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternate growers, pursuant to this paragraph and paragraph (c) of this section.

* * * * *

(i) The time and manner of nominating members, alternate members, and additional alternate grower members of the committee shall be prescribed by the Secretary: *Provided*, That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

8. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to § 907.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate for each member and an additional alternate for each grower member. From the nominations made pursuant to § 907.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

9. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate grower members of the committee on the basis of the representation provided for in § 907.22.

10. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate grower member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate grower member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate grower member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

11. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate grower member, the additional alternate grower member shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member to act in that member's place if the alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

12. Section 907.31 is revised to read as follows:

§ 907.31 Expenses and compensation.

The members of the committee and their respective alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and shall receive compensation at a rate to be determined by the committee, which rate shall not exceed $25 per day or portion thereof spent in performing such duties. Whenever specifically authorized or approved by the committee, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him in attending committee meetings and shall receive compensation at the rate provided in this section, notwithstanding that the committee member for whom he serves as alternate also attends such meetings.

§ 907.34 [Removed]

13. Section 907.34 is removed.

§ 907.41 [Amended]

14. Paragraph (d) of § 907.41 is removed.

§ 907.50 [Amended]

15. In paragraph (a) of § 907.50, the third sentence, "In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate and size regulation", is removed.

16. In § 907.51, paragraphs (a) and (c) are revised as follows:

§ 907.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, reports representing the respective views of the committee members with respect to its failure to act shall be submitted to the Secretary.

* * * * *

(c) At any time during a week for which the Secretary, pursuant to § 907.52, has fixed the quantity of oranges which may be handled, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

* * * * *

§ 907.52 [Amended]

17. In the last sentence of § 907.52, the words "prior to or" are removed.

18. In § 907.53, paragraph (i) is removed and paragraphs (b), (c), (f), (g), and (h) are revised to read as follows:

§ 907.53 Prorate bases.

* * * * *

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least:

(1) The name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant;

(2) An accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; and

(3) An estimate of the total quantity of oranges available for current shipment

by the applicant in terms of a unit of measure designated by the committee.

(c) Such application shall include a certification by the handler that he has control, for all purposes relating to this part, of the oranges described in the application.

* * * * *

(f) When any person having a prorate base has moved all his oranges or has remaining a quantity smaller than his allotment, he shall be removed from the prorate base or his prorate base shall be reduced so that his allotment based thereon shall not exceed the quantity of oranges remaining under his control; except that he shall receive his allotments on his full prorate base to the extent necessary to pay back loans for which he is obligated in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission or inaccuracy in any such information, it shall correct the same and shall give the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission or inaccuracy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission or inaccuracy.

(h) Each week during the marketing season when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base fixed for him.

19. Section 907.54 is revised to read as follows:

§ 907.54 Allotments.

Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be handled by each such person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which mat be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for him pursuant to this part.

20. Section 907.55 is revised to read as follows:

§ 907.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week, and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to his allotment an amount of such oranges equivalent to 20 percent of his allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And provided further,* That if, subsequent to the determination of general maturity, allotment (other than short life allotment) is forfeited in any prorate district during any prorate period, such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such prorate period, unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend his undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 907.54. However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 907.60, or is entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotment issued to each such person until such excess has been entirely offset: *Provided,* That no overshipment incurred during one season shall be deducted from allotments issued during the following season. The provisions of this section shall not apply to any person who, during any week, has not received an allotment under this subpart for such week. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 907.55.

21. Section § 907.56 is revised to read as follows:

§ 907.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 907.52, in an amount less than his allotment of oranges for such week, he may handle, in addition to his allotment for the next week only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges.

§ 907.59 [Amended]

22. In the first sentence of § 907.59, the words "pursuant to § 908.54," after the first comma in the first sentence, are removed.

§ 907.60 [Amended]

23. In the first sentence of § 907.60, the words "§ 907.54(a)" are removed and, in their place, the words "§ 907.54" are added.

§ 907.61 [Amended]

24. In the first sentence of § 907.61, the words "§ 907.54(a)" are removed and, in their place, the words "§ 907.54" are added.

§ 907.61a [Amended]

25. In the first sentence of § 907.61a, the words "§ 907.54(a)" are removed

and, in their place, the words "§ 907.54" are added.

26. Section 907.64 is revised to read as follows:

§ 907.64 Issuance of size regulation.

Whenever the Secretary shall find, from the findings, recommendations, and information submitted by the committee, or from other available information, that to limit the handling of oranges by sizes would tend to effectuate the declared policy of the act, he shall fix the sizes of oranges grown in each such prorate district which may be handled during the specified period. When any such size regulation restricts the handling of a portion of a specified size, the quantity of such size that may be handled by a handler during a particular week shall be established as a percentage of the weekly allotment issued to such handler when volume regulation is in effect, and the total weekly volume handled by such handler when volume regulations is not in effect. Any such regulation may provide that the handling of oranges shipped to Canada shall be subject to size regulation different from the size regulation applicable to the handling of other shipments of oranges. The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give adequate notice thereof to all handlers.

§ 907.67 [Amended]

27. In the last sentence of section 907.67, the words "periodically review and" are removed.

§ 907.70 [Amended]

28. In the introductory text of § 907.70, the words "person who first handles oranges" are removed and, in their place, the word "handler" is added.

29. Section 907.71 is revised to read as follows:

§ 907.71 Manifest report.

Each handler shall furnish to the committee information regarding the size of oranges in each standard packed carton or its equivalent handled by such handler whether such shipments were destined to points in the United States and Alaska or to Canada and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

§ 907.73 [Removed]

30. Section 907.73 and the undesignated heading preceding it are removed.

31. In § 907.83, paragraph (c)(1) is revised, paragraphs (d) and (e) are removed, a new paragraph (c)(3) is added, and paragraph (f) is redesignated as paragraph (d) as follows:

§ 907.83 Termination.

* * * * *

(c) (1) The Secretary shall terminate the provisions of this part at the end of any fiscal year, whenever he finds that continuance is not favored by producers; but such termination shall be effective only if announced on or before October 15 of the then current fiscal year.

(2) * * *

(3) Upon recommendation of the committee, received not later than January 15 of an odd numbered year, the Secretary shall conduct a referendum prior to March 15 of such year to ascertain whether continuance of this part is favored by producers.

* * * * *

§ 907.103 [Removed]

32. Section 907.103 is removed.

§ 907.106 [Removed]

33. Section 907.106 and the undesignated heading preceding it are removed.

§ 907.109 [Removed]

34. Section 907.109 is removed.

§ 907.118 [Removed]

35. Section 907.118 is removed.

§ 907.173 [Removed]

36. Section 907.173 and the undesignated heading preceding it are removed.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

37. In § 908.11, the first sentence is revised to read as follows:

§ 908.11 Handle.

Handle means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of Arizona. * * *

38. Section 908.18 is revised to read as follows:

§ 908.18 Carload.

Carload means a quantity of oranges equivalent to 924 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

39. Section 908.19, is revised to read as follows:

§ 908.19 Export.

Export means to ship oranges to points outside the continental United States, Canada, and Alaska.

40. In § 908.20, paragraph (a) is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower member there shall be one additional alternate. Ten of the members and their respective alternatives and, for grower members, additional alternates, shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member or alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

* * * * *

41. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member, alternate member, and additional alternate grower member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate

grower members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office members, not including alternate members or additional alternate grower members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate grower member for the next succeeding term of office.

42. In § 908.22, paragraphs (a) introductory text, (c), (d), (e), and (i) are revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate grower member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made:

* * * * *

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate member shall be nominated for each member and an additional alternate shall be nominated for each grower member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 and above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table applicable to the other nominating entities shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and, for grower members, one additional alternate member.}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made	Number of members which may be nominated (an alternate member shall be nominated for each member and an additional alternate shall be nominated for each grower member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.00	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and, for grower members, one additional alternate member.}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate, and additional grower, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate, and additional alternate grower, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided*, That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternate growers, pursuant to this paragraph and paragraph (c) of this section.

* * * * *

(i) The time and manner of nominating members, alternate members, and additional alternate grower members of the committee shall be prescribed by the Secretary: *Provided*, That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

43. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate for each member and an additional alternate for each grower member. From the nominations made pursuant to § 908.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

44. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate grower members of the committee on the basis of the representation provided for in § 908.22.

45. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate grower member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate grower member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate grower member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which

nominated such person for the term or from other qualified persons.

46. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate grower member, the additional alternate grower member shall so act: *Provided*, That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member to act in that member's place if the alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

47. Section 908.31 is revised to read as follows:

§ 908.31 Expenses and compensation.

The members of the committee, and their respective alternates when acting as members, shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties under this part and shall receive compensation at a rate to be determined by the committee, which rate shall not exceed $25 per day or portion thereof spent in performing such duties. Whenever specifically authorized or approved by the committee, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him in attending committee meetings and shall receive compensation at the rate provided in this section, notwithstanding that the committee member for whom he serves as alternate also attends such meetings.

§ 908.34 [Removed]

48. Section 908.34 is removed.

§ 908.41 [Amended]

49. Paragraph (d) of § 908.41 is removed.

§ 908.50 [Amended]

50. In paragraph (a) of § 908.50, the third sentence, "In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate and size regulation." is removed.

51. In § 908.51, paragraphs (a) and (c) are revised as follows:

§ 908.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, reports representing the respective views of the committee members with respect to its failure to act shall be submitted to the Secretary.

* * * * *

(c) At any time during a week for which the Secretary, pursuant to § 908.52, has fixed the quantity of oranges which may be handled, the committee may recommend to the Secretary that such quantity be increased for such week. Each such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

* * * * *

§ 908.52 [Amended]

52. In the last sentence of § 908.52, the words "prior to or" are removed.

53. In § 908.53, paragraph (i) is removed and paragraphs (b), (c), (f), (g), and (h) are revised to read as follows:

§ 908.53 Prorate bases.

* * * * *

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least:

(1) The name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant;

(2) An accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; and

(3) An estimate of the total quantity of oranges available for current shipment by the applicant in terms of the unit of measure designated by the committee.

(c) Such application shall include a certification by the handler that he has control, for all purposes relating to this marketing order, of the oranges described in the application.

* * * * *

(f) When any person having a prorate base has moved all his oranges or has remaining a quantity smaller than his allotment, he shall be removed from the prorate base or his prorate base shall be reduced so that his allotment based thereon shall not exceed the quantity of oranges remaining under his control; except that he shall receive his allotments on his full prorate base to the extent necessary to pay back loans for which he is obligated in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission or inaccuracy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission or inaccuracy.

(h) Each week during the marketing season when volume regulation is likely to be recommended the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base fixed for him.

54. Section 908.54 is revised to read as follows:

§ 908.54 Allotments.

Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be

handled by each person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for him pursuant to this part.

55. Section 908.55 is revised to read as follows:

§ 908.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week, and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to his allotment an amount of such oranges equivalent to 20 percent of his allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And provided further,* That if, subsequent to the determination of general maturity, allotment (other than short life allotment) is forfeited in any prorate district during any prorate period, such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such prorate period, unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend his undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 908.54. However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 908.60, or is entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotment issued to each such person until such excess has been entirely offset: *Provided,* That no overshipment incurred during a marketing year shall be deducted from allotments issued during the following marketing year. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 908.55.

56. Section 908.56 is revised to read as follows:

§ 908.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 908.52, in an amount less than his allotment of oranges for such week, he may handle, in addition to his allotment for the next week only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges.

§ 908.59 [Amended]

57. In the first sentence of § 908.59, the words "pursuant to § 908.54," after the first comma in the first sentence, are removed.

§ 908.60 [Amended]

58. In the first sentence of § 908.60, the words "908.54(a)" are removed and, in their place, the words "§ 908.54" are added.

§ 908.61 [Amended]

59. In the first sentence of § 908.61, the words "908.54(a)" are removed and, in their place, the words "§ 908.54" are added.

§ 908.61a [Amended]

60. In the first sentence of § 908.61a, the words "§ 908.54(a)" are removed and, in their place, the words "section 908.54" are added.

61. Section 908.64 is revised to read as follows:

§ 908.64 Issuance of size regulation.

Whenever the Secretary shall find, from the findings, recommendations, and information submitted by the committee, or from other available information, that to limit the handling of oranges grown in any prorate district or districts by sizes would tend to effectuate the declared policy of the act, he shall fix the sizes of oranges grown in each such prorate district which may be handled during the specified period. When any such size regulation restricts the handling of a portion of a specified size, the quantity of such size that may be handled by a handler during a particular week shall be established as a percentage of the weekly allotment issued to such handler when volume regulation is in effect, and the total weekly volume handled by such handler when volume regulation is not in effect. The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give adequate notice thereof to all handlers.

§ 908.67 [Amended]

62. In the last sentence of § 908.67, the words "periodically review and " are removed.

§ 908.70 [Amended]

63. In the introductory text of § 908.70, the words "person who first handles oranges" are removed and, in their place the word "handler" is added.

64. Section 908.71 is revised to read as follows:

§ 908.71 Manifest report.

Each handler shall furnish to the committee information regarding the size of oranges in each carton handled by such handler and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

§ 908.73 [Removed]

65. Section 908.73 and the undesignated heading preceding it are removed.

66. In § 908.83, paragraph (c)(1) is revised, paragraph (d) and (e) are removed, a new paragraph (c)(3) is added, and paragraph (f) is redesignated as paragraph (d) as follows:

§ 908.83 Termination.

* * * * *

(c)(1) The Secretary shall terminate the provisions of this part at the end of any marketing year, whenever he finds that continuance is not favored by producers; but such termination shall be effective only if announced on or before January 15 of the then current marketing year.

(2) * * *

(3) Upon recommendation of the committee, received not later than

August 15 of an even numbered year, the Secretary shall conduct a referendum prior to October 15 of such year to ascertain whether continuance of this part is favored by producers.

* * * * *

§ 908.103 [Removed]

67. Section 908.103 is removed.

§ 908.106 [Removed]

68. Section 908.106 and the undesignated heading preceding it are removed.

§ 908.109 [Removed]

69. Section 908.109 is removed.

§ 908.118 [Removed]

70. Section 908.118 is removed.

§ 908.173 [Removed]

71. Section 908.173 and the undesignated heading preceding it are removed.

Dated: February 5, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-3231 Filed 2-10-93; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 915

[Docket No. FV92-915-1IR]

Avocados Grown in South Florida; Temporary Relaxation of Grade Requirements for Certain Florida Avocados (M.O. 915)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action temporarily relaxes grade requirements for Florida avocados by suspending all grade requirements for fresh avocados shipped in certain containers to destinations within the production area in Florida. This suspension will end when more abundant supplies of fresh Florida avocados are expected to be available. Supplies of fresh Florida avocados are currently very limited due to extensive damage from Hurricane Andrew last August, and supplies next season are expected to be substantially below normal. This action will enable Florida growers and handlers to sell a larger portion of their avocado crop in the fresh market in the production area.

DATES: This interim final rule becomes effective February 11, 1993. Comments which are received by March 15, 1993 will be considered prior to finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: 202-702-5331; or William Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 915 (7 CFR part 915) regulating the handling of avocados grown in South Florida. This 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.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final 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 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are about 40 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida, and about 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Florida avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) recommended the relaxation for avocados. This committee works with the Department in administering the marketing agreement and order. This committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This action temporarily relaxes grade requirements for Florida avocados by suspending all grade requirements for fresh avocados shipped to destinations within the production area in Florida in containers other than those authorized under § 915.305. This suspension will end on April 1, 1994, when more abundant supplies of fresh Florida

avocados are expected to be available. Supplies of fresh Florida avocados are currently very limited due to extensive damage from Hurricane Andrew last August, and supplies next season are expected to be substantially below normal.

Currently, all fresh Florida avocados must grade at least U.S. No. 2, when shipped in any container. This relaxation will only apply to Florida avocados shipped to destinations within the production area. Thus, the U.S. No. 2 grade requirement will continue to apply unchanged to avocados shipped to destinations outside the production area, as well as to all avocados shipped to any destination in those containers specified in § 915.305. Also unchanged by this action are current maturity, container, pack, and inspection requirements for all fresh Florida avocado shipments under the avocado marketing order.

Currently, avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since this action does not change the minimum grade requirements of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

This relaxation will provide Florida avocado growers and handlers with an opportunity to sell, in the production area, fresh avocados which would otherwise be culled out during the packing process, thus making additional avocados available to consumers. This action is expected to result in relatively small quantities of lower quality avocados being sold within the production area, and facilitate the movement of avocados to the fresh market.

This relaxation is being made on an interim final rule basis, since it needs to become effective promptly. This action relaxes requirements, and was unanimously recommended by the committee.

This action reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain avocados grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will permit avocado handlers to make additional supplies of fruit available to meet consumer needs consistent with crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the suspension set forth below 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 action until 30 days after publication in the **Federal Register** because: (1) This action relaxes grade requirements currently in effect for avocados grown in Florida; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) Florida avocado shipments are currently in progress; (4) this action must be made effective as soon as possible to be of maximum benefit to the Florida avocado industry; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

2. Section 915.306 [7 CFR 915.306] is amended by adding a new paragraph (a)(7) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) * * *

(7) Notwithstanding the provisions in this section, such avocados may be handled during the period February 11, 1993 through March 31, 1994, not subject to the grade requirements specified in paragraph (a)(1) of this section when they are shipped in containers other than those authorized under § 915.305 to destinations within the production area.

* * * * *

Dated: February 5, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–3230 Filed 2–10–93; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R–0748]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule to the Capital Adequancy Guidelines.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is revising its capital adequacy guidelines for bank holding companies and state member banks to provide explicit guidance on the types of intangible assets that may be included in (that is, not deducted from) the Tier 1 capital calculation for risk-based and leverage capital purposes. The revision also includes limits and discounts that are applicable to those intangible assets included in capital. The revision was formulated in conjunction with the staffs of the four federal financial institutions regulatory agencies (the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS)) and, when made final by the other agencies, will achieve greater consistency among the agencies with respect to the capital treatment of intangible assets. In addition, certain aspects of the final rule implement provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

EFFECTIVE DATE: March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728–5883), Norah M. Barger, Manager (202/452–2402), Thomas R. Boemio, Supervisory Financial Analyst (202/452–2982), Robert E. Motyka,

Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The international bank capital standards (Basle Accord) [1] require that banks deduct goodwill from their core capital elements in determining Tier 1 capital for risk-based capital purposes. [2] The Basle framework, which by its terms applies only to internationally active banks, was adopted by the Federal Reserve for all state member banks. The Board also chose to apply, generally on a consolidated basis, a risk-based capital framework similar to the Basle Accord to U.S. bank holding companies. [3] Under this framework, bank holding companies are also required to deduct goodwill from Tier 1 capital. Furthermore, the Board has adopted a leverage capital standard for state member banks and bank holding companies. [4] Since Tier 1 capital serves as the numerator of the leverage ratio, goodwill also is deducted from the core capital elements for purposes of the leverage standard.

A. Current Treatment of Identifiable Intangible Assets

The Basle Accord does not address the treatment of identifiable intangible assets, that is, intangible assets other than goodwill. Consequently, under the Basle framework, U.S. bank regulators have discretion in specifying the treatment of these other intangible assets. In evaluating the appropriateness of including particular intangible assets in an organization's capital, the Federal Reserve and the other federal banking agencies consider a number of factors, including the following criteria, sometimes referred to as the "three-part test":

1. The reliability and predictability of any cash flows associated with the asset and the degree of certainty that can be achieved in periodically determining the asset's useful life and value;

2. The marketability of the asset, that is, the existence of an active and liquid market; and

3. The salability of the asset, that is, the feasibility of selling the asset apart from the financial institution or from the bulk of its assets.

All the agencies have determined that purchased mortgage servicing rights (PMSRs) [5] generally meet these criteria and all allow such assets to be included in Tier 1 capital, subject to certain limits. The agencies currently differ on the extent to which other intangibles meet the criteria, and each follows somewhat different procedures regarding their treatment.

The FDIC and OCC fully deduct all intangibles other than PMSRs from Tier 1 capital. The Federal Reserve does not automatically deduct any identifiable intangible assets from Tier 1 capital, but determines the appropriateness of their inclusion in the calculation of an organization's capital position on a case-by-case basis. The Board has long considered the level and quality of identifiable intangible assets in assessing the capital adequacy and overall asset quality of banking institutions since even those intangible assets that meet the above criteria usually contain a relatively high degree of risk. The OTS has concluded that, at least in some cases, certain other identifiable intangible assets (for example, core deposit intangibles, or CDIs) [6] may meet the three criteria and, therefore, has not required the deduction of some of these other identifiable intangible assets in calculating capital ratios.

All the agencies specify limits on the amount of intangibles that institutions can include in capital. The Board's current risk-based capital guidelines indicate that while all intangible assets will be monitored, identifiable intangible assets in excess of 25 percent of Tier 1 capital are subject to particularly close scrutiny. The OCC permits PMSRs to account for up to 25 percent of Tier 1 capital. The OTS permits PMSRs to be included up to 50 percent of Tier 1 capital, and other qualifying intangibles (for example, CDIs) are limited to 25 percent of Tier 1 capital. The FDIC permits PMSRs up to 50 percent of Tier 1 capital. Both the OTS and the FDIC impose certain valuation and discounting requirements on PMSRs included in capital.

B. Proposal for the Treatment of Identifiable Intangible Assets

For some time, the agencies have been reviewing the capital treatment of identifiable intangible assets with the aim of developing greater uniformity among the agencies in the treatment of these assets for capital adequacy purposes. On the basis of this review, the Board, on February 19, 1992, proposed for public comment revisions to its capital adequacy guidelines to provide explicit guidance on certain types of intangible assets that may be included in capital, namely PMSRs and purchased credit card relationships (PCCRs), [7] as well as specifications for appropriate limits on the amount of such assets that may be included within capital. The proposed revisions represented a proposal jointly developed by the staffs of the four federal financial institutions regulatory

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[1] The Basle Accord is a risk-based capital framework that was proposed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] The risk-based capital guidelines utilize the ratio of a banking organization's Tier 1 capital and Tier 2 capital to the organization's total on-balance sheet assets and off-balance sheet credit arrangements, adjusted for their relative risks. Tier 1 capital is composed of core capital elements such as common equity and qualifying perpetual preferred stock, while Tier 2 capital is composed of supplementary capital elements such as the allowance for loan and lease losses and subordinated debt.

[3] For bank holding companies with consolidated assets of less than $150 million, the risk-based capital guidelines generally are applied on a bank-only basis.

[4] The leverage capital guidelines utilize a ratio of the banking organization's Tier 1 capital elements to its total average on-balance sheet assets.

[5] PMSRs are identifiable intangible assets associated with the right to service mortgage loans. PMSRs generally arise when an institution purchases such rights from another entity that originated the mortgage loans. An organization that acquires PMSRs has the obligation to collect principal and interest payments, and escrow amounts from the mortgagor, and to insure that all amounts collected are passed on to the appropriate parties. In return for performing these functions, the servicer receives a fee, which is generally based on the remaining principal amount due on the mortgages being serviced.

[6] CDIs are identifiable intangible assets associated with the value of the relatively low cost funding afforded by core depositor relationships (that is, certain nonbrokered retail deposits) acquired from another depository institution. CDIs generally arise when an organization purchases another depository institution or some of its branches and assumes the related deposit liabilities. The value of CDIs is based upon the assumption that the lower cost source of funds provided by core depositor relationships will continue to be available to the acquiring institution for a period of time after the acquisition.

[7] PCCRs are identifiable intangible assets associated with the right to provide future advances and other services to credit cardholders and to provide correspondent merchant processing under credit card arrangements that have been originated by, and purchased from, another entity. PCCRs generally arise when a credit card portfolio is bought and the purchaser acquires the current advances outstanding under the credit card arrangements, which are tangible assets, as well as the right to provide future services to the cardholders, which is an intangible asset. The value of PCCRs derives from the anticipated profit the purchaser will earn from interest on future advances, fees charged for other future credit card-related services, after covering expenses and other operating costs such as credit losses.

agencies with respect to the regulatory capital treatment of intangible assets.

The Federal Reserve also proposed that, to the extent that PMSRs are determined to be includable in Tier 1 capital, they should be subject to certain valuation requirements that are consistent with provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). In that regard, section 475 of the Act provides that the federal banking agencies determine the amount of PMSRs includable in the calculation of an institution's capital, if such servicing rights are valued at not more than 90 percent of their fair market value, and are reviewed on at least a quarterly basis. In addition, the Federal Reserve proposed that institutions determine the fair market value and book value of PMSRs includable in capital in accordance with criteria already set forth in the current FDIC and OTS rules regarding these intangible assets. Since the calculation of the fair market value for PCCRs is at least as subjective as it is for PMSRs, the Federal Reserve also proposed that PCCRs be subject to the same valuation requirements as PMSRs.

The changes in the capital treatment of intangible assets were proposed for incorporation into the capital ratios used for both examinations and applications purposes. The proposal stated, however, that, consistent with the existing capital guidelines, the Board may in certain cases continue to evaluate an organization's tangible capital ratios (after deducting all intangibles) in assessing its overall capital adequacy, if warranted in the judgment of the Board.

C. Proposal in Detail

The Board proposed the following treatment for identifiable intangible assets for purposes of the risk-based and leverage capital guidelines:

1. PMSRs and PCCRs would be considered qualifying intangible assets. As such, they would not have to be deducted from capital provided that, in the aggregate, they do not exceed 50 percent of Tier 1 capital and provided that PCCRs do not exceed a sublimit of 25 percent of Tier 1 capital. PMSRs and PCCRs in excess of these limits would be deducted from an organization's core capital elements in determining Tier 1 capital.[8]

2. The limits on PMSRs and PCCRs would be based on a percentage of Tier 1 capital before excess holdings of these assets are deducted, but after goodwill and all other nonqualifying identifiable intangible assets (for example, CDIs) are deducted.

3. Institutions would be required to determine the fair market value and to review the book value of their PMSRs and PCCRs at least quarterly. Banking organizations that wish to include these assets in capital would not be able to carry them for regulatory reporting purposes at a book value that exceeds the discounted value of their estimated future net cash flows. The discounted cash flow provision is a current requirement in the guidelines of the FDIC and the OTS. The discount rate used for this purpose should not be less than that derived at the time of acquisition, based upon the estimated cash flows and the price paid for the asset at the time of purchase.

4. For purposes of calculating Tier 1 capital, the amount of PMSRs and PCCRs an organization could include in capital could not exceed the lesser of 90 percent of the fair market value of the assets (this provision is consistent with section 475 of FDICIA), 90 percent of their original purchase price (as currently required by the FDIC and the OTS), or 100 percent of their book value.

5. CDIs and all other identifiable intangible assets would be deducted from the core capital elements for purposes of calculating an institution's Tier 1 capital, just as goodwill, in accordance with the Basle Accord, is deducted.[9]

II. Public Comments on the Proposal

The comment period for this proposal ended March 27, 1992. Of the forty-five public comment letters received that addressed the proposal, thirty-two indicated varying levels of support for the Board's effort to revise its capital adequacy guidelines with regard to the treatment of identifiable intangible assets. Most of the commenters offering support for the Board's effort, however, expressed concerns or very strong reservations with various aspects of the proposal. The thirteen respondents that explicitly opposed the proposal based their opposition on one or more of the following reasons: the proposed treatment of intangibles is too restrictive for capital adequacy purposes; the valuation methods are arbitrary and complex, and are not in accordance with GAAP; the treatment ignores the risk reduction properties of CDIs and other identifiable intangible assets; and the proposal, if implemented, would create a competitive disadvantage between U.S. banking organizations and nonfinancial institutions and between U.S. banking organizations and foreign banks.

A. Issues Raised by Commenters

Nine respondents indicated that the three-part test should be used to determine which intangible assets would be eligible for inclusion in capital. Fifteen respondents agreed that PMSRs and/or PCCRs meet the three criteria and, thus, should be included in Tier 1 capital. Of the eighteen commenters that addressed the issue of limitations on the amount of PMSRs and PCCRs that can be included in capital, seven specifically stated that they favored the proposed aggregate limit of 50 percent of Tier 1 capital.

Seven commenters opposed both the 50 percent aggregate limit and 25 percent sublimit for PCCRs on the grounds that these limits were arbitrary and unjustified in view of the proposal's other valuation requirements for these assets and were inconsistent with generally accepted accounting principles (GAAP), which does not impose any limitations on the inclusion of these assets within capital. Ten respondents specifically opposed the 25 percent sublimit for PCCRs, which they contended are inherently as valuable as PMSRs and, thus, should be treated in the same manner as PMSRs for capital purposes.

Thirteen commenters specifically addressed what they perceived as the proposal's ambiguity with regard to whether or not an institution's qualifying intangibles, that is, PMSRs and PCCRs, would be deducted from capital for applications purposes. These commenters maintained that banking organizations should be aware of the criteria they are being measured against when filing applications and that ambiguity on this matter indicated that the Board viewed these intangibles as worthless even though the proposal states that they have value.

All twenty-two commenters that addressed the proposed deduction of CDIs from Tier 1 opposed it and supported a full or partial inclusion of CDIs in Tier 1 capital. Commenters asserted that CDIs meet the criteria in the three-part test and have real

[8] PMSRs and PCCRs that are included in (that is, are not deducted from) capital would be included in the calculation of total risk-weighted assets at a risk weight of 100 percent for risk-based capital purposes and would be included in total average assets for leverage capital purposes. PMSRs and PCCRs that are not included in (that is, are deducted from) capital would not be included in the calculation of total risk-weighted assets for risk-based capital purposes and would be deducted from total average assets for leverage capital purposes.

[9] Like goodwill, CDIs and all other intangible assets not includable in capital would not be included in the calculation of total risk-weighted assets for risk-based capital purposes and would be deducted from average total assets for leverage capital purposes.

economic value. These commenters contended that the proposal, if implemented, could discourage institutions from purchasing deposits from those institutions that are experiencing financial difficulties or are failing, thereby depleting the deposit insurance funds and increasing the ultimate cost of closing an institution to the taxpayers.

Fifteen respondents expressed opposition to an automatic deduction of other identifiable intangible assets such as purchased trust servicing rights, purchased investment management relationships, purchased home equity rights, and merchant servicing rights. These commenters stated that although many of these assets are classified as intangible assets for accounting purposes, they are economically equivalent to tangible assets.

Three respondents discussed internally generated servicing rights, which the proposal did not address. It was noted that although the value of these off-balance sheet assets are often substantial, they are not included in the Board's consideration of an institution's capital adequacy. Commenters maintained that the discounted value of PMSRs and PCCRs should be offset by the value of internally generated servicing rights.

Twelve commenters urged the Board to consider some type of grandfathering for identifiable intangible assets subject to deduction from capital that were acquired prior to issuance of the proposal. While the proposal did not contemplate grandfathering, respondents contended that the deduction of preexisting intangible assets would be unfair to banking organizations that had purchased the assets at a price that reflected the existing rules and had established businesses based upon these rules. Others stated that some organizations that currently include CDIs in their capital calculations would experience substantial reductions in regulatory capital. Several commenters indicated that they could support a transitional period to provide for an orderly conversion to the new standard.

B. Responses to the Board's Questions

Question 1: Twenty-four commenters responded to the first question posed by the Board which inquired whether the approaches proposed for the valuation and discounting of PMSRs and PCCRs were appropriate.

Eleven commenters specifically addressed the issue of limiting the amount of PMSRs and PCCRs included in capital to 90 percent of fair market value. Four respondents supported the 10 percent discount, which is consistent with the provisions regarding evaluation of PMSRs in section 475 of FDICIA. Seven others opposed this discount requirement on the grounds that it is inconsistent with GAAP and is unnecessary in view of the active and liquid markets for these assets. Seven commenters also opposed the proposal that the amount of qualifying intangible assets includable in capital be limited to 90 percent of the original purchase price on the grounds that such a discount is not required by either GAAP or FDICIA and offers little supervisory benefit in view of the other valuation requirements.

Nine of the ten commenters addressing the proposal that the fair market value of PMSRs and PCCRs be determined by applying an appropriate market discount rate to the expected net future cash flows supported the proposed valuation approach. One commenter preferred use of the original discount rate. Six of the commenters indicated that while the use of an actual market sales price for PMSRs and PCCRs would be beneficial in the overall assessment of the fair market value of these assets, it would not be an adequate substitute for the proposed method. A seventh commenter indicated that use of recent sales prices for PCCRs would strengthen the validity of the fair market value determined by the proposed approach.

Fifteen commenters addressed the proposed approach to determine the book value of PMSRs and PCCRs included in capital. Fourteen respondents were against either the requirement that these assets be valued on their books using a discounted approach or the specification that the discount rate applied to the estimated future net cash flows be no lower than the rate used at the time of acquisition. The one commenter that supported both requirements stated that the use of the original discount rate would maintain consistency in measuring subsequent cash flows with the original projections.

Commenters opposing the discounted approach requirement stated that it was inconsistent with GAAP, which permits but does not require that an asset's expected cash flows be discounted to determine the asset's book value, and that it should be eliminated since it is neither required by GAAP nor mandated by FDICIA. The ten respondents objecting to the requirement for what they viewed as an artificial floor on the discount rate stated that it could result in a book value that not only was lower than amortized cost, but also was lower than fair market value. These organizations argued that banks need flexibility in applying an appropriate discount rate that would reflect current market and portfolio conditions.

Although the Board did not propose requiring an independent evaluation of identifiable intangible assets, six respondents commented on such evaluations, which the FDIC and the OTS currently require on an annual basis for intangibles included in capital. Four organizations agreed that an institution should be allowed to assess internally the value of its intangibles without incurring the cost of an independent third party evaluation and commended the Board for not proposing such a requirement. Two other organizations, however, supported the requirement of an annual independent evaluation on the grounds that it would promote a conservative approach to quarterly reviews and, thereby, help to prevent abuses.

Nine commenters addressed the proposal's requirement that banking organizations determine the book value and fair market value of PMSRs and PCCRs at least quarterly. Four organizations supported the requirement, while five opposed it. Four of these five institutions objected on the grounds of cost and favored annual instead of quarterly reviews. The fifth stated that valuations should be performed more frequently than quarterly.

Four commenters inquired whether the requirement limiting the amount of qualifying intangibles in capital to the lesser of 90 percent of fair market value, 90 percent of original purchase price, or 100 percent of book value, would be applied on a pool-by-pool or aggregate portfolio basis. The proposal did not address this issue. The four commenters favored application of the limitation on an aggregate portfolio basis, which they viewed as consistent with GAAP and with the way in which institutions dispose of these assets. They also expressed the view that applying limitations on a pool-by-pool basis would unjustly result in a reduction of a portfolio's value for purchases that had decreased in value, without permitting offsetting increases for purchases that had risen in value.

Question 2: Eight respondents addressed the second question posed by the Board which asked how the recent large level of mortgage refinancings had affected the market for, and values of, PMSRs and requested general market information on identifiable intangible assets.

The eight commenters all agreed that the value of PMSRs is inversely related to the speed of prepayments associated with mortgage refinancings. They noted

that the recent decrease in interest rates had prompted a surge of refinancings of loans with high interest rates, resulting in an increase in prepayments and, thus, a decrease in the value attached to existing PMSRs. Some respondents stated that the value of PMSRs related to new mortgage originations at lower interest rates and purchases of lower rate mortgages have maintained or increased their value since anticipated prepayments are expected to be low due to the reduced interest rates at which the mortgages were originated. As a result, the aggregate value of an institution's PMSRs may have either increased or decreased depending upon the institution's portfolio mix of PMSRs related to existing loans at higher interest rates and those related to new loans at lower interest rates.

Several commenters stated that although the recent refinancings have, in general, negatively affected the market for existing PMSRs, the income generated from new originations and the use of hedge instruments has had a positive impact on institutions' earnings. The majority of respondents to this question concurred that the market for new PMSRs remains competitive.

Question 3: Nine respondents addressed the Board's third question which inquired as to the reasons for which banking organizations buy PMSRs and whether it would be appropriate to limit an organization's involvement in PMSRs based on their ability to manage the associated prepayment risk.

Some respondents to this question indicated that PMSRs provide banks with a stable source of revenue and an attractive return on equity. Others maintained that their PMSRs portfolios were integral components of their overall mortgage lending business. A few commenters agreed that PMSRs were useful hedges against changing interest rates since their returns are negatively correlated to returns on other assets held by depository institutions. Most respondents stated that an organization's overall interest rate risk management system should include the evaluation of the prepayment risk associated with PMSRs.

Question 4: Nine respondents addressed the Board's fourth question which solicited views on the appropriate capital treatment for excess servicing rights, which GAAP currently classifies as tangible assets.

Most of these commenters agreed that excess servicing rights should not be deducted from capital, nor treated like PMSRs for capital purposes, even though these assets possess characteristics similar to those of PMSRs.

III. Final Amendments to the Capital Adequacy Guidelines With Regard to the Capital Treatment of Intangible Assets

After review of the comments received and further consideration of the issues involved, and following consultations with the other federal banking agencies, the Board is now issuing in final form amendments to its risk-based and leverage capital guidelines to provide explicit guidance on the types and amounts of intangible assets that state member banks and bank holding companies may include in capital. These final amendments have been developed in consultation with the other federal banking agencies and are consistent with international capital standards.

As proposed, the Board will allow banking organizations to include in capital PMSRs and PCCRs, but will require the deduction of CDIs and other identifiable intangible assets. While PMSRs and PCCRs clearly meet the three criteria set forth in the proposal as some of the factors considered in determining the appropriateness of including intangible assets in capital, CDIs and other identifiable intangible assets do not.

A review of the comments indicated that inclusion in the proposed rule of the three-part test as a means for determining which identifiable intangible assets could be included in regulatory capital led some respondents to conclude that the Board did not necessarily intend to require the deduction of all identifiable intangible assets other than PMSRs and PCCRs. Accordingly, to avoid any confusion with regard to the Board's views on which intangibles qualify for inclusion in capital, the three-part test will be eliminated from the final rule. These three criteria, however, will continue to be considered in the assessment of the quality of an institution's intangible assets for purposes of evaluating its overall capital position.

A number of the commenters that objected to the exclusion from capital of CDIs and other identifiable intangible assets argued that, at a minimum, such assets that institutions had previously acquired should be grandfathered into capital. After further consideration of this matter, the Board agrees that to the extent institutions were permitted to include such assets in capital prior to issuance of the proposal, they should not now be required to deduct those assets from capital. Accordingly, for supervisory purposes, the Board will permit institutions to incorporate into their capital ratios identifiable intangible assets other than PMSRs and PCCRs that were acquired prior to February 19, 1992. It should be noted, however, that the Federal Reserve's longstanding practice has been to deduct these assets from capital for purposes of evaluating an organization's capital position for applications purposes. Accordingly, the Board believes that it would be inappropriate to include in the calculation of capital ratios used for applications purposes any CDIs or identifiable intangible assets other than PMSRs or PCCRs, whether or not such assets were acquired prior to February 19, 1992.

As proposed, the final rule will permit PMSRs and PCCRs to be included in capital only to the extent that, in the aggregate, they do not exceed 50 percent of Tier 1 capital. PCCRs also will be subject to a sublimit of 25 percent of Tier 1 capital. While several commenters objected to the lower limitation on PCCRs includable in capital, the Board believes that this sublimit is appropriate since the market for PCCRs does not have the liquidity and maturity of the market for PMSRs and the assumptions used in the valuation of PCCRs generally are less objective and subject to less market discipline than those used in the valuation of PMSRs.

In the interest of simplicity, these limits on PMSRs and PCCRs will be based, as proposed, on a percentage of Tier 1 capital before excess holdings of these assets are deducted, that is, the sum of core capital elements (for example, common equity and qualifying perpetual preferred stock) less goodwill and other nonqualifying intangible assets. This method of calculation, however, could result in the inclusion in capital of PMSRs and PCCRs in an amount greater than 50 percent, and of PCCRs in an amount greater than 25 percent, of Tier 1 capital net of goodwill, other nonqualifying intangible assets, and deductible amounts of PMSRs and PCCRs. Thus, it would be possible for an institution to report a positive amount of Tier 1 capital even though its holdings of PMSRs and PCCRs exceed the sum of its core capital elements. Accordingly, as proposed, the final rule contains cautionary language that indicates that excessive holdings of PMSRs and PCCRs includable in capital may be viewed as an unsafe and unsound practice.

For purposes of calculating Tier 1 capital, the amount of PMSRs and PCCRs an organization may include in capital cannot exceed the lesser of 90 percent of the fair market value of these

assets or 100 percent of their book value. The proposal also would have limited the amount of these assets includable in capital to not more than 90 percent of the original purchase price of the asset. Several commenters opposed this requirement on the grounds that it would impose a recordkeeping burden but provide little supervisory benefit in light of the other proposed valuation requirements. In addition, respondents noted that FDICIA does not require this limitation. The Board believes these arguments have merit and, accordingly, is eliminating this limitation from the final rule.

Like the proposal, the final rule does not specify whether the limitation to the lesser of 90 percent of fair market value or 100 percent of book value should be applied on a pool-by-pool or aggregate basis. The use of an aggregate approach by some institutions in the past to avoid recording a writedown of individual assets by purchasing new assets does raise concerns with regard to the use of such an approach. However, the Board believes that these concerns are mitigated by the other valuation requirements that are being imposed on PMSRs and PCCRs. Accordingly, the rule does not specify either the pool-by-pool or aggregate approach.

As proposed, institutions will be required to determine the fair market value and to review the book value of their PMSRs and PCCRs at least quarterly. Unlike the FDIC and the OTS, the Federal Reserve did not propose that these assets be subject to an annual independent valuation, and the final rule does not contain such a valuation requirement. However, the rule does note that the Federal Reserve, on a case-by-case basis, may require an institution to obtain independent valuations of its intangible assets.

The proposal indicated that if an institution wished to allow PMSRs to be recognized for inclusion in regulatory capital, it would have to carry them at a book value equal to the discounted value of their future net servicing income. The discount rate used for this purpose could not be less than that derived at the time of acquisition, based upon the estimated cash flows and the price paid for the asset at the time of purchase. Many commenters expressed opposition to the use of the discounted approach to determining book value, as well as to a mandated floor on the discount rate. The Board, however, continues to support these requirements for the determination of the book value of PMSRs and PCCRs for several reasons. The use of a discounted approach, while not required by GAAP, is permitted by GAAP. Since this approach is more conservative than an undiscounted approach, the Board believes it is the most appropriate method to use for intangible assets included in the calculation of regulatory capital.

The Board also believes it is more appropriate for institutions to use the original discount rate, which is an objectively determinable rate, rather than a market-based rate as suggested by some commenters. The original discount rate is based on the original purchase price relative to the estimated future net cash flows at the time of purchase. Market-based discount rates are much less objective and are subject to greater manipulation and abuse. Moreover, the original discount rate reflects the economics of a transaction at its inception and, thus, its use is consistent with the historical cost accounting model.

In addition, determining the book value of PMSRs and PCCRs based on expected net cash flows discounted at the original discount rate makes the characteristics of these qualifying intangible assets similar to those of certain tangible assets (for example, excess servicing fees receivable) that currently have no specific capital limitations. This requirement, therefore, provides additional justification for the inclusion of these qualifying intangible assets in regulatory capital.

While a number of commenters disagreed with the proposed discounted approach for the valuation of PMSRs and PCCRs, the Board continues to support the proposed approach to the valuation of these assets. However, the Board believes that these valuation requirements are more appropriately framed in the context of regulatory reporting requirements rather than in the context of a regulatory capital rule. Accordingly, the Board is eliminating from the final rule the requirement that the book value of PMSRs and PCCRs included in capital be accounted for on a discounted basis, using a discount rate that is no less than that employed at the time of acquisition. These requirements, however, will be incorporated into instructions for the reporting of PMSRs and PCCRs in the Reports of Condition and Income for state member banks (Call Report) and the Consolidated Financial Statements for bank holding companies with total consolidated assets of $150 million or more (FR Y–9C Report).[10]

[10] For bank holding companies, these instructions will take the form of additional line items to Risk-Based Capital Schedule HC–I, which pertains to risk-weighted assets.

The Board is clarifying that the capital treatment of intangible assets set forth in the final rule will be incorporated into the capital ratios used for both examinations and applications purposes. The final rule, however, notes that in assessing an organization's capital position for applications purposes, the Board reserves the right as it deems appropriate to take into account the quality and composition of an organization's capital, together with the quality and value of its tangible and intangible assets. Nonetheless, as mentioned above, any previously acquired CDIs or other identifiable intangible assets apart from PMSRs or PCCRs that may be grandfathered into capital for supervisory purposes will not be included in the calculation of an institution's capital ratios for applications purposes.

IV. Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe adoption of this final rule would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In this regard, the vast majority of small banking organizations have very limited amounts of identifiable intangible assets, which are the subject of this final rule, as a component of their capital structures. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this final rule will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, banking, Branches, Capital adequacy, Confidential business information, Currency, Dividend payments, Federal Reserve System, Flood insurance, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in the preamble, and pursuant to the Board's

authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 461, 481–486, 601, 611, 1814, 1823(j), 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(i), 78o–4(c) (5), 78q, 78q–1, and 78w.

Appendix A—[Amended]

2. Appendix A to part 208 is amended by revising the first sentence and by removing the second sentence of the first undesignated paragraph of section II.A.1.; by revising the first undesignated paragraph of section II.A.2.; by revising the first sentence of section II.A.2.d.; by revising paragraph (i) of section II.B.; by revising section II.B.1.b.; and by revising footnote 16 of section II.B.2., to read as follows:

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements [5] less goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix.

* * * * *

2. * * *

The maximum amount of Tier 2 capital that may be included in a bank's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

* * * * *

d. * * * The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). * * *

* * * * *

B. * * *

(i)(a) Goodwill—deducted from the sum of core capital elements.

(b) Certain identifiable intangible assets, that is, intangible assets other than goodwill—deducted from the sum of core capital elements in accordance with section II.B.1.b. of this appendix.

* * * * *

1. * * *

a. * * *

b. *Other intangible assets.* The only types of identifiable intangible assets that may be included in, that is, not deducted from, a bank's capital are readily marketable purchased mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of Tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of Tier 1 capital. [14]

For purposes of calculating these limitations on purchased mortgage servicing rights and purchased credit card relationships, Tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in purchased mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of Tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that a bank is operating in an unsafe and unsound manner because of overreliance on intangible assets in Tier 1 capital.

Banks must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of purchased mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's intangible assets.

The amount of purchased mortgage servicing rights and purchased credit card relationships that a bank may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions in the commercial bank Consolidated Reports of Condition and Income (Call Report). If both the application of the limits on purchased mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank would deduct only the greater of the two amounts from its core capital elements in determining Tier 1 capital.

The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank's capital ratios for supervisory and applications purposes. However, in making an overall assessment of a bank's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of a bank's capital, together with the quality and value of its tangible and intangible assets.

Consistent with long-standing Board policy, banks experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. * * * [16] * * *

3. Appendix A to part 208 is amended by revising the last undesignated paragraph of section III.C.4. to read as follows:

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

C. * * *

4. * * *

The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

* * * * *

4. Appendix A to part 208 is amended by revising the first, second, and third sentences of the first undesignated paragraph of section IV.A. to read as follows:

IV. Minimum Supervisory Ratios and Standards

* * * * *

A. * * *

[5] During the transition period and subject to certain limitations set forth in section IV below, Tier 1 capital may also include items defined as supplementary capital elements.

[14] Amounts of purchased mortgage servicing rights and purchased credit card relationships in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from a bank's core capital elements in determining Tier 1 capital. However, identifiable intangible assets (other than purchased mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

[16] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the Call Report.

As reflected in Attachment VI, by year-end 1992, all state member banks should meet a minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital. For purposes of section IV.A., Tier 1 capital is defined as the sum of core capital elements less goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix. The maximum amount of supplementary capital elements that qualifies as Tier 2 capital is limited to 100 percent of Tier 1 capital.* * *

* * * * *

5. In Appendix A to part 208, the table in Attachment II is amended by revising the fifth entry of the left column and by revising footnote 1 of the fifth entry of the left column to read as follows:

ATTACHMENT II—SUMMARY DEFINITION OF QUALIFYING CAPITAL FOR STATE MEMBER BANKS* USING THE YEAR-END 1992 STANDARDS

Components
* * * * *
Less: Goodwill and other intangible assets required to be deducted from capital.[1]
* * * * *

* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

[1] Requirements for the deduction of other intangible assets are set forth in section II.B.1.b. of this appendix.

6. In Appendix A to part 208, the table in Attachment VI is amended by revising the second entry of the fourth column and by adding a new footnote number 3 to the second entry of the fourth column to read as follows:

ATTACHMENT VI—SUMMARY

Final Arrangement—Year-End 1992
* * * * *
Common equity, qualifying noncumulative perpetual preferred stock, and minority interest less goodwill and other intangible assets required to be deducted from capital.[3]
* * * * *

* * * * *

[3] Requirements for the deduction of other intangible assets are set forth in section II.B.1.b. of this appendix.

Appendix B—[Amended]

7. Appendix B to part 208 is amended by revising footnote 2 and by revising the last sentence of the second undesignated paragraph of section II to read as follows:

II. The Tier 1 Leverage Ratio

* * * * *

* * * 2 * * * As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Report), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other intangible assets; and any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital.[3]

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

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

Appendix A—[Amended]

2. Appendix A to part 225 is amended by revising the first sentence and by removing the second sentence of the first undesignated paragraph of section II.A.1.; by revising the first undesignated paragraph of section II.A.2.; by revising the first sentence of section II.A.2.d.; by revising paragraph (i) of section II.B.; by revising section II.B.1.b.; and by revising footnote 17 of section II.B.2. to read as follows:

II. Definition of Qualifying Capital for the Risk Based Capital Ratio

* * * * *

A. * * *

1. * * *

Tier 1 capital is generally defined as the sum of core capital elements[6] less goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix.

* * * * *

[2] At the end of 1992, Tier 1 capital for state member banks includes common equity, minority interest in equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; and all other intangible assets. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of appendix A to this part.

[6] During the transition period and subject to certain limitations set forth in section IV below, Tier 1 capital may also include items defined as supplementary capital elements.

2. * * *

The maximum amount of Tier 2 capital that may be included in an organization's qualifying total capital is limited to 100 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix).

* * * * *

d. * * * The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and intermediate-term preferred stock that may be treated as supplementary capital is limited to 50 percent of Tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). * * *

* * * * *

B. * * *

(i)(a) Goodwill—deducted from the sum of core capital elements.

(b) Certain identifiable intangible assets, that is, intangible assets other than goodwill—deducted from the sum of core capital elements in accordance with section II.B.1.b. of this appendix.

* * * * *

1. * * *

a. * * *

b. *Other intangible assets.* The only types of identifiable intangible assets that may be included in, that is, not deducted from, an organization's capital are readily marketable purchased mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of Tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of Tier 1 capital.[15]

For purposes of calculating these limitations on purchased mortgage servicing rights and purchased credit card relationships, Tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in purchased mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of Tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that an organization is operating in an unsafe and

[15] Amounts of purchased mortgage servicing rights and purchased credit card relationships in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from an organization's core capital elements in determining Tier 1 capital. However, identifiable intangible assets (other than purchased mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes

unsound manner because of overreliance on intangible assets in Tier 1 capital.

Bank holding companies must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of purchased mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of an organization's intangible assets.

The amount of purchased mortgage servicing rights and purchased credit card relationships that a bank holding company may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C Report). If both the application of the limits on purchased mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank holding company would deduct only the greater of the two amounts from its core capital elements in determining Tier 1 capital.

The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank holding company's capital ratios for supervisory and applications purposes. However, in making an overall assessment of an organization's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of an organization's capital, together with the quality and value of its tangible and intangible assets.

Consistent with long-standing Board policy, banking organizations experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. * * * [17] * * *

* * * * *

3. Appendix A to part 225 is amended by revising the last undesignated paragraph of section III.C.4. to read as follows:

III. Procedures for Computing Weighted Risk Assets and Off-Balance Sheet Items

* * * * *

C. * * *

4. * * *

The following assets also are assigned a risk weight of 100 percent if they have not been deducted from capital: investments in unconsolidated companies, joint ventures, or associated companies; instruments that qualify as capital issued by other banking organizations; and any intangibles, including those that may have been grandfathered into capital.

* * * * *

4. Appendix A to part 225 is amended by revising the first, second, third, and fourth sentences of the first undesignated paragraph of section IV.A. to read as follows:

IV. Minimum Supervisory Ratios and Standards

* * * * *

A. * * *

As reflected in Attachment VI, by year-end 1992, all bank holding companies [56] should meet a minimum ratio of qualifying total capital to weighted risk assets of 8 percent, of which at least 4.0 percentage points should be in the form of Tier 1 capital. For purposes of section IV.A., Tier 1 capital is defined as the sum of core capital elements less goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix. The maximum amount of supplementary capital elements that qualifies as Tier 2 capital is limited to 100 percent of Tier 1 capital. In addition, the combined maximum amount of subordinated debt and intermediate-term preferred stock that qualifies as Tier 2 capital is limited to 50 percent of Tier 1 capital.

* * *

* * * * *

5. In Appendix A to part 225, the table in Attachment II is amended by revising the fifth entry of the left column and by revising footnote 1 of the fifth entry of the left column to read as follows:

ATTACHMENT II—SUMMARY DEFINITION OF QUALIFYING CAPITAL FOR BANK HOLDING COMPANIES* (USING THE YEAR-END 1992 STANDARDS)

Components
. . . . .
Less: Goodwill and other intangible assets required to be deducted from capital.[1]
. . . . .

* See discussion in section II of the guidelines for a complete description of the requirements for, and the limitations on, the components of qualifying capital.

[1] Requirements for the deduction of other intangible assets are set forth in section II.B.1.b. of this appendix.

6. In Appendix A to part 225, the table in Attachment VI is amended by revising the second entry of the fourth column; by revising footnote 1; and by revising footnote 3, which is referenced in the second entries of the second, third, and fourth columns, to read as follows:

ATTACHMENT VI—SUMMARY

Final Arrangement—Year-End 1992
. . . . .
Common equity, qualifying noncumulative and cumulative perpetual preferred stock,[1] and minority interest less goodwill and other intangible assets required to be deducted from capital.[3]
. . . . .

[1] Cumulative perpetual preferred stock is limited within Tier 1 to 25% of the sum of common stockholders' equity, qualifying perpetual preferred stock, and minority interest.

2 * * *

[3] Requirements for the deduction of other intangible assets are set forth in section II.B.1.b. of this appendix.

* * * * * *

Appendix D—[Amended]

7. Appendix D to part 225 is amended by revising footnote 3 and by revising the last sentence of the second undesignated paragraph of section II to read as follows:

II. The Tier 1 Leverage Ratio

* * * * *

* * * [3] * * * As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the banking organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other intangible assets; and any investments in subsidiaries or associated companies that the Federal Reserve

[17] An exception to this deduction would be made in the case of shares acquired in the regular course of securing or collecting a debt previously contracted in good faith. The requirements for consolidation are spelled out in the instructions to the FR Y–9C Report.

[56] As noted in section I above, bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based ratios on a consolidated holding company basis, subject to certain terms and conditions.

[3] At the end of 1992, Tier 1 capital for bank holding companies includes common equity, minority interest in equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; and all other intangible assets. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

determines should be deducted from Tier 1 capital.[4]

* * * * *

Board of Governors of the Federal Reserve System, February 2, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-2891 Filed 2-10-93; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-190-AD; Amendment 39-8484; AD 93-02-02]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires replacement of certain nuts in the wing spar attachment brackets and certain pins at the rear spar attachment bracket with improved parts. This amendment is prompted by reports of loose bolts and Hi-shear pins found on the front and rear spar. The actions specified by this AD are intended to prevent reduced structural capability of the wings.

DATES: Effective March 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on October 29, 1992 (57 FR 49038). That action proposed to require replacement of certain nuts in the wing spar attachment brackets and certain pins at the rear spar attachment bracket with improved parts.

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

The commenter supports the proposed rule.

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

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,543, or $1,018 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-02-02. Fokker: Amendment 39-8484. Docket 92-NM-190-AD.

Applicability: Model F27 series airplanes; serial numbers 10102 through 10433, inclusive; 10435 through 10443, inclusive; and 10446 through 10450, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural capability of the wings, accomplish the following:

(a) Within 8,000 flight hours after the effective date of this AD, or within 60 months after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace currently installed nuts having non-metallic locking inserts, installed at the wing spar attachment brackets at wing station 1040, with all-metal self-locking nuts, in accordance with Fokker Service Bulletin F27/57-23, Revision 6, dated August 13, 1991.

(2) Replace the lower 14 Hi-shear pins at the rear spar attachment bracket with Hi-lok fasteners, in accordance with Fokker Service Bulletin F27/57-23, Revision 6, dated August 13, 1991.

(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, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of Appendix A to this part.

requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with Fokker Service Bulletin F27/57–23, Revision 6, dated August 13, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 18, 1993.

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–3237 Filed 2–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–185–AD; Amendment 39–8485; AD 93–02–03]

Airworthiness Directives; Short Brothers Model SD3–60 and SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 and SD3–SHERPA series airplanes, that requires an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged; removal of the bushings and an inspection to detect faults of the bores in the fork end, if necessary; and repair of the fork end of the pintle pin, if necessary. This amendment is prompted by a report that the fork end of the rear pintle pin on a MLG was found cracked due to stress corrosion that had developed as a result of the absence of sealant around the flange of the bushing. The actions specified by this AD are intended to prevent stress-corrosion cracking and subsequent failure of the MLG.

DATES: Effective March 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 and SD3–SHERPA series airplanes was published in the Federal Register on October 30, 1992 (57 FR 49153). That action proposed to require an inspection of the fork end of the rear pintle pin on each main landing gear (MLG) to verify that sealant is properly applied and is undamaged; removal of the bushings and an inspection to detect faults of the bores in the fork end, if necessary; and repair of the fork end of the pintle pin, if necessary.

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

The commenter supports the proposed rule.

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

The FAA estimates that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,595, or $27.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

93–02–03. Short Brothers, PLC: Amendment 39–8485. Docket 92–NM–185–AD.

Applicability: All Model SD3–60 and SD3–SHERPA series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent stress-corrosion cracking and subsequent failure of the main landing gear (MLG), accomplish the following:

(a) Within 300 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, perform a visual inspection of the fork end of the rear pintle pin on each MLG to verify that an undamaged fillet of sealant is properly applied around the flanges of the bronze bushings in accordance with Shorts SD3–60 Service Bulletin SD360–32–33, dated August 7, 1992.

(1) If an undamaged fillet of properly-applied sealant is found: No further action is required by this AD.

(2) If no fillet of sealant is found at the joint line, or if a damaged fillet of sealant is found: Prior to the accumulation of 1,200 hours

time-in-service or 120 days after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs first, remove the bushings and perform a magnetic non-destructive testing (NDT) inspection to detect faults of the bores in the fork end, in accordance with the service bulletin. If faults are found as a result of the NDT inspection, prior to further flight, repair the fork end of the rear pintle pin in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and removal shall be done in accordance with Shorts SD3–60 Service Bulletin SD360–32–33, dated August 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 18, 1993.

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–3238 Filed 2–10–93; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–19255]

Rescission of Safe Harbor Rule for Certain Information No Longer Required in Financial Statements of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is rescinding Rule 0–9 under the Investment Company Act of 1940 because the rule is obsolete.

EFFECTIVE DATE: The removal of the rule will be effective on February 11, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Special Counsel, (202) 272–2097, Office of Disclosure and Adviser Regulation, Division of Investment Management, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is rescinding Rule 0–9 (17 CFR 270.0–9) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), which relates to the presentation of inflation-related information in investment company reports. In September 1979, the Financial Accounting Standards Board ("FASB") adopted Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices" ("SFAS 33"). SFAS 33 was intended to establish standards for reporting the effects of inflation on information presented in financial statements.[1] In response to the adoption of SFAS 33, the Commission adopted, in February 1981, rule amendments to require the SFAS 33 information in documents filed with the Commission.[2] Because the disclosure required by SFAS 33 was new and experimental, the Commission also adopted "safe harbor" rules to insulate SFAS 33 information contained in filings with the Commission from the antifraud provisions of the federal securities laws if prepared in good faith. The safe harbor rule adopted for investment companies was Rule 0–9 under the Investment Company Act of 1940.[3]

After further consideration, the FASB concluded that the SFAS 33 information was not necessary for investment companies. In January 1982, the FASB adopted Statement of Financial Accounting Standards No. 54, "Financial Reporting and Changing Prices: Investment Companies" ("SFAS 54") which exempted investment companies from the requirements of SFAS 33.[4]

As a result of SFAS 54, the safe harbor provided in Rule 0–9 is not necessary because funds no longer must include supplemental information on the effects of changing prices in their financial statements. Therefore, the Commission is rescinding Rule 0–9.[5]

The Commission for good cause finds, in accordance with the section 4(b)(B) of the Administrative Procedure Act ("APA") (15 U.S.C. 553(b)(B)), that, since Rule 0–9 no longer has any practical application or effect, notice and opportunity for public comment are unnecessary. In addition, pursuant to section 4(c) of the APA (5 U.S.C. 553(d)), the Commission has determined to make the rescission effective immediately because it affects an unnecessary rule.[6]

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

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

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

1. The authority citation for part 270 continues to read as follows:

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

§ 270.0–9 [Removed]

2. Section 270.0–9 is removed and reserved.

Dated: February 5, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3268 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[1] SFAS 33 applied to large publicly-held corporations with total assets amounting to more than $1 billion. It was effective for fiscal years ended on or after December 25, 1979.

[2] Investment Company Act Rel. No. 11622 (Feb. 17, 1981) (46 FR 13988 (Feb. 25, 1981) ("Release No. 11622")). The amendments were proposed in Investment Company Act Rel. No. 6201 (Mar. 27, 1980) (45 FR 23470 (Apr. 3, 1980)).

[3] The Commission also adopted in Release No. 11622 safe harbor rules for SFAS 33 disclosure in documents filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (Rule 175 (17 CFR 230.175)) and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Rule 3b–6 (17 CFR 240.3b–6)).

[4] SFAS 54 was effective on January 27, 1982, retroactive to fiscal years ending on or after December 25, 1979, which was the effective date of SFAS 33.

[5] The safe harbor would continue to apply to funds that included the SFAS 33 information in financial statements filed with the Commission while Rule 0–9 was in effect.

[6] The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rescission of Rule 0–9 because the Act's requirements affect proposed actions subject to public notice and comment.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 385

[Docket No. RM87–17–004]

Natural Gas Data Collection System; Order No. 493–D

Issued February 3, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order amending final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is expanding the listing of acceptable electronic media to include electronic data interchange (EDI). Initial EDI implementation will be restricted to FERC Forms Nos. 8 and 11. The Commission is amending its regulations to reflect the use of EDI for electronic data submission. EDI will reduce the Commission's administrative costs and burdens by reducing time spent physically handling magnetic media and processing the data submitted into the appropriate databases.

EFFECTIVE DATE: This order is effective March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at the Commission's Headquarters, 941 North Capitol Street NE., Washington, DC 20426. The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of the document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is expanding the listing of acceptable electronic media in Order No. 493 [1] to include electronic data interchange (EDI). Order No. 493 authorized natural gas companies to submit certain forms and findings on electronic media unless a waiver was granted. Initial EDI implementation will be restricted to FERC Form Nos. 8 and 11. The Commission is amending its regulations in §§ 154.26 and 385.2011 to reflect the use of EDI for electronic data submission.

EDI will expand the list of acceptable methods of electronic date submission at the Commission. EDI also will reduce the Commission's administrative costs and burdens by reducing time spent physically handling magnetic media and processing the data submitted into the appropriate databases.

Although the Commission eventually will accept other forms and filings using EDI data transmission, currently the Commission has the capability to receive only FERC Form Nos. 8 and 11 via EDI. The Commission will notice EDI implementation for other Order No. 493 forms and filings in the Federal Register when the appropriate software programming is coded and the proper files are set up to receive the other filings.

II. Background and Discussion

Order No. 493 implemented Commission regulations requiring natural gas companies to submit rate filings, certificate and abandonment applications, blanket certificate applications, Volumes I and IA of tariffs, and Form Nos. 8, 11 and 16 on an electronic medium in addition to the traditional required number of paper copies. Order No. 493 identified the types of electronic media, including various forms of magnetic tapes and diskettes, suitable for electronic data submission and provided that the list would be expanded and updated as new electronic data submission capability is acquired.

The Commission recently conducted a successful pilot program where several volunteers submitted FERC Form Nos. 8 and 11 using EDI data transmission. A recent Ogden/ERC Government Systems analysis of the Commission's potential uses for EDI rated Form Nos. 8 and 11 as two of the top candidates for EDI and noted that the forms were ready for EDI implementation.[2]

EDI is an electronic data submission capability that allows computers to exchange data over telephone lines. EDI is a computer-to-computer transfer of information that minimizes the need for human participation. Data are loaded on the transmitting entity's computer and telecommunicated directly to the addressee's value added network or computer, thereby eliminating the need for the addressee's employees to manually load the data into the computer from magnetic media or by rekeying. EDI data transmission saves time and reduces errors and permits automatic validation and reconciliation of the data filed. EDI is the common "language" used to get information from one computer system to another. The user must translate this information to or from his own computer system, but this translation software has to be prepared only once.

The Commission will require that EDI-transmitted data be filed via a transaction set approved by the American National Standards Institute X12 Committee. Although data filed using EDI technology may be transmitted directly from computer to computer, the Commission will utilize a value added network (VAN) for receipt of EDI-transmitted data. The VAN is like an old-fashioned pigeon-hole mail rack. Each authorized user has a labelled pigeon-hole fitted with a security device to prevent unauthorized extraction of documents. The VAN will provide an intermediate delivery service, receiving and storing transactions from transmitters, and delivering messages or holding messages for pick-up by addressees. Without the VAN, natural gas companies would require direct access to the Commission's computer. The Commission believes that the VAN will enhance computer security by eliminating direct access to the Commission's computer.

[1] 53 FR 15023 (Apr. 27, 1988), FERC Stats. & Regs. ¶ 30,808 (Apr. 5, 1988); order granting reh'g, 53 FR 16058 (May 5, 1988), FERC Stats. & Regs. ¶ 30,813 (May 2, 1988); order providing new effective date, 53 FR 19283 (May 27, 1988), FERC Stats. & Regs. ¶ 30,817 (May 19, 1988); order on reh'g, 53 FR 30027 (Aug. 10, 1988), FERC Stats. & Regs. ¶ 30,826 (Aug. 1, 1988); order on reconsideration, 53 FR 49652 (Dec. 9, 1988), FERC Stats. & Regs. ¶ 30,840 (Nov. 30, 1988); final rule, 54 FR 21197 (May 17, 1989), FERC Stats. & Regs. ¶ 30,853 (May 11, 1989).

[2] Deliverable No. 1, "Current Environment Analysis" and Deliverable No. 3, "Identification/Feasibility Study", prepared by Ogden/ERC Government Systems for FERC through the General Services Administration, Task No. N2S201002, Contract No. GS00K90AJD0621 dated June 8, 1992 and September 22, 1992.

Natural gas companies using EDI for electronic data submission at the Commission will be responsible for their own VAN contract and for all service and maintenance charges, including, but not limited to, connect time on the VAN. EDI communications to the Commission must be sent to an Information Exchange mailbox on the VAN. Additional information regarding access to the Commission's VAN mailbox will be provided in the electronic filing instructions on the Commission's forms and filings.

Natural gas companies also will be required to provide and maintain the machines and programs needed to effectively and reliably transmit and receive transaction sets. Company representatives authorized to transmit information to and receive information from the Commission will be required to have an EDI sender/receiver number (User ID). An EDI transaction containing a valid User ID will be sufficient to verify the identity of the sender and the authenticity of the document.

Natural gas companies must successfully complete an EDI test period prior to using EDI for electronic data submission at the Commission. During the test period, companies will be required to submit the requisite number of paper copies and the previous form of electronic media (tape or diskette), while at the same time transmitting the information via EDI. This test period will ensure that EDI is operating as intended prior to terminating the previous form of electronic media. Upon successful completion of the test period, the natural gas company may discontinue the original tape or diskette electronic data submission in favor of EDI, but must continue to submit the requisite number of paper copies.

The Commission will not consider a document filed until the EDI portion of the submission is delivered to the Commission's VAN mailbox and the paper copies and any accompanying documents are received at the Commission. If delivery to the VAN mailbox occurs during non-business hours, weekends, or holidays, receipt will occur on the next business day. Upon proper receipt of an EDI transaction, the Commission will acknowledge receipt via EDI. The Commission will notify natural gas companies via EDI if the Commission is unable to accept the substance of the transaction.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[4] An agency is not required to make an RFA analysis if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities."[5]

Most companies required to comply with this final rule are major natural gas pipelines and thus do not fall within the RFA's definition of small entity. In addition, the use of EDI is optional, so it has no significant economic impact. The Commission therefore certifies that this order will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[6] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[7] This order involves the review of natural gas rate filings and establishment of rates for transportation and sale of natural gas and is, therefore, categorically exempt.[8] Thus no environmental assessment or environmental impact statement is necessary for the requirements of this rule.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[9] Although this order does not increase or decrease information collection requirements, it does impact information collection. Therefore, the Commission is notifying OMB that the information collection requirements for FERC Form No. 8 (OMB Control No. 1902–0026), Underground Gas Storage Report, and FERC Form No. 11 (OMB Control No. 1902–0032), Natural Gas Pipeline Company Monthly Statement, are affected by this order.

VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA) exempts certain rules from notice and comment requirements.[10] Specifically, the APA exempts "rules of agency organization, procedure, or practice" from the requirements for notice and comment.[11] The addition of EDI as an acceptable form of electronic media qualifies for exemption as a procedural rule because it does not affect the substantive rights of a party. Permitting EDI electronic data submission merely adds an optional method of presenting information to the Commission.

This order is effective March 15, 1993.[12]

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

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

In consideration of the foregoing, the Commission amends parts 154 and 385, title 18, chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for part 154 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

2. In § 154.26, paragraph (c) is revised to read as follows:

§ 154.26 Copies to be supplied.

* * * * *

(c) *Submittals.* All copies and electronic submissions other than EDI are to be included in one package together with a letter of transmittal and all other material and information required by these regulations, and addressed to the Federal Energy

[3] 5 U.S.C. 601–612.

[4] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "Small Business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[5] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A Small Business is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[6] Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶30, 783 (Dec. 10, 1987) codified at 18 CFR part 380 (1992).

[7] 18 CFR 380.4.

[8] 18 CFR 380.4(a)(25).

[9] 5 CFR part 1320.

[10] 5 U.S.C. 553(b)(3).

[11] 5 U.S.C. 553(b)(3)(A).

[12] 5 CFR 553(d).

Regulatory Commission, Washington, DC 20426. If the electronic data submission is made via electronic data interchange (EDI), the paper copies, a letter of transmittal, and all other material and information required by these regulations should be addressed to the Federal Energy Regulatory Commission, Washington, DC 20426. The EDI submissions are to be made as indicated in the electronic filing instructions and formats for the particular form or filing. And EDI submission is not deemed to be filed until it is received in the Commission's VAN mailbox and the paper copies and accompanying documents are received at the Commission. An EDI transmission received outside of regular Commission business hours will be deemed filed the next regular business day.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2605; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

4. In § 385.2011, paragraph (d)(1) designation is added after paragraph (d) heading and before the words "The electronic media", and paragraph (d)(2) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media.

* * * * *

(d) *Where to file.*

(1) * * *

(2) EDI data submissions must be made as indicated in the electronic filing instructions and formats for the particular form or filing, and the paper copies and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, room 3110, 825 North Capitol Street, NE, Washington, DC 20426.

* * * * *

[FR Doc. 93–3112 Filed 2–10–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8456]

RIN 1545–AQ14

Capitalization on Certain Policy Acquisition Expenses; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8456, which was published in the **Federal Register** for Tuesday, December 29, 1992 (57 FR 61813). The final regulations relate to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Geisler (202)–622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction provide rules under section 848 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8456 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8456), which was the subject of FR Doc. 92–30943, is corrected as follows:

On page 61829, column 1, § 1.848–2(k)(2)(ii), fourth line, the language "without regard to the date on the" is corrected to read "without regard to the date on which the".

Cynthia Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–3183 Filed 2–10–93; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8448]

RIN 1545–AP64

Enhanced Oil Recovery Credit; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8448), which were published Monday, November 23, 1992 (57 FR 54919). The amendments to final regulations provide the public with guidance in determining the costs that are subject to the credit, the circumstances under which the credit is available, and the procedures whereby a project is certified as a qualified enhanced oil recovery project.

EFFECTIVE DATE: November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, 202–622–3120 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to section 43 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of these final regulations (T.D. 8448), which was the subject of FR Doc. 92–27741, is corrected as follows:

Paragraph 1. On page 54921, column 3, in the preamble under the heading "V. *Qualified Tertiary Recovery Method*", first full paragraph, last to lines, the language "guidelines for obtaining advance determinations." is corrected to read "guidelines for obtaining private letter rulings.".

Par. 2. On page 54922, column 2, in the preamble under the heading "VII. *Qualified Costs—Tangible Property—Placed in Service*", first full paragraph, line 5, the language "These comments contend that the" is corrected to read "These commentators contend that the".

Par. 3. On page 54924, column 1, in § 1.43–1(a)(2), *Example 2*, fourth line from the bottom of the paragraph, the language "project, D may not claim a credit for the cost" is corrected to read "project, D may not claim a credit for the costs".

Par. 4. On page 54924, column 3, in § 1.43–1(g), *Example 1*, line 9, the language "development costs under section 263(c). The" is corrected to read "development costs. The".

Par. 5. On page 54930, column 2, § 1.43–4(e)(3), *Example 2*, line 6, the language "purchases a nitrogen plant to supply the" is corrected to read

"purchase a nitrogen plant to supply the".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-3187 Filed 2-10-93; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8461]

RIN 1545-AO42

Nuclear Decommissioning Fund Qualification Requirements; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8461, which was published in the **Federal Register** for Wednesday, December 30, 1992 (57 FR 62198). The final regulations relate to the qualification requirements of a nuclear decommissioning fund.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Geisler (202)-622-3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide rules under section 468A(e)(4)(C) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8461 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8461), which was the subject of FR Doc. 92-31057, is corrected as follows:

On page 62198, column 1, in the preamble, immediately following the heading "**SUPPLEMENTARY INFORMATION**", new language is added to read as follows:

"Paperwork Reduction Act

The collection of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1269. The estimated annual burden per respondent varies from two to four hours, depending on individual circumstances, with an estimated average of three hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.".

Cynthia Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-3186 Filed 2-10-93; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-24]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is adding Cho Yang Line to the list of Korean-flag carriers subjected to reporting requirements and potential fees. The effect of the amendment to the rule will be to adjust or meet unfavorable conditions created by restrictions imposed by the Government of Korea, by imposing countervailing burdens on all the Korean-flag carriers in the U.S./Korea oceanborne trade.

DATES: Sections 586.5(b) (2) and (4)(iii) effective June 1, 1994. Reports due May 1, 1993; November 1, 1993; and May 1, 1994.

ADDRESSES: Reports to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission ("Commission" or "FMC") on November 13, 1992, issued a final rule under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19"), imposing fees on vessels calling at United States ports and operated by Korean-flag carriers Hanjin Shipping Company, Ltd. ("Hanjin") and Hyundai Merchant Marine Co., Ltd. ("Hyundai"), in response to unfavorable conditions found to exist in the oceanborne trade between the United States and Korea ("Trade"). The unfavorable conditions were found to result from restrictions imposed by the Government of Korea ("ROK"), precluding U.S. carriers in the trade from engaging in trucking activities in Korea. The sanctions were suspended until June 1, 1994, during which time the Commission will review progress by the ROK in implementing commitments to ease those restrictions. The Commission also prescribed a schedule for periodic reporting by Hanjin, Hyundai, and certain U.S.-flag carriers, in order to apprise it of ongoing developments.

By separate order issued on November 13, 1992, the Commission required Cho Yang Line ("Cho Yang"), a Korean-flag carrier, to show cause why it should not also be subjected to the reporting requirements and sanctions ("Show Cause Order"). The Commission noted that Cho Yang, which began operating in the Trade following the initiation of this proceeding, was in 1991 the 22nd largest carrier of TEUs moving through U.S. ports, with a 136 percent increase in cargoes from the previous year. The Show Cause Order noted:

> As a major Korean-flag carrier, active in the U.S./Korea Trade, there would appear to be no reason why Cho Yang Line should not be subject to the same potential sanctions as Hanjin and Hyundai. These two carriers have been designated for sanctions, consistent with the intent of Section 19 on the basis of their status as carriers flying the flag of a country found to be imposing discriminatory restrictions on U.S. carriers in the Trade, and without facing similar obstacles in their operations in the United States.

Thirty days were provided for Cho Yang's response. Cho Yang requested and received a 30-day enlargement of time to respond to the Show Cause Order.

Cho Yang's Response

Cho Yang responded by letter dated January 12, 1993. It advises that it was not operating in the Trade at the time this proceeding began, and therefore did

not participate in the reporting to the Commission or in the "consultations which resulted in the FMC adopting the Final Rule * * *." Cho Yang argues that its smaller "size and influence" (vis-a-vis Hanjin and Hyundai) "may be a factor the Commission will wish to take into account." Cho Yang also asserts that as a member of a consortium, operating under an FMC-filed agreement, "any potential sanctions against Cho Yang could also adversely effect [sic] other Consortium partners and the other trades which are not related to this order covering the United States/Korea trade." Cho Yang therefore asks not to be subjected to the sanctions or the reporting requirements.

Discussion

Cho Yang has presented no compelling reason why it should not be subjected to the same potential sanctions and reporting requirements as the other Korean-flag carriers in the Trade. Although not required to participate in reports or otherwise apprise the Commission of its views, it had every opportunity to do so voluntarily, as did other interested entities, primarily port and shipper interests, who submitted their views for the record. Moreover, the Order to Show Cause presented Cho Yang with an additional opportunity to address the merits of the proceeding. It has chosen not to do so, while at the same time requesting that it not be required to participate in future reporting. While the Commission does not consider that Cho Yang has in any way been prejudiced by its lack of participation in this proceeding to date, it is evident that its nonparticipation was voluntary and continues to remain its preferred course of action. It is therefore not a valid basis for excluding Cho Yang from the sanctions and reporting requirements applied to Hanjin and Hyundai.

That Cho Yang was not a party to the consultations preceding the issuance of the final rule is of no consequence.[1] At no time could or did the Commission require any U.S. or Korean carrier to consult or negotiate with one another or a governmental entity. The consultations eventually proved to be fruitful, and resulted in commitments which prompted suspension of sanctions, and if implemented should obviate the need to impose those sanctions. The Commission's final rule was not based on the carriers' participation in those discussions, but rather on the continued existence of unfavorable conditions which Section 19 was enacted to address. Cho Yang's lack of participation in those consultations is irrelevant to the determination to subject it, as a major Korean-flag carrier, to measures designed to counteract the restrictions imposed by the ROK.

Cho Yang's relatively recent entry in the Trade and its size compared to Hanjin and Hyundai are also immaterial. Although considerably smaller than its Korean competitors, Cho Yang is hardly an insignificant or incidental presence in the Trade. Moreover, because the potential sanctions will be based on the number of vessels calling at U.S. ports, and will therefore be proportional to the size of the operations of the penalized carriers in the Trade, they cannot be said to be inequitable as applied to the smaller Cho Yang.[2]

Finally, the Commission is not unmindful of, and has indeed taken into account, the likely impact of Section 19 sanctions on the operations of others doing business with the penalized carriers. Those potentially adversely affected by such actions, which are imposed only absent a resolution of the matter by the responsible foreign government, include some U.S. as well as other foreign interests. Such effects are weighed against the likely benefits to be achieved upon elimination of the offending restrictions and the overall objectives of the Commission's statutory mandate. Cho Yang's business partners are not unique to the extent they stand to be affected by any failure on the part of the ROK to meet its commitments and thereby preclude the necessity for sanctions.

The Commission has therefore determined that Cho Yang has demonstrated no basis for excepting it from the reporting requirements and potential sanctions applicable to Hanjin and Hyundai. The Commission's rules at 46 CFR 586.5 are therefore amended to add Cho Yang Line as a named carrier, and its FMC-filed tariffs as tariffs subject to suspension in the event Cho Yang fails to pay any assessed fee or to file any required report. Also added are the tariffs of the Trans-Atlantic Agreement ("TAA"), which are subject to suspension to the extent they are applicable to Cho Yang Line. The reports required of Cho Yang and the procedures for their submission are described in the aforementioned final rule. Inasmuch as the December 15, 1992, reporting date applicable to the other U.S. and Korean carriers has passed, only the remaining reporting dates—May 1, 1993, November 1, 1993, and May 1, 1994—will be applicable to Cho Yang.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, part 586 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 586—[AMENDED]

1. The authority citation for part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.5 is amended by revising paragraph (b)(2) and by adding paragraph (b)(4)(iii) to read as follows:

§ 586.5 Conditions unfavorable to shipping in the United States/Korea trade ("Trade")—Intermodal Operations.

* * * * *

(b) * * *

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $100,000: Hanjin Shipping Co., Ltd., Hyundai Merchant Marine Co., Ltd., and Cho Yang Line. * * *

* * * * *

(4) * * *

(iii) Cho Yang Line (Cho Yang Shipping Co., Ltd.)

FMC No. 1—Ocean and Intermodal Freight Tariff No. 1, Applicable from Ports and Points in Korea, Taiwan, Hong Kong, Macao, Thailand, Singapore, Malaysia, Philippines, Indonesia and People's Republic of China to Ports and Points in the United States

FMC No. 2—Ocean and Intermodal Freight Tariff No. 2, Applicable from Ports and Points in Japan to Ports and Points in the United States

FMC No. 3—Ocean and Intermodal Freight Tariff No. 3, Applicable from Ports and Points in the United States to Ports and Points in the Far East

[1] Cho Yang is, incidentally, incorrect in its assessment that the consultations resulted in the Commission's imposition of sanctions. Rather, the inter-governmental and commercial discussions resulted in concessions which prompted the Commission to *suspend* the sanctions ultimately imposed.

[2] The sanctions imposed and suspended in the final rule are a $100,000 per voyage fee on transportation of cargo aboard vessels of the named Korean-flag carriers.

FMC No. 4—Ocean and Intermodal Freight Tariff No. 4, Applicable Between Ports and Points in the United States and Ports and Points in Panama

FMC No. 5—Service Contract Tariff No. 1, Naming Essential Terms and Services as Provided in Service Contracts Filed with the Federal Maritime Commission

FMC No. 6—Ocean and Intermodal Freight Tariff No. 6, Applicable Between Ports and Points in the United States and Worldwide Ports and Points

FMC No. 11—Ocean and Intermodal Freight Tariff No. 11, Applicable Between Ports and Points in the United States and Middle East and Indian Subcontinent Ports and Points in Bahrain, Bangladesh, India, Iran, Iraq, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka and the United Arab Emirates

FMC No. 12—Bill of Lading Tariff No. 12

FMC No. 13—Equipment Interchange Tariff No. 13

Trans-Atlantic Agreement (TAA) (FMC No. 202-011375) Service Contract Essential Terms, Publication FMC No. 1

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Tariff of Inland Charges in the Continental United States, Tariff FMC No. 2

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Tariff FMC No. 3 Between Ports and Points in Europe and Ports and Points in U.S.A.

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Tariff of Inland Charges in Continental Europe, Tariff FMC No. 4

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Tariff of Inland Charges in the Scandinavia/Baltic Range, Tariff FMC No. 5

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Gazetteer Tariff, Tariff FMC No. 6

Trans-Atlantic Agreement (TAA) (FMC No. 202–011375) Tariff FMC No. 7, Applicable Between Points and Ports in United Kingdom and Ireland and Ports and Points in the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–3151 Filed 2–10–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–258, FCC 93–72]

Implementation of Section 10 of the Cable Consumer Protection and Competition Act of 1992: Indecent Programming and Other Types of Materials on Cable Access Channels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order implements that part of section 10 of the Cable Consumer Protection and Competition Act of 1992, that directs the Commission to adopt rules that require cable operators to place on a single channel all indecent programming, as identified by program providers, intended for carriage on commercial leased access, and to restrict subscriber access to such channel unless access to it is requested in writing. It also clarifies other aspects of section 10 related thereto. The purpose of the new rule is to limit the access of children to indecent programming, as defined by Commission regulations, when cable operators do not voluntarily prohibit indecent programming under amended 47 U.S.C. 541(h).

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen A. Bailey, Office of General Counsel, at 202–254–6530.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Public reporting burden for this collection of information is estimated to vary from 8 minutes to 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 13 hours per year. The public is invited to send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information and Records Management Branch, room 416, Washington, DC 20554, and the Office of Management and Budget, Paperwork Reduction Project (3060–xxxx), Washington, DC 20503.

Initiating Document

Notice of Proposed Rule Making in MM Docket 92–258, 57 FR 54207 (November 17, 1992), 7 FCC Rcd 7709 (1992).

Summary of First Report and Order

1. This is a summary of the Commission's First Report and Order, FCC 93–72, adopted February 1, 1993, and released February 3, 1993. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC 20554. Copies of this document also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

2. The First Report and Order adopts rules and regulations that implement section 10(b) of the Cable Television Consumer Protection and Competition Act by requiring cable operators to place indecent leased access programming, as identified by program providers, on a "blocked" leased access channel, where such programming is not prohibited under a written and published policy of the cable operator adopted pursuant to section 10(a) of the Act. In addition, it clarifies other aspects of section 10 related thereto and states that regulations implementing section 10(c) of the Act, relating to cable-operator imposed restrictions on obscene and other types of materials on public, educational, and governmental access channels, will be adopted in a subsequent Report and Order.

3. In this First Report and Order, the Commission rejected constitutional challenges both to section 10 and the Commission's implementation thereof finding that, under the Supreme Court's decision in *Sable Communications* v. *FCC*, 492 U.S. 115 (1989), indecent matter is subject to government regulation if a compelling government interest exists and such regulation is carefully tailored. It found that a compelling interest underlies section 10 and the implementing regulations—to reduce children's exposure to indecent materials on cable leased access channels. It further found that the blocking approach enacted by Congress, rather than a voluntary "lockbox" approach, is the least restrictive but effective means of achieving that compelling interest. Thus, the Commission held that regulation of indecent programming on commercially leased access channels of cable systems is not constitutionally impermissible.

4. It also rejected other constitutional arguments that the statute and the proposed implementing rule were "underinclusiveness" in not addressing the "entirety" of the indecent problem. In addition, it refused to hold that the activities of cable operators in the provision of access channels constitute "state action," that access channels are "public fora" or that, therefore, cable operators impermissibly act as "government surrogates" when they prohibit indecent programming on commercial leased access under section 10(a) of the Act.

5. The Commission also rejected a challenge that it had failed to comply with the Administrative Procedure Act. It stated, *inter alia*, that it had in the Notice of Proposed Rule Making amply articulated the purposes intended to be served by the rule and provided the public with an adequate description of the subjects and issues involved.

6. As to section 10(a) of the new Cable Act, the Commission held that Congress appeared to give cable operators wide discretion to determine the manner in which they implement it. That section permits a cable operator to enforce a "written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards." The Commission said that the legislative history of section 10 makes clear that cable operators are free to decide whether to prohibit indecent programming on these channels and, therefore, they do not act as government surrogates under section 10(a). The Commission stated that section 10(a) appears to permit cable operators to adopt any measures appropriate for implementation including, but not limited to, the requirements adopted under section 10(b), subject to the caveat in section 612(c)(2) relating to the exercise of editorial control. It saw no reason to dispute cable operators' interpretation that they have the discretion to prohibit some, but not necessarily all, indecent programming under section 10(a) as long as they block the rest under section 10(b). Because Congress appeared to omit any role for the Commission under section 10(a) and because programmers are otherwise allowed, under existing statutory provisions, to enforce their rights to commercial leased access in federal district courts, it concluded that the courts, rather than this agency, are the appropriate forums for resolution of any disputes concerning whether cable operators have properly denied access pursuant to section 10(a).

7. With respect to implementation of the blocking requirement under section 10(b), the Commission took several actions. It adopted its proposed definition of indecent programming as tailored to the cable medium. It stated that the standard would be based on the "average subscriber to cable television," rather than the average subscriber to a particular cable system or in a particular locality. This interpretation, according to the Commission, not confined to a specific geographical area or specific cable system, is reasonable and appropriate, given that the purpose of indecency regulation is to protect children from exposure to such materials. Although it disagreed that the standard requires the Commission to base its determination relating to indecency on the basis of the work as a whole, it did state that "context" is an important factor and would be considered.

8. The Commission also decided that under section 10(b), which requires the cable operator to block indecent programming "as identified by program providers," it is the program provider, not the cable operator, that is required to identify whether a program is indecent and, therefore, subject to the blocking requirement. It stated its belief that section 10(b) does not require cable operators to prescreen or review programs for this purpose. According to the Commission, cable operators will not be held liable under section 10 or Commission rules for their failure to block programming not identified as indecent by program providers. However, it stated that a cable operator's right to prescreen would not appear to be prohibited in light of the amendment to section 638 removing cable operator immunity for obscene programming on cable access channels. In addition, it stated that the language in section 638 should be construed to remove immunity only for the provision of programming that is unprotected by the first amendment. The Commission expressed the belief that cable operators that do not prescreen, and thus do not have actual knowledge of any obscene programming on leased access channels, would otherwise be immune from prosecution for violations of obscenity laws. It further stated that cable operators would be immunized from liability under section 10(b), even if they have a contrary belief that programming not identified by programmers is indecent. It noted, however, that programmers who fail to identify indecent programming will be subject to appropriate sanctions.

9. The Commission stated that cable operators should be able to use certification procedures as a means to enforce any policies prohibiting indecent programming that are established under section 10(a) and that requiring certification would also be permissible under section 10(b). It therefore said that cable operators would be permitted to require certification of program providers relating to whether programming is indecent and obscene. It added that certification would not remove a cable operator's independent right to prescreen. The Commission said that this approach strikes an appropriate balance between the cable operator's rights and obligations under section 10 (b) and (d) and the access provisions of section 612(c)(2).

10. The Commission also said that Congress, through enactment of section 10, clearly intended that its legislative scheme should prevail over any state or local laws that attempted to prohibit or otherwise regulate indecent programming on leased access channels and thus its clearly defined scheme in section 10(b) preempts any state laws that otherwise might govern indecent programming on access channels. It therefore interpreted section 10(b) as immunizing cable operator and programmers from liability for indecent programming where they have complied with section 10(b) requirements.

11. Cable operators would, therefore, be allowed to require program providers to certify that their programming is not obscene programming or indecent programming required to be blocked. A program provider that does not provide a requested certification would not be entitled to access, according to the Commission. Program providers of live programming, the Commission stated, would be permitted to certify that they have exercised reasonable efforts to ensure that their programs are not obscene (or indecent if provided on a non-blocked channel).

12. The Commission stated that the certification must be made in writing by the program provider or other person or entity assuming responsibility for the program's content. It said that certification by an access organization or entity responsible for management of the commercial leased access channels would be sufficient if that organization or entity assumes responsibility for the content of the programs intended for commercial leased access. It further stated that the certification should include the full name, address, and telephone number of such person but that a separate certification for each program would not be required.

13. The Commission stated that a maximum of thirty days advance notice prior to the access user's requested time for leased access should be adequate to enable cable operators to comply with the blocking requirement. It emphasized that its rule would not prohibit leased access users from providing earlier notification. It noted that a specific time slot requested might not be available and, therefore, alternative air dates or arrangements might have to be made. It stated that, in such circumstances, no further notification from the program provider should be required.

14. The Commission stated that it would require cable operators, consistent with other cable recordkeeping requirements, to retain copies of program provider identifications and/or certifications for eighteen months from the date of receipt to ensure the availability of such information should any disputes arise under section 10(b) or related leased access provisions. It added that program providers would be required to renew their certifications prior to the expiration of the eighteen month period for programming intended to be shown after that date.

15. As for the blocking requirement itself, the Commission stated that cable operators would be allowed to employ any blocking mechanism that they choose—scrambling, interdiction or any other method, as long as it is effective. It agreed that cable operators should not be required to block a leased access channel until they receive a request for carriage from a provider of indecent programming but emphasized that operators must have the capability to block such a channel within the implementation time frame specified in the rules. Similarly, it stated that cable operators should be allowed to use the channel for non-blocked leased access programming to the extent it is not being used for indecent programming. Thus, the channel would be required to be blocked only during those time periods that indecent leased access programming is being shown, according to the Commission. It added that the "blocked" channel should be counted as part of the cable operator's obligation to provide leased access capacity under section 612.

16. The Commission stated that under section 10(b), cable operators would not be permitted to "channel" indecent leased access programming on blocked channels by scheduling it only at late hours of the evening or other times when children are least likely to be viewing. However, it believed that cable operators with written and published policies issued pursuant to section 10(a) have authority under that section to block indecent programming and to schedule it as they please on blocked channels. It further stated that cable operators should be permitted, if they so choose, to provide an additional blocked leased access channel for indecent programming if the first channel becomes full. However, it declined to address whether operators that do not have a written and published policy under section 10(a) would be required to provide an additional blocked channel in the event a single channel is filled.

17. Although it declined to specify the form of notification that should be given subscribers about the availability of a blocked channel, the Commission stated that a subscriber's written request to receive the channel should contain a statement that the subscriber is at least eighteen years of age. Mere telephonic confirmation, according to the Commission, would be insufficient for the purpose of ascertaining whether the recipient is, in fact, at least eighteen years of age.

18. The Commission stated that cable operators would be required to have in place blocking implementation mechanisms and procedures within 120 days of the date of publication of the new regulations in the **Federal Register**. It said that the 120 day period should provide cable operators sufficient time within which to make technical arrangements, inform subscribers of the new leased access blocking requirement and afford subscribers adequate time to notify the cable operator in writing if they wish to receive any programming on the channel when, and if, it becomes available on the system. At the expiration of the 120 day period, cable operators subject to section 10(b) will be required to place indecent programming on a blocked channel, according to the Commission. This means, the Commission stated, that, no later than 30 days prior to the expiration of the 120 day period, programmers must identify any programming that is indecent and which is intended to be carried on the 121st day of the time period.

19. The Commission believed that, in view of the fact that Congress explicitly required us to adopt regulations implementing section 10(b), it was obligated to specify procedures for resolution of disputes relating to section 10(b)'s implementation. It stated that, where such disputes arise (e.g., there is an allegation that a program provider failed to comply with the new program identification rules), it would entertain special relief petitions under § 76.7 of the rules, 47 CFR 76.7, from cable operators in accordance with the existing procedures we have established. Similarly, the Commission would entertain complaints from subscribers in accordance with the existing complaint procedures. If the petition or complaint is meritorious, the Commission said, it would then take appropriate action, based upon the circumstances, e.g., issue a warning or a notice of apparent liability for violation of the statute and/or Commission rules, or denial of leased access to a program provider in the future.

Final Regulatory Flexibility Analysis

20. *The Need and Purpose of this Action.* The regulations in this First Report and Order are intended to implement that part of Section 10 of the Cable Consumer Protection and Competition Act of 1992 that directs the Commission to adopt regulations designed to limit children's access to indecent programming on commercial leased access channels. The regulations accomplish this by requiring cable operators (which do not voluntarily prohibit indecent programming) to place indecent programming, as identified by program providers, on a "blocked" leased access channel and restricting subscriber access to this channel unless specifically requested in writing by a subscriber.

21. *Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis.* Boston Community Access commented that far greater burdens would be imposed on nonprofit access organizations, institutional access producers, and individual access producers, than on cable operators. Although others pointed out that new burdens would be imposed on access administrators, access users, and others, under the new restrictions, their comments were specifically directed to the Initial Regulatory Flexibility Analysis.

22. *Significant Alternatives Considered and Rejected.* In this First Report and Order, we have considered the most efficacious manner to implement the section 10's provisions relating to indecent programming on leased access channels and in the least burdensome manner that is consistent with the statute's aims. To the extent that Boston Community Access' comments, noted above, are directed to adoption of restrictions relating to the public, educational, and governmental access channels, they will be addressed in a subsequent Report and Order. To the extent they are intended to address leased access channel restrictions, we

have attempted to minimize the burdens on leased access program providers by not requiring notification as to each individual program provided by them and by requiring such notifications only by those assuming responsibility for the content of the programming. No other significant alternatives consistent with the aims of the statute were presented.

Conclusion

23. Our purpose has been to implement the provisions of section 10(b) which, in accordance with the will of Congress, are intended to safeguard the well-being of children in our society, a compelling governmental interest, by reducing their exposure to indecent programming on commercial leased access channels. By the same token, we have sought to protect the constitutionally protected rights of others to distribute, and receive access to, such programming on cable television. We believe that the regulations we have adopted strike an appropriate balance between these aims.

Ordering Clauses

24. Accordingly, pursuant to section 10 of the Cable Consumer Protection and Competition Act of 1992, Public Law 102–385, and sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, part 76 of the Commission's Rules is amended, as set forth below, effective 120 days from date of publication in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; 47 U.S.C. 531, 532.

§ 76.305 [Amended]

2. Section 76.305(a) is amended by removing the word "and" before "§ 76.601(e)" and removing the period at the end of that paragraph and inserting "and § 76.701(h) (records for leased access)."

3. Part 76 is amended by adding a new subpart L, consisting of § 76.701, before the index to read as follows:

Subpart L—Cable Television Access

§ 76.701 Leased access channels.

(a) Notwithstanding 47 U.S.C. 532(b)(2) (Communications Act of 1934, as amended, section 612), a cable operator, in accordance with 47 U.S.C. 532(h) (Cable Consumer Protection and Competition Act of 1992, section 10(a)), may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(b) A cable operator that does not prohibit the distribution of programming in accordance with paragraph (a) of this section shall place any leased access programming identified by program providers as indecent on one or more channels that are available to subscribers only with their prior written consent as provided in paragraph (c) of this section.

(c) A cable operator shall make such programming available to a subscriber within 30 days of receipt of a written request for access to the programming that includes a statement that the requesting subscriber is at least eighteen years old; a cable operator shall terminate a subscriber's access to such programming within 30 days from receipt of a subscriber's request.

(d) A program provider requesting access on a leased access channel shall identify for a cable operator any programming that is indecent as defined in paragraph (g) of this section. Such identification shall be in writing and include the full name, address, and telephone number of the program provider and a statement that the program provider is responsible for the content of the programming. A cable operator may require that such identification be provided up to 30 days to the requested date for carriage. A program provider requesting carriage of "live programming" on a leased access channel that is not identified as indecent must exercise reasonable efforts to insure that indecent programming will not be presented. A cable operator will not be in violation of paragraph (b) of this section if it fails to block indecent programming that is not identified by a program provider as required in paragraph (d) of this section.

(e) A cable operator may request a program provider to certify that the programming intended for leased access is not obscene programming or indecent programming subject to the requirement of paragraph (b) of this section. A cable operator may request a program provider of "live programming" to certify that reasonable efforts will be made to ensure that such programming is not obscene programming or indecent programming subject to the requirement of paragraph (b) of this section.

(f) A cable operator shall not be required to provide leased access to a program provider if—

(1) The program provider refuses to identify whether programming is indecent as required under paragraph (d) of this section; or

(2) The program provider refuses or fails to certify, if requested by the cable operator under paragraph (e) of this section, that the programming is not obscene programming or indecent programming subject to the requirement of paragraph (b) of this section; or

(3) The program provider refuses or fails to certify, if requested by the cable operator under paragraph (e) of this section, that reasonable efforts will be made to ensure that any "live programming" is not obscene programming or indecent programming subject to the requirement of paragraph (b) of this section; or

(4) The program provider has failed to provide up to thirty days' prior notice, if requested by the cable operator, that the programming is indecent.

(g) For purposes of paragraphs (b)–(f) of this section, "indecent programming" is any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable medium.

(h) Cable operators shall retain records sufficient to verify their compliance with paragraph (b) of this section and make such records available to the public. Such records must be retained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

[FR Doc. 93–3313 Filed 2–10–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 99

[RIN 2105–AB98]

Employee Responsibilities and Conduct

AGENCY: Office Of The Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule removes most of the Department's regulations on Employee Responsibilities and Conduct

from the Code of Federal Regulations. The Department's regulations are being replaced, as of February 3, 1993, by new Office of Government Ethics regulations which apply to employees throughout the executive branch. The Department's regulations on Employee Responsibilities and Conduct which relate to post employment matters and waivers of conflicts of interest are being retained in the Code of Federal Regulations pending subsequent issuance of Office of Government Ethics regulations on those topics.

EFFECTIVE DATE: This final rule takes effect on February 3, 1993.

FOR FURTHER INFORMATION CONTACT: William R. Register or Grace Reidy, Office of the General Counsel (C–10), Department of Transportation, 400 7th Street, S.W., room 10102, Washington, D.C. 20590, (202) 366–9161.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Office of Government Ethics (OGE) published revised Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635; 57 FR 35006). These standards become effective on February 3, 1993. They supersede existing agency standards of ethical conduct. The Department's existing regulations on Employee Responsibilities and Conduct are in 49 CFR part 99.

The Department's regulations on Employee Responsibilities and Conduct also include provisions relating to the filing and review of financial disclosure reports. The regulations have been superseded by OGE's revised regulations on financial disclosure published on April 7, 1992 (5 CFR parts 2633 and 2634; 47 FR 11800).

Overview

Measures being taken within the Department of Transportation to implement OGE's revised standards of employee conduct and OGE's revised regulations on financial disclosure include:

1. Removing the Department's regulations on Employee Responsibilities and Conduct from 49 CFR part 99, except subpart F and appendix E which relate to post employment matters, and appendix A which relates to regulatory waivers of conflicts of interest. Subpart F and appendix E remain in effect pending issuance of OGE regulations on post employment matters. Appendix A remains in effect pending issuance of upcoming OGE regulations on regulatory waivers of conflict of interest.

2. Issuing regulations determined to be necessary to supplement OGE's revised standards of employee conduct. These supplemental regulations would cover matters relating to outside employment, conflicts of interest, and receipt of gifts. Pursuant to 5 CFR 2635.105, OGE approval of the Department's supplemental regulations will be required. Proposed supplemental regulations are currently being prepared for issuance as a notice of proposed rulemaking in the near future.

3. Issuing a revised departmental order on employee responsibilities and conduct, and issuing implementing modal administration orders or procedures as necessary. The Department's existing order, DOT Order 3700.2, implements President Johnson's Executive Order (E.O.) 11222 ("Prescribing Standards of Ethical Conduct for Government Officers and Employees"), 3 CFR, 1964–1965 Comp., p. 306, and former OGE regulations on employee conduct. The revised departmental order will contain procedures for processing reviews, determinations, approvals, and other actions in accordance with OGE's revised standards. The revised departmental order will also include provisions implementing President Clinton's Executive Order 12834, "Ethics Commitments by Executive Branch Officials." Further, the revised departmental order will authorize deputy ethics officials to designate "agency designees" who are authorized pursuant to OGE's revised standards to issue certain ethics determinations under the revised standards. As mandated in OGE's regulations, in 5 CFR 2635.103, an upcoming Coast Guard Instruction on ethics will include standards of conduct applicable to military enlisted personnel.

4. Issuing departmental and operating administration orders or procedures on financial disclosure matters. These orders are required pursuant to 5 CFR 2634.103 of OGE's revised regulations on financial disclosure. These orders will address topics outlined in OGE's memorandum of September 3, 1992, relating, among the others, to the collection, filing, and review of financial disclosure reports. A copy of OGE's memorandum may be obtained from the address listed under **FOR FURTHER INFORMATION CONTACT.**

Description of Final Rule

The Department's regulations in 49 CFR part 99 to be removed from 49 CFR part 99 include:

1. Subpart A

General regulations relating to the purpose and policies surrounding E.O. 11222.

2. Subpart B

Regulations relating to gifts, outside employment, conflicting financial interests, use of government property and title, misuse of information, indebtedness, and gambling. Each of these topics is addressed in OGE's revised standards of employee conduct and in regulations published by the Office of Personnel Management in the **Federal Register** of November 30, 1992 (57 FR 56433).

3. Subpart C

Statements of employment and financial interest. The regulations in this subpart have been superseded by OGE's revised regulations on financial disclosure. Pursuant to OGE's revised regulations on financial disclosure, implementing agency procedures concerning financial disclosure are required. The Department's order on financial disclosure will include procedures for the collection, filing, and review of financial disclosure reports.

4. Subpart D

Regulations relating to ethical conduct and responsibilities of special government employees. The regulations in this subpart are addressed in OGE's revised standards of employee conduct.

5. Subpart E

Procedures relating to the issuance of ethics advice, review of financial disclosure reports, remedial action, and appeal of determinations requiring remedial or disciplinary action. Procedures relating to the issuance of ethics advice are covered in OGE's revised standards of employee conduct. Procedures relating to the review of financial disclosure reports are addressed in OGE's revised regulations on financial disclosure and will be addressed in the Department's order on financial disclosure. The Department's revised order on employee responsibilities and conduct will include procedures relating to remedial and disciplinary action and appeals.

6. Appendix B

List of statutory provisions relating to employee conduct. OGE's revised standards of employee conduct include a list of applicable statutory provisions.

7. Appendix C

List of employees required to submit financial disclosure reports. OGE's revised regulations on financial disclosure contain requirements concerning who is required to file a financial disclosure report. The Department's order on financial

disclosure will include a list of designated positions.

8. Appendix D

Extract from appendix C of the Civil Service Federal Personal Manual System on special government employees. The material in this appendix is covered in Chapter 304 of the Federal Personnel Manual.

The Department's regulations that are to be retained include:

1. Subpart F which contains regulations relating to post employment responsibilities. Pending issuance of upcoming OGE regulations on post employment matters, subpart F is being retained along with a note that its provisions apply only to employees who terminated service before January 1, 1991. Also, the regulations in 49 CFR part 98, which contain pre-1991 procedures for enforcing post employment restrictions, are being retained pending issuance of upcoming OGE regulations on post employment matters.

2. Appendix A which addresses regulatory waivers of conflict of interest. These regulations are being retained pending issuance of OGE regulations on regulatory waivers.

3. Appendix E which explains statutes relating to post employment responsibilities. This Appendix will be retained along with a note that the appendix applies only to employees who terminated government service prior to January 1, 1991.

The Department's existing regulation on outside employment, which is in 49 CFR 99.735–11 and which is being removed from the CFR in this rulemaking, will be subsequently reproposed as a supplemental regulation in the proposed Departmental regulations referenced in the "Overview" section. Those Departmental regulations would be published as a part of OGE's regulations title 5, CFR. Also, the Department's regulations in 49 CFR part 9 on employee testimony in legal proceedings are being retained and a cross reference to OGE's regulation on employee testimony, in 5 CFR 2635.805, will be added to 49 CFR part 9. The cross reference to OGE's regulation on employee testimony will be included in an upcoming revision to 49 CFR part 9 to be published in late January 1993.

Regulatory Analysis and Notices

In accordance with 5 U.S.C. 553 (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383) of the Administrative Procedure Act, this final rule has not been preceded by a notice of proposed rulemaking and it is being made effective in less than thirty days after publication. The rule relates to matters of agency management and personnel, which matters are exempt from the rulemaking procedures in 5 U.S.C. 553. In addition, following those procedures would be both unnecessary and contrary to the public interest since the Department's regulations on employee responsibilities and conduct are automatically superseded by OGE's rules on February 3, 1993, and timely action in issuing this final rule is essential to give full effect to and avoid confusion concerning the effect of OGE's new rules.

This final rule is not a major or significant rule under DOT Regulatory Policy and Procedures, 44 FR 11040, and its economic impact will be minimal. For this reason, further regulatory evaluation is not necessary. Further, the rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12012, it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is because the rule has no effect on State and local governments, since it applies only to Federal employees or former employees. Furthermore, there are no reporting or record keeping requirements associated with this rulemaking. Lastly, I certify, under the criteria of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. In fact, since it concerns only Federal employment, there is no impact on small entities involved.

In accordance with the foregoing, the Department of Transportation is amending part 99 of title 49 of the Code of Federal Regulations as set forth below.

List of Subjects in 49 CFR Part 99

Conflict of interest.

Issued in Washington, DC, on February 4, 1993.

Federico Peña,

Secretary of Transportation.

PART 99—[AMENDED]

1. The authority citation for part 99 is revised to read as follows:

Authority: 49 U.S.C. 322; E.O. 12674, 54 FR 15159, CFR, 1989 Comp., P 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., P. 306.

Subpart A—[Removed and Reserved]

2. Subpart A is removed and reserved.

Subpart B—[Removed and Reserved]

3. Subpart B is removed and reserved.

Subpart C—[Removed and Reserved]

4. Subpart C is removed and reserved.

Subpart D—[Removed and Reserved]

5. Subpart D is removed and reserved.

Subpart E—[Removed and Reserved]

6. Subpart E is removed and reserved.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

7. In subpart F, a new § 99.735–80 is added to read as follows:

§ 99.735–80 Applicability.

The provisions of this subpart apply only to employees who terminated government service before January 1, 1991.

Appendix B—[Removed and Reserved]

8. Appendix B is removed and reserved.

Appendix C—[Removed and Reserved]

9. Appendix C is removed and reserved.

Appendix D—[Removed and Reserved]

10. Appendix D is removed and reserved.

Appendix E—Statutes Regulating Post-Employment Responsibilities of Government and Special Government Employees

11. By adding a note after the title to appendix E and before the discussion entitled "Section 207 Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners" to read as follows:

Note: This appendix applies only to employees who terminated government service before January 1, 1991.

[FR Doc. 93–3220 Filed 2–10–93; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1139

[Docket No. AO–309–A31; DA–90–021]

Milk in the Great Basin Marketing Area; Final Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would change several provisions of the Great Basin milk order. The decision would relax the diversion provisions and would relax the limit on the amount of milk that producer-handlers may receive from pool plants and other order plants. Other revisions would change the due date for payments to the producer-settlement fund, make several technical changes to component pricing provisions and change the application of location adjustments of diverted milk. The order changes were considered at a public hearing held on August 27–28, 1990, in Salt Lake City, Utah. The order changes were requested by two cooperative associations and are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Great Basin marketing area.

Cooperative associations will be polled to determine whether producers favor the issuance of the proposed amended order.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this action proposed will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding;

Notice of Hearing: Issued August 14, 1990; published August 20, 1990 (55 FR 33915).

Recommended Decision: Issued August 24, 1992; published August 28, 1992 (57 FR 39146).

Order suspending rule: Issued October 26, 1992; published October 30, 1992 (57 FR 49132).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Great Basin marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Salt Lake City, Utah, on August 27–28, 1990. Notice of such hearing was issued on August 14, 1990 and published August 20, 1990 (55 FR 33915).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on August 24, 1992, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. Pooling standards for a cooperative's reserve milk supply.", Five new paragraphs are added after paragraph 25.

2. Under the heading "2. Pooling standards for a cooperative manufacturing plant.", Paragraphs one and six are revised and one new paragraph is added after paragraph six.

3. Under the heading "3. Limits on producer-handler receipts from pool plants and other order plants.", Three new paragraphs are added after paragraph 24.

4. Under the heading "5. Application of location adjustments in paying producers for milk that is diverted.", One new paragraph is added after paragraph thirteen.

5. Under the heading "8. Technical changes in order provisions relative to component pricing:

(a) Handler protein price. ", Paragraph nine is revised and three new paragraphs are added after paragraph nine.

6. Under the heading "8(c). Protein accounting by plant operators.", one new paragraph is added after paragraph six.

The material issues on the record of the hearing relate to:

1. Pooling standards for a cooperative's reserve milk supply;

2. Pooling standards for a cooperative manufacturing plant;

3. Limits on producer-handler receipts from pool plants and other order plants;

4. Application of location adjustments in determining the obligation of a partially-regulated distributing plant;

5. Application of location adjustments in paying producers for milk that is diverted;

6. Due date for payment of handler obligations to the producer-settlement fund;

7. Handler payments to cooperative associations for plant milk and bulk tank receipts from producer-members; and

8. Technical changes in order provisions relative to component pricing:

(a) Handler protein price.

(b) Location and zone differentials.

(c) Protein accounting by plant operators.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards for a Cooperative's Reserve Milk Supply

The order should not be amended to provide an additional option for pooling a cooperative association's milk supply. This decision provides, as an alternative, that the order's diversion limitations for cooperatives be relaxed. The diversion limitations are increased from 60 percent for the period of April through August and 50 percent in all other months to 75 percent during all months of the year.

Western Dairymen Cooperative, Inc. (WDCI) proposed the "cooperative reserve supply unit" as an additional option in pooling a cooperative's milk supply. Their proposal, modified at the hearing, would have required a cooperative to meet the following requirements:

(1) The cooperative must file an application with the market administrator for a "cooperative reserve supply unit status" no less than 15 days prior to the first day of the month such status is requested;

(2) The cooperative must qualify as a handler of bulk tank milk or diverted milk of its member producers during the month and as a handler of producer milk during each of the 12 preceding months;

(3) Each member producer of the cooperative must deliver at least one day's production each month to a pool distributing plant;

(4) The cooperative must be qualified to receive payments for producer milk;

(5) The cooperative has producer members, the majority of whom are producing milk on farms located within 175 miles of a pool distributing plant located within the marketing area;

(6) The cooperative has not entered into an agreement with another cooperative association to have its allowable diversions computed on a combined basis;

(7) The cooperative would not be able to operate a pool plant located in the marketing area (initially WDCI proposed that a cooperative not operate a milk plant);

(8) The cooperative must ship milk to pool distributing plants during the month in an amount equal to not less than 25 percent of its producer milk (initially WDCI proposed a 35 percent requirement);

(9) The cooperative reserve supply unit supplies fluid milk products to a distributing plant located within 175 miles (initially 100 miles) of the majority of the cooperative's member producers in accordance with instructions from the market administrator calling for a minimum level of shipments to pool distributing plants; and

(10) The market administrator may require shipments of bulk fluid milk from the reserve supply unit whenever the market administrator determines, as the result of an investigation, that additional milk supplies are needed at any pool distributing plant(s) in order to serve the fluid needs of the market.

The WDCI proposal provided that an investigation may be undertaken either at the market administrator's own initiative or on the basis of a request from a pool distributing plant. If the market administrator finds after the investigation that it is necessary to issue an instruction requiring shipments of milk, the market administrator shall issue a notice stating that a shipping instruction is being considered and inviting data, views and arguments with respect thereto, which will be considered in making his determination.

A cooperative association, after qualifying as a reserve supply unit, shall continue to have that status until it fails to meet all of the previously described conditions, or until it applies for termination thereof, in which case such status shall be withdrawn on the first day of the month following the application.

If a cooperative association holding such reserve supply unit status fails to comply with any shipping requirements or takes any action which evades the intent of any shipping requirements, the market administrator shall report these facts to the Director of the Dairy Division who may suspend the cooperative from qualification. The suspension would cover a period of not more than 12 months during which the association has qualified as a handler of bulk tank milk or of diverted milk of its members.

The first witness for WDCI testified that the association is a marketing cooperative with members located in 10 states. He said that the association is operating four manufacturing plants and three fluid milk plants in the Great Basin marketing area.

The spokesman for WDCI said that milk production is increasing and commercial use remains flat. He said that because of the increase in milk production, cheese plants are interested in acquiring manufacturing plants. WDCI, he contended, will be committed more to manufacturing operations and utilizing these manufacturing facilities at optimum levels of production.

The WDCI witness said that the association has signed a letter of intent with another company which could result in a significant change in the status of WDCI's manufacturing plants and in the use of its member milk for manufacturing. He said the association wants to see that the fluid needs of the market are served from the closet possible supply source. The witness indicated the cooperative's proposal would accomplish that objective.

At the hearing the WDCI witness requested that the Department waive a recommended decision on this issue. In their post-hearing brief, however, they withdrew this request.

At the hearing WDCI made several modifications to its proposal. Under the first modification a cooperative would not be permitted to operate a pool plant located in the marketing area. Initially, WDCI had proposed that a cooperative may not operate a milk plant. Another modification provided for shipments to pool distributing plants of not less than 35 percent of the cooperative's member-producer monthly milk production instead of 25 percent. A third modification would require that a member producer deliver at least one days' production each month to a pool distributing plant.

The second witness for WDCI said the proposal is similar to a provision in the Pacific Northwest order. He said that the proposed standards assure that the association will not "ride" the pool but is there to serve the needs of the market.

At the hearing a witness for two cooperative associations, Magic Valley Milk Producers, Inc. (MVMP), and Quality Milk Producers, Inc. (QMP), and witnesses for Gossner Foods (Gossner), a proprietary handler, presented testimony in opposition to the WDCI proposal.

The witness for MVMP said that the WDCI proposal would not benefit MVMP. He said that for June and July 1990, MVMP was only able to ship about 21 percent of its Grade A milk to

pool distributing plants located in the Great Basin marketing area (monthly production of members for June and July 1990 approximately 21 million pounds).

The MVMP spokesman said that the proposed 75-mile limitation by WDCI would eliminate MVMP from qualifying under the proposed "cooperative reserve supply unit" even though about 30 percent of their members are located within the Great Basin marketing area. He testified that MVMP has been serving this market for about three years. MVMP, he said, delivers a substantial amount of milk to the Meadow Gold distributing plant at Pocatello, Idaho. If that plant were to close, the cooperative's members' farms would be located about 240 to 270 miles from a pool distributing plant in the marketing area.

The witness for MVMP proposed several modifications to the WDCI proposal. He said that a cooperative in order to qualify under this proposal should (1) not operate a pool distributing plant rather than a milk plant within the marketing area (2) have producers whose milk is currently pooled on the Great Basin order or are located within 175 miles of a pool distributing plant located within the marketing area and (3) ship to pool distributing plants 25 percent during the months of September through April and 20 percent during the months of May through August of the cooperative association members' monthly milk production. Also, the qualified cooperative association should not lose its status as a "cooperative reserve supply unit" because of the closing of the closest pool distributing plant to the majority of its producers.

Two witnesses for Gossner testified in opposition to the WDCI proposal. The second Gossner witness said his testimony was also presented on behalf of KDK Dairy, Banquet Foods and Chappel Cheese.

The first Gossner witness said that the present provisions are adequate for WDCI to pool its members' milk on the Great Basin order without operating a bottling plant or a cheese plant. He said that if WDCI is going out of the fluid milk business, then this proposal would encourage WDCI to sign on as many new producers as possible with the intent of controlling the entire milk supply.

This Gossner witness testified, that even though they have their own independent producers, they are concerned about the possibility of other sources of milk not being available because of the adverse effect that WDCI's proposal would have on the market. He said that Gossner operates an aseptic milk plant that engages substantially in supplying military contracts. The witness indicated that this type of business requires that milk always be at a reasonable price. Gossner, he said would have less objection to the WDCI proposal if the monthly shipping percentages were increased from 25 to 35 percent.

The second witness for Gossner and other handlers said that the WDCI proposal will further increase the dominance of WDCI as the principal buyer of milk in the Great Basin market. He said that Gossner and other handlers are all heavily dependent upon Grade B milk and that the WDCI 25 percent shipping standard will accelerate the conversion of Grade B milk to Grade A milk.

This spokesman for Gossner and other handlers said that the proprietary cheese plants are already operating at less than capacity and any further reduction in milk supplies would result in the closing of some cheese plants in the marketing area. He said that if the cheese plants were to close, this could result in the closure of bottling operators because of their dependence on the cheese plants to take their diverted milk.

A witness for QMP said that the association supports the modifications proposed by MVMP. He said that members of the association produce approximately 11 to 12 million pounds of milk per month and the milk pooled by the association goes to a distributing plant at Pocatello, Idaho. The members of the association, he said, are located within the southern Idaho counties of Twin Falls, Gooding, and Jerome and, therefore, the proposed mileage standards by WDCI would eliminate their organization from qualifying under the WDCI proposal.

As indicated previously, the "cooperative reserve supply unit" proposed as modified, should not be adopted. The relaxation of the diversion provisions as provided for in this decision will enable the proponent of the "cooperative reserve supply unit" proposal to efficiently provide for the fluid needs of the market and, at the same time, accommodate the movement of more milk for manufacturing in recognition of changes in supply and demand for milk in this market.

The 75 percent diversion limitation provision provided for in this decision will enable WDCI to move milk directly from the farm to manufacturing plants in amounts equal to WDCI's proposed 25 percent monthly shipping requirements contained in their proposal. The 75 percent diversion provision would require (reciprocal) shipments to pool plants of 25 percent.

The 75 percent diversion provision, coupled with the provision that authorizes the Director of the Dairy Division to increase or decrease these limitations by 10 percentage points, should provide flexibility in the event that market conditions substantially change.

As indicated previously, there was substantial opposition to the WDCI proposal even with the proposed modifications. The modified proposal leaves some doubt as to whether other cooperatives, besides WDCI, would be able to meet all the requirements of this provision. The relaxation of the diversion provisions should accommodate the changed marketing conditions that WDCI was concerned about and at the same time provide other cooperative associations with the ability to more efficiently move milk supplies where needed.

Exceptions were filed by WDCI and Gossner. WDCI stated that market conditions have substantially changed since the hearing in August 1990. They indicated that a permanent change in diversion limitations should not be made on the basis of obsolete facts. WDCI stated that the anticipated conditions that were the basis for their proposal never materialized.

Gossner in their exceptions indicated that they did not object to the proposed 75 percent provision provided it was available to proprietary handlers. Gossner stated that this provision gives a clear advantage to cooperative associations and limits the marketing options of other producers.

Both exceptions are denied. Regarding Gossner's position that the provision should be available to proprietary handlers, there is no record basis in this proceeding to so provide. The hearing evidence, and indeed the proposal for a bulk tank unit, were based on the needs of a cooperative association. Proprietary handlers did not offer any evidence that would support making the greater diversion allowance apply to proprietary handlers as well as to cooperatives.

WDCI's exception maintains that the facts in the record offered by WDCI in support of the proposal are obsolete, and thus any needed amendments should be based on evidence concerning conditions as they now exist. Although the conditions anticipated by WDCI in its testimony did not materialize, the record does indicate that another cooperative association may be able to benefit from a higher diversion limit. Thus, while WDCI's proposed changes may not be needed under more current

conditions, the diversion limit change adopted herein will accommodate the pooling of milk by Magic Valley Quality Milk Producers cooperative.

2. Pooling Standards for a Cooperative Manufacturing Plant

The order should continue to provide that a cooperative association must ship at least 35 percent of its member producer milk to a pool distributing plant to qualify its manufacturing plant for pool status. The order should also continue to provide that the Director of the Dairy Division may increase or decrease such percentage by 10 percentage points.

Currently, the order provides that a cooperative association must ship 35 percent of its member-producer milk to a pool distributing plant to qualify its manufacturing plant for pool status. However, when the Great Basin and Lake Mead orders were merged on April 1, 1988, the order provided for a 45 percent shipping requirement. The 45 percent standard was lowered to 40 percent effective May 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 30881). The standard was further lowered to 35 percent effective June 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 25446). Both of the reductions were made by the Director of the Dairy Division at the request of WDCI.

A witness for MVMP said that a decrease in the shipping requirements to 25 percent is necessary to reflect the fact that Class I milk movements on the Great Basin order have decreased about 14 percent when compared to the first 7 months of 1989. He said that if the shipping standard had been 25 percent rather than 35 percent the association would have saved about $132,000 for the period of March 1990 through July 1990.

The MVMP proposal was opposed by WDCI and Gossner. The witness for WDCI said that the association is delivering approximately 40 percent of its milk supply to pool distributing plants. The WDCI witness said the association does not want this shipping provision to be established any lower than 35 percent.

The witness for Gossner said that the company's opposition to this proposal is similar to their opposition to the WDCI proposal to establish a cooperative reserve supply unit. He said that the MVMP proposal could result in the elimination of proprietary manufacturing plants because this proposal would increase the conversion of Grade B milk to Grade A milk.

The change proposed by MVMP was adopted in the recommended decision. However, exceptions were filed by WDCI and Gossner. WDCI stated that at the present time marketing conditions are substantially different than at the time of the hearing. They indicated that they are now the only cooperative association operating a regulated manufacturing milk plant and that the present 35 percent provision is not excessive. WDCI also expressed a concern about the possibility of excess milk from neighboring markets being pooled on the Great Basin market if this provision were lowered to 25 percent. Gossner indicated that the adoption of the proposal might give WDCI an advantage and would encourage WDCI to take on new members with the intent of controlling the entire milk supply.

The concerns expressed by MVMP in support of their proposal are now moot because they are not now operating a manufacturing pool plant. Therefore, it is concluded that the change proposed in the Recommended Decision should not be adopted. There is no need at this time to lower the percentage of milk that a cooperative association must ship to a pool distributing plant in order to pool its manufacturing plant.

3. Limits on Producer-Handler Receipts From Pool Plants and Other Order Plants

The order should be amended to provide a producer-handler with more flexibility in acquiring fluid milk products from pool plants or other order plants in order to supplement the producer-handler's own production. The amended order would allow a producer-handler to acquire unlimited quantities of fluid milk products during the months of December through August provided the producer-handler met the following requirements during the months of September through November. During the period of September through November, the producer-handler's purchases of fluid milk products (excluding flavored and cultured fluid milk products) would be limited to 15,000 pounds (3 month total) or 5 percent of the producer-handler's disposition (3 month total), whichever is greater. The order would also provide that if the producer-handler exceeded this limitation during the months of September through November, the producer-handler's purchases of fluid milk products (excluding flavored or cultured milk products) could not exceed 5,000 pounds each month or 5 percent of the producer-handler's monthly disposition, whichever is greater.

The order presently provides that a producer-handler may purchase fluid milk products each month from pool plants or other order plants in an amount not in excess of the larger of 5,000 pounds or 5 percent of the producer-handler's Class I disposition.

At the hearing, WDCI, abandoned a proposal that would have permitted a producer-handler to purchase from a pool plant or other order plant during each of the months of May through August fluid milk products amounting to 10,000 pounds or 5 percent of its Class I disposition, whichever is larger, and during the months of September through April, the larger of 5,000 pounds a month or 5 percent of its monthly Class I disposition.

At the hearing, Mr. Glen Brown who is part owner and the manager of Brown Dairy, Inc. (Brown), located at Coalville, Utah, testified in support of the change in the producer-handler provision that is adopted herein.

Mr. Brown said that the present order provisions make it unreasonably difficult to manage his operation in an orderly manner. He said that anyone who has had any experience with cows knows that cow's production will vary more than 5 percent per day and per month with month-to-month variations of more than 5 percent. Therefore, he said, that the only logical way to provide a producer-handler a means to market his production is to remove the unreasonable restrictions contained in the order.

Mr. Brown said that a three-month qualifying period during the historically low production period should alleviate the market disruption concerns that producers and handlers may have. He said that his proposal would, for the most part, eliminate the need to dump onto the market surplus milk.

A producer-handler, according to Brown, does not know what his Class I sales will be until the month is over. As a consequence, the producer-handler does not know until the month is over, the volume of milk that can be purchased under the 5 percent allotted under the order. He said that his proposed three-month qualifying period should help solve this problem. In addition, the current provision, he says, makes it very difficult at times to provide fluid milk products to special groups such as the Boy Scouts in their own immediate area. He said that the fluid milk demands of the Boy Scouts and other youth groups, exceed the current 5 percent of Class I sales that producer-handlers are permitted to

obtain from pool plants or other order plants.

Mr. Brown said that the amount of milk attributable to producer-handlers in this market has declined from previous decades and has stayed very stable during the last few years. He said also that at least two-thirds of the Federal orders have no limitations on purchases of fluid milk products by producer-handlers.

Mr. Brown testified that the prices he obtains for his packaged fluid milk do not adversely affect the market. His prices, he says, when taking all products into consideration, are not the lowest or the highest in the market. He said, too, that he has to pay the Class I price for his purchases. For this reason he believed that no producer in the market would be adversely affected by his purchases of supplemental milk.

Mr. Brown said that his proposal would have a positive impact on small entities, especially in rural areas where the economy and employment are struggling. He said that a suspension of this provision for the period of December 1989 through August 1990, to the best of his knowledge, did not have an adverse effect on this market.

Mr. Brown also proposed that the limitation on the quantity of fluid milk products that a producer-handler may purchase should not include flavored and cultured fluid milk products. He said that today's high technology and capital-intensive machinery dictate that processors cooperate in order to accommodate the consumer.

At the hearing another producer-handler (Ideal Dairy) briefly testified in support of the Brown proposal. Winder Dairy, in a brief, stated that it also supports the Brown proposal.

The witness for Ideal Dairy said that in his operation he has to have a surplus averaging about 30 percent of the dairy farm's milk production. Some months it can vary from a low of 5 percent to a high of 40 percent. He said that his demand for milk is higher during the 8 or 9 months that the schools are operating rather than in the summer. He indicated that his own production and purchases from pool plants are higher than last year.

In its brief, Winder Dairy stated that the prior suspension of the limitations on purchases by producer-handlers has not been disruptive and that this greater flexibility in purchases can be useful to the market.

At the hearing a witness for WDCI testified in opposition to the Brown proposal. He said that before the merger of the Great Basin and Lake Mead orders the producer-handler limitation in the Great Basin order was the higher of 3,000 pounds or 5 percent of its Class I sales. He said that the cooperative proponent of the merger proposed the increase to 5,000 pounds per month in recognition of the general trend toward higher milk production.

The spokesman for WDCI said that the Department of Agriculture (Department) has always taken the position that producer-handlers are small volume farmers marketing their own milk and carrying the burden of their own reserve supply. Producer-handlers, he said, are allowed to market their own milk for Class I purposes without sharing it with the producers so long as they market their own reserve supply and do not transfer the burden of carrying the reserve supply to other producers.

The WDCI witness said that the Department has permitted producer-handlers to acquire limited quantities of milk from pool sources so that they could supplement their own farm production during the low production months and make other Class I products available to customers. He said that it is unfair to require regulated handlers to pay the Class I price for all fluid milk distribution while their competitors, the producer-handlers, can offer milk for sale without regard to the Class I price.

The WDCI spokesman said that during the suspension for the period of December 1989 through August 1990, substantial quantities of reserve milk were shifted from producer-handlers to other producers and that fully regulated handlers lost sales. He said that purchases of fluid milk products by producer-handlers increased from 67,000 pounds a year ago to 430,000 pounds and that these purchases displaced sales by fully regulated handlers.

A limit should apply on purchases of supplemental milk by producer-handlers during the months of September through November. A producer-handler should be permitted to purchase fluid milk products (excluding flavored and cultured fluid milk products) from pool plants and other order plants during the months of September through November in an amount not to exceed 15,000 pounds for the 3-month period or 5 percent of the producer-handler's Class I disposition during such 3-month period, whichever is greater.

A limit on supplemental milk purchases by producer-handlers is needed to preclude a producer-handler from shifting to pool producers the burden of carrying the producer-handler's reserve milk supply. Without any limit on purchases a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of production with purchases from pool sources.

By limiting a producer-handler's purchases during the months of seasonally low production, September through November, other producers in the Great Basin market will have some assurance that a producer-handler is responsible for producing enough milk to supply 95 percent of the producer-handler's Class I sales during such 3-month period.

The producer-handler's request that flavored fluid milk products and cultured fluid milk products not be included in the purchase limits during the months of September through November should also be granted. This will enable a producer-handler to offer a more complete line of milk products to customers without the capital outlay that would otherwise be required to process and package such items.

The application of a limit on purchases of supplemental milk supplies by producer-handlers during the months of December-August tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally high production. The limit on supplemental purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts.

Removal of the limit on purchases of supplemental milk by producer-handlers during the market's seasonally high production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low production months of September through November in order to service their year-round sales accounts and retain producer-handler status.

Exceptions were filed by WDCI and a comment in support of the change was filed by Winder Dairy.

WDCI stated that the season for serving the Boy Scout camps, as discussed in the recommended decision, is not normally spread over the months specified in the recommended decision (December through August) for allowing unlimited purchases of pool milk by producer-handlers. WDCI, in their exceptions,

suggested instead that producer-handlers be allowed to purchase unlimited quantities of fluid milk products from pool plants and other order plants only during the months of April through August.

If WDCI's suggestion were adopted, the restriction on producer-handler receipts from pooled sources would be in effect from September through March. This would be contrary to the concept that the critical period during which a producer-handler must demonstrate self-sufficiency is in the short supply months of September through November. The record does not indicate that any problem of producer-handlers shifting the burden of carrying surplus milk to other producers during the months of December through March will develop. Accordingly, WDCI's exception is denied.

4. Application of Location Adjustments in Determining the Obligation of a Partially-Regulated Distributing Plant

No change should be made in computing the obligation of the operator of a partially-regulated distributing plant.

Under the present provisions of the Great Basin order, a partially-regulated distributing plant operator regulated under a State order has two options under which the operator's pool obligation may be determined:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another order.

(b) The plant operator may choose to pay to the producer-settlement fund the value of the fluid milk products distributed in the marketing area determined by the difference between the appropriate class prices applicable at the location of the partially-regulated distributing plant (but not to be less than zero) as announced by the State order and the value of such milk as determined pursuant to the class prices and component prices established under the Great Basin milk order.

A witness for WDCI, who also represented the Borden Company, proposed that the obligations of a handler operating a partially-regulated distributing plant be revised to eliminate the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area. In describing the proposal to eliminate location adjustments, proponent stated that the proposal retains all of the provisions of section 76 (obligation of a handler operating a partially-regulated distributing plant) with the exception that the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area by partially-regulated distributing plants subject to State regulation would be eliminated. Proponent contended that elimination of the location adjustment from section 76 will place the partially-regulated distributing plants on an equal footing with plants subject to full regulation by the Great Basin order or any other Federal milk marketing order with respect to fluid milk product disposition in the Great Basin market.

The brief submitted on behalf of WDCI makes it clear that the cooperative association is proposing the elimination of the location adjustment in computing the obligation of a partially-regulated distributing plant that is regulated under a State order.

Proponent indicated that location adjustments in Federal milk marketing orders are designed to equalize the cost of transporting bulk milk from farms to fluid milk processing plants, whether shipped directly from farms or through supply plants. Location adjustments are not intended, according to proponents, to underwrite the cost of transporting packaged fluid milk products from one location to another.

Proponents contended that the purpose of the payment to the market administrator by the operator of the partially-regulated distributing plant is to equate the cost of packaged fluid milk products distributed in the Great Basin marketing area by such partially-regulated distributing plants with that of plants subject to full regulation by the Great Basin order. The witness for WDCI indicated that the price (cost) determined under the State program at the location of the partially-regulated distributing plant should be equated with the Great Basin zone price in which packaged fluid milk products are distributed, rather than such zone price minus the Great Basin location differential.

The WDCI witness said that the use of location adjustments to determine the obligation of a partially-regulated distributing plant was never intended by the Department and is inconsistent with the treatment afforded other plants regulated by other Federal marketing orders. He said that the proper basis for determining the obligation of a partially-regulated distributing plant is the cost difference established under the terms of the Great Basin order and the cost established by the State government at the plant location. This, he said, is consistent with the decision of the Supreme Court in the Lehigh Valley Farmers Cooperative vs. the Secretary court case.

The spokesman for WDCI on cross-examination indicated that there are times when the California Class I price at Los Angeles is lower than the Great Basin Class I price and this is when the partially-regulated California plants would be required to make a compensatory payment. He said that he could not conceive of any circumstances when there could be a pool plant in Los Angeles fully regulated under the Great Basin order with a location adjustment back to Los Angeles that could in any way compete with other plants regulated under the State program.

At the hearing there was no testimony in opposition to the WDCI proposal. Winder Dairy in its brief only indicated that they were opposed to the proposal and that the provision has worked well. In a brief, MVMP and Quality indicated that they supported the WDCI proposal.

The two options that are available to the operator of a partially-regulated distributing plant that is also regulated under a State order in payment of the plant's obligation to the Great Basin pool for sales of fluid milk products in the Great Basin marketing area attempt to equalize the costs of the raw milk utilized in such sales that are incurred by the unregulated handler with the costs incurred by the fully regulated handler. The option of purchasing from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area assures that a partially-regulated distributing plant has no competitive advantage over a fully regulated handler.

Under the second option, the operator of the partially-regulated distributing plant is required to pay to the producer-settlement fund the difference in the value under the State order and the value under the Great Basin order of the raw milk f.o.b. the plant on the fluid milk products distributed in the Great Basin marketing area by the partially-regulated plant. This option also attempts to assure that the operator of the partially-regulated distributing plant pays as much for the plant's raw product as the operator of a distributing plant that is fully regulated by the Great Basin milk order and is located at the site of the partially-regulated distributing plant. To accomplish this, it is necessary that the operator of the partially-regulated distributing plant pay to the producer-settlement fund the amount by which the value of the raw product under the State order is less

than the value of the raw product under the Great Basin order at the location of the plant. In determining the value of the raw milk under the Great Basin order at the plant's location, it is necessary to look at the value of such milk under the Great Basin order at the central market location that is nearest to the partially-regulated distributing plant (Las Vegas or Salt Lake City) and then deduct the location adjustment applicable under the Great Basin order to establish the value of the raw milk at such plant's location.

The proponents who are advocating that a location adjustment not apply in computing the obligation of a partially-regulated distributing plant are, in effect, proposing that one ignore the location of the plant and determine the value of the raw milk at its point of sale in the marketing area.

Under proponent's assessment of what constitutes competitive equity, a handler fully regulated under a Federal milk order who is selling packaged fluid milk in a no-location adjustment zone but whose plant is located in a minus location adjustment zone should have to pay into the producer-settlement fund the difference in zone prices on the volume of milk that is sold in the higher-priced zone. Likewise, a handler fully regulated under a Federal milk order who is selling packaged fluid milk products in another Federal order marketing area in which handlers are required to pay a higher Class I differential on fluid milk sales should have to pay into the producer-settlement fund the difference in Class I differentials on the volume of milk that is sold in the higher-priced zone.

For the reasons previously set forth, the operator of a partially-regulated distributing plant should continue to pay to the producer-settlement fund on the plant's sales of fluid milk products in the Great Basin market the amount by which the value of raw milk under the Great Basin order f.o.b. the plant exceeds the value of the raw milk f.o.b. the plant under the State order. Accordingly, the proposal that location adjustments not be applicable in computing the obligation of a handler operating a partially-regulated distributing plant that is regulated by a State order which provides for marketwide pooling is hereby denied.

5. Application of Location Adjustments in Paying Producers for Milk That Is Diverted

The order should be amended to provide that the weighted average differential payable to a producer shall be adjusted based on the location of the plant to which the milk is delivered but should not be adjusted below the weighted average differential based on the location of the county seat or the county courthouse of the county in which the producer's farm is located.

The order currently provides that the weighted average differential payable to producers shall be adjusted based on the location of the plant to which the milk is diverted.

WDCI proposed that the order be amended to place a floor on the amount of location adjustment to be deducted from the weighted average differential payable to a producer. Under WDCI's proposal, the amount of the location adjustment would be floored by the location of the producer's farm even though a greater location adjustment applies at the location of the plant to which the milk is diverted.

A witness for WDCI said that the expected consolidation of WDCI manufacturing plants from many small and inefficient country plants to a few large volume plants will substantially change the operation of the cooperative in many ways. He said that the pressures of the market will increase transportation costs on some of the milk produced in the outlying areas. Producers, he said, may be forced at times to ship their milk to distant plants in order to minimize WDCI losses on the milk.

The spokesman for WDCI said that their proposal would place a maximum location adjustment based on the location of the dairy farm. This proposal, he said, should lessen the need to incur the extra costs of transferring milk through supply plants or transfer facilities. He said that many of WDCI members are located substantial distances from a market and the provision would apply mostly to "distress" milk.

In briefs, Winder Dairy, MVMP and QMP stated that they were opposed to the proposal. Winder Dairy stated only that the present provisions have worked well.

The joint brief filed by MVMP and QMP stated that the WDCI proposal would provide that any producer whose farm is located in a zero location zone could have his milk shipped to the most remote plant and incur no location differential. The brief stated that the proposal would require other cooperatives to subsidize the increased costs of transportation for the cooperative shipping milk in this manner.

Location adjustments are designed primarily to equalize the net return received by a producer who transports milk from the farm to a distributing plant located in the market center or to a distributing plant located between the producer's farm and the market center. Location adjustments, however, are an impediment to the movement of producer milk when it is necessary to transport such milk to a manufacturing plant that is located in the opposite direction of the market-center plants from the farm. In such instance, the producer or the producer's cooperative association incurs the cost of moving the milk from the farm location to the manufacturing plant but also receives a price that is reduced by the amount of the location differential applicable at the manufacturing plant's location.

What WDCI's proposal attempts to accomplish is to limit the costs incurred by the producer (or cooperative association) in shipping milk to a distant manufacturing plant. The producer (or cooperative association) will have to pay the cost of transporting the milk from the farm to the manufacturing plant. Under WDCI's proposal, the adjustment to the producer's pay price will be limited to the location adjustment applicable at the farm's location rather than the distant manufacturing plant.

The proposal by WDCI is designed to assist cooperative associations in marketing "distress" milk and is a marketing tool that should be adopted in the Great Basin market. For the most part, producers and cooperative associations will continue to ship milk to local plants whenever possible to obtain the higher pay prices. In the event that there is not a sufficient demand for milk locally, then those producers whose milk must be shipped to a more distant market outlet would be assured by the adoption of WDCI's proposal that their pay price will not be depressed below the pay price that would apply at a plant located in the same county as the individual producer's farm.

The location adjustment structure of the Great Basin order provides for three price zones within the marketing area. A zero location adjustment zone applies to the northern two-thirds of Utah. A minus 25 cent location adjustment is applicable in southern Idaho and northeastern Nevada. A minus 30 cents is applicable in the remainder of the marketing area. Outside the marketing area a location adjustment is applicable at a rate of minus 1.5 cents per hundredweight for each 10 miles of distance from the nearer of Salt Lake City, Utah or Las Vegas, Nevada.

The record reflects that, from time to time, WDCI has incurred losses in diverting milk from a producer located in the Meridian area of Idaho to a manufacturing plant in Chehalis, Washington. Also, milk is diverted from

producers in the area of Mesquite, Nevada and from a producer in the area of Kingman, Arizona to manufacturing plants in California. This milk is diverted away from the market centers where the milk is pooled and in the case of the Meridian producer, results in a minus location adjustment of approximately $1.50.

WDCI in diverting this milk, is providing an economic service of handling reserve milk supplies (balancing) for the market which benefits all producers associated with the Great Basin order. WDCI incurs significant hauling costs in diverting milk to distant manufacturing outlets for Class III use. No location adjustment applies to the Class III price. Producer milk diverted to nonpool plants should not receive an order pay price that is depressed below the order pay price that would apply at a plant located in the same county as the individual producer's farm.

Exceptions were filed by Magic Valley Quality Milk Producers, Inc., a new cooperative association that resulted from the merger of Magic Valley and Quality Milk Producers, Inc. subsequent to the hearing. Their position continues to be that the cost of transporting excess or distress milk should not have to be shared by all the producers associated with the market. This position previously has been fully considered. Therefore, there is no basis in the exceptions to consider this matter further.

6. Due Date for Payment of Handler Obligations to the Producer-Settlement Fund

The order should be amended to provide that a handler's payment to the producer-settlement fund must be received by the market administrator by the 14th day of the month. The order presently provides that if the payment by a handler is postmarked by the 14th day of the month, the payment date has been met. The order should also provide that if the 14th day of the month falls on a Saturday or Sunday or on any Monday that is a national holiday, the monthly payment would have to be received on the next day on which the market administrator's office is open for public business. A similar conforming change should be made in the section of the order dealing with the market administrator's payments to handlers from the producer-settlement fund.

The market administrator testified in support of WDCI's proposal that would require the monthly handler obligation to the producer-settlement fund to be received by the market administrator on or before the second day after the handler has been notified of the handler's obligation, but in any event no later than the 14th day of the month. The witness said that currently, handlers are required to pay the producer-settlement fund on or before the 14th day after the end of the month, but if the payment is in the mail on the 14th, the order requirement has been met. If the 14th falls on a holiday, or a Saturday or Sunday, then handlers may wait until the next business day to mail the payment.

The witness said that it takes at least two days for a payment mailed by a Utah or Idaho handler to reach his office in Phoenix, Arizona. In addition, Arizona Banks will not permit the withdrawal against any out-of-state check until a minimum of two-days' deposit has been met. For March 1990 milk, he said, the money paid by handlers to the producer-settlement fund was not available until April 20. However, the order requires his office to make payment on or before the 15th day after the end of the month to those handlers who are due payments out of the producer-settlement fund.

The witness said that the monthly handler obligations to producers and to the producer-settlement fund are computed by the 12th day of the month and that handlers are immediately informed of their obligations to the producer-settlement fund. He said that with the modern way of transmitting payments such as express mail and by wire, the WDCI proposal is not likely to cause any hardship to any handler.

The witness testified that at the present time some handlers are paying their obligation by wire transfer. He said that every month he cannot make timely payments out of the producer-settlement fund because not all the monies received are free to be withdrawn.

The witness said that handlers are notified of their producer-settlement fund obligation between the 9th and the 12th of the month. He testified that his office could compute the handler obligations and notify them by the 10th of the month 90 percent of the time.

There appears to be no other alternative to requiring that payment to the market administrator must be in the form of spendable funds and must be received by the market administrator by the 14th of the month. Under the current provisions, the market administrator is required to make payments to cooperatives and certain handlers the day after the payments are due to him from all handlers. Time will not permit the clearance of out-of-state checks through the Phoenix, Arizona, bank prior to the withdrawal of money from the producer-settlement fund on the 15th of the month if such checks are deposited on the 14th day of the month. If a handler insists on making payment by check, such check should be submitted enough in advance of the 14th of the month so that a withdrawal may be made against such check on the 15th of the month. Another alternative that handlers may want to consider is the use of wire transfers for payment of handler obligations.

7. Handler Payments to Cooperative Associations for Plant Milk and Bulk Tank Receipts from Producer-Members

The order should be amended to provide that each handler shall pay a cooperative association for milk received from a pool plant operated by such association or by transfer from such association based on the value of such milk at class prices under the order. The dates for making the partial payment and the final payment should be the 3rd day prior to the last day of the month and the 16th day after the end of the month, respectively.

The order should also provide that such handler shall pay a cooperative association for milk received from its member producers at the producer prices, i.e., the weighted average differential and the butterfat and producer protein prices.

Currently, the order provides that a handler who buys milk from a pool plant operated by a cooperative association or who buys bulk tank milk from member producers of a cooperative association shall make payment for such milk at the rate of payment specified for producer milk.

In paying for bulk tank receipts from a cooperative association, the order should continue to provide for payment at the Class III price (or basic formula price) times 1.2 for milk received from producers during the first 15 days of the month. However, payment for plant milk from a cooperative during the first 15 days of the month should be at the Class III price (or basic formula price). In most instances, transfers from the cooperative's pool plant appears to be made for Class III uses. Hence, payment at the Class III price times 1.2 would represent an overpayment in most instances for milk received during the first 15 days of the month.

The payment procedures adopted herein were proposed by WDCI. The principal change in the payment for milk received from a cooperative association deals with milk received from a pool plant operated by a cooperative association. Payment for such milk should be based on the value at class prices under the order to assure that the cooperative is neither overpaid or underpaid by the handler receiving

such milk. As previously noted, transfers from the cooperative's pool plant appear to be made primarily for Class III uses. Hence, payment for such milk at the prices due for producers milk would result in an over-payment to the cooperative association. The payment procedure adopted herein will also assure that cooperatives receive the full value for milk that is utilized in Class I uses.

The current dates for partial and final payment for milk received from a cooperative's pool plant should be advanced by one day in order for cooperatives to make payment to their member procedures on the same date that other producers are paid for their milk.

8. Technical Changes in Order Provisions Relative to Component Pricing

(a) Handler protein price. The order should be amended to provide for the computation of a "handler protein price" based upon the protein content of producer milk for the current month. The "handler protein price" would be announced by the 5th day after the end of the month.

The order presently provides for the computation of a "milk protein price" which is based upon the average percentage of protein in all producer milk for the preceding month. This price is announced by the 5th day after the end of each month.

The spokesman for WDCI said the proposed changes to the section of the order dealing with class prices and component prices of the order would fix the price charged handlers for protein in producer milk assigned to Class II and III in a manner that will cause it to be aligned more directly each month with skim milk values reflected in the Minnesota-Wisconsin (M–W) price. This change will mean that the price charged Great Basin handlers for protein will follow along with the costs incurred for the nonfat component of milk by handlers elsewhere throughout much of the nation. He said that the present provisions are deficient in this respect.

The WDCI witness said that at the time component pricing was adopted in this market, the market administrator had to use the average protein test for the prior month in lieu of the current month. He said that the one month lag was not expected to make a great deal of difference in most months. It was expected that the pluses and minuses would cancel out each other with a small degree of error.

The witness for WDCI said that this approach has not worked out as well as assumed. He said that variations in protein tests have averaged out quite well over the years, except for a possible trend upward, but the effect on handler costs for individual months has varied more from the revenue neutral figures than was expected. It is now obvious that the industry underestimated the problem associated with price distortions caused by using the previous month's protein tests. Also, the industry overestimated the need to announce the handler protein price concurrently with butterfat and skim milk prices.

The WDCI witness said that monthly differences in handler costs of plus $100,000 to minus $250,000 in using a protein price based upon the percent of protein content in the prior month's receipts versus the percent of protein content in the current month's receipts are the result of more than one factor. One factor is the seasonal variation and the other is the month-to-month variations in the average protein tests. He said that a second factor is the larger and more frequent fluctuations in the basic milk prices during the past two or three years in comparison to the prices the industry has been accustomed to receiving in the past decades. He said that the distortion in the cost to Great Basin handlers intends to be cumulative over a period of months because of the seasonal nature of the variation in the protein content of producer milk. Protein tests tend to increase in the fall and decrease in the spring and this means that the use of the previous month's protein tests may increase the handler protein price during the fall months of the year and decrease it in the spring.

The spokesman for WDCI said that the timing of the price announcement is not critical to handlers. He said that WDCI is the handler for a substantial majority of Class II and III milk pooled on the Great Basin order. WDCI will not be seriously inconvenienced if the announcement of the "handler protein price" is not announced until the weighted average differential price has been computed.

The witness for WDCI said that at a prior hearing involving Federal Orders 33, 36, and 49, proponents for component pricing said the Department should announce the protein content in the milk received in the Minnesota-Wisconsin plants that it used in computing the monthly basic formula price. He said that WDCI requests a similar amendment and that this would avoid the need to call a separate hearing in order to make such a procedure effective in the Great Basin order. He said that this would expedite the realization of equity in setting the level of protein prices here based directly on central market values. Also, the protein price could then be announced on the 5th day after the end of the month.

Proponent's arguments for computing the current month protein price and announcing such price on or before the 12th of the month are persuasive. As proponent points out, such procedure will cause the protein price to be more directly aligned with the skim milk values reflected in the Minnesota-Wisconsin price.

As requested by WDCI in their exceptions, the price for protein should be based on the Minnesota-Wisconsin price and the protein content of the milk included in the Minnesota-Wisconsin price series. The handler protein price should be computed by subtracting from the Minnesota-Wisconsin price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the Minnesota-Wisconsin price.

This revision is consistent with the recommended decision issued July 30, 1992, for the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing orders. Also, a similar provision was proposed at a recent hearing for the Pacific Northwest and the Southwestern Idaho-Eastern Oregon marketing orders.

The protein content of the milk used for the Minnesota-Wisconsin price has begun to be collected and reported for the month proceeding the month for which the M–W price is announced. This data can be adjusted for the current month using historical data collected by the market administrators of the Upper Midwest and Chicago Regional milk orders.

(b) Location and zone differentials. The section of the order dealing with location and zone differentials for producer and nonpool milk should be amended to provide that the weighted average differential at any location shall not be less than zero. Under the provision, as amended, the market administrator in adjusting the weighted average differential price by the amount of the plant location adjustment would not end up with a negative weighted averaged differential for producers.

WDCI proposed the change to assure that the price to be paid any producer would not be less than the basic formula price for the month.

The proposed change is appropriate and is adopted herein. The basic formula price represents the value of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. Grade A milk that is delivered to a pool plant under the Great Basin order and classified as Class III milk is priced to

the handler at the Class III price. Accordingly, any producer who delivers milk to a pool plant should not be required to receive any less than the basic formula price (or Class III price) for such milk.

(c) Protein accounting by plant operators. WDCI's proposal to require complete protein accounting in plants operated by fully regulated handlers should not be adopted.

The WDCI witness said that the cooperative's proposal would provide the market with needed additional assurance that the valuable ingredients in producer milk are being measured accurately and that the volume of milk disposed of in fluid milk products by handlers will be fully accounted for.

The spokesman for WDCI spoke at great length on the origin of the present system, the need for improvement in plant accounting and the importance of accounting for concentrated milk items. He said the additional testing necessary under this proposal is nothing more than any prudent plant operator should want to know in any case. He said that there will be no need under this proposal for any additional collection of samples in any plant for which a proper butterfat testing program is in place. In most cases the only additional testing activity will be nothing more than a simple matter of reading and recording protein contents of the samples which are being tested for butterfat content.

At the hearing, witnesses for KDK and Gossner Foods testified in opposition to the proposal. Winder Dairy filed a brief and stated that this proposal will be very detrimental to their ability to remain profitable.

Both witnesses in opposition to this proposal said that they object to the added cost that would occur in testing and accounting for the protein in all receipts and utilizations of milk and milk products.

The Gossner witness said that they cannot extract the protein from receipts of milk and that they assume that the percentage of protein in the bulk milk that they receive from the farm will remain relatively constant and be uniformly distributed throughout the milk receipts. He said that automated in-plant accounting of milk components, especially finished products, is still not economically available to small businesses.

Exceptions were filed by WDCI. The exceptions by WDCI were short and only indicated that the recommended decision failed to recognize the primary purpose of their proposal. The exceptions constitutes a reiteration of their position on the need for complete protein accounting in plants and is not persuasive.

The need for plant accounting for protein as a separate component was not sufficiently demonstrated on this record. As opponents pointed out, handlers have no means of separating protein from milk. As a consequence, the protein content of the finished products is not expected to differ from the protein content of the incoming milk supply.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Great Basin order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Great Basin marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

August 1992 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Great Basin marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1139

Milk marketing orders.

Dated: February 5, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

Order[1] Amending the Order Regulating the Handling of Milk in the Great Basin Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determination set forth herein.

(a) Findings

A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Great Basin marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Great Basin marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Acting Administrator, Agricultural Marketing Service on August 24, 1992 and published in the **Federal Register** on August 28, 1992 (57 FR 39146), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to modifications in §§ 1139.7(d), 1139.50(f), 1139.71(a), 1139.71(c)(2), 1139.72, 1139.74(e) and 1139.74(e)(2)(ii).

Accordingly, 7 CFR part 1139 is proposed to be amended as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR part 1139 continues to read as follows:

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

(2) Revise § 1139.10(b)(1)(ii) to read as follows:

§ 1139.10 Producer-handler.

* * * * *

(b) * * *

(1) * * *

(ii) From pool plants by transfer or diversion, or from other order plants, excluding flavored and cultured fluid milk products, in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month, except, such monthly limit shall not apply during the following months of December through August to a producer-handler who received an amount, excluding flavored and cultured fluid milk products, not in excess of the larger of 15,000 pounds or 5 percent of such person's Class I disposition during the previous period of September through November.

* * * * *

3. In § 1139.13, paragraphs (d) (1) and (2) are revised to read as follows:

§ 1139.13 Producer milk.

* * * * *

(d) * * *

(1) The weighted average differential applicable to such milk shall be adjusted based on the location of the plant to which delivered, but it shall not be adjusted to a lower figure than is applicable at the location determined pursuant to § 1139.52(a) or (b) based on the location of the county seat or the county courthouse of the county in which such producer's farm is located.

(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk diverted by a cooperative association during any month may not exceed 75 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator.

4. In § 1139.50, paragraphs (d), (e), and (f) are revised to read as follows:

§ 1139.50 Class prices and component prices.

* * * * *

(d) The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1139.51(a) by 35.

(e) The butterfat price per pound shall be the total of: (1) The skim milk value per hundredweight for the month, computed pursuant to paragraph (d) of this section, divided by 100; and (2) the butterfat differential for the month, computed pursuant § 1139.51(a) multiplied by 10.

(f) Handler protein price. The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

5. Revise § 1139.53 to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month; and

(b) The 15th day of each month, the Class II price for the following month;

(c) The 5th day after the end of each month, the Class III price, and the prices for skim milk and butterfat computed pursuant to § 1139.50(d) and (e) respectively, and the handler protein price computed pursuant to § 1139.50 (f) for such month.

6. Amend § 1139.71 by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows;

§ 1139.71 Payments to the producer-settlement fund.

(a) Each handler whose obligation computed pursuant to paragraph (a)(1)

of this section exceeds such handler's credit computed pursuant to paragraph (a)(2) of this section shall pay to the market administrator no later than the 14th of the month, an amount equal thereto:

(1) * * *
(2) * * *
(b) * * *

(c) The following conditions shall apply with respect to the payment prescribed in paragraph (a) of this section:

(1) Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account; and

(2) If the date by which the payment must be received by the market administrator falls on a Saturday or Sunday or on any national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

7. Revise § 1139.72 to read as follows:

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If the date by which such payments are to be made falls on a Saturday or Sunday or a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

8. In § 1139.74, revise paragraph (c) introductory text and paragraph (e) to read as follows:

§ 1139.74 Payments to producers and to cooperative associations.

* * * * *

(c) Payment shall be made in the manner set forth in paragraph (c) (1) and (2) of this section to a cooperative association for milk received from such association pursuant to § 1139.13(a)(2) or from its member producers pursuant to § 1139.13(a)(1) if the cooperative association is authorized by its members to collect payment for their milk and the cooperative association notifies the handler and the market administrator in writing of its desire to make such collection:

* * * * *

(e) Each handler shall pay a cooperative association for milk received from a pool plant operated by such association on the basis of the classification thereof assigned by the market administrator as follows:

(1) On or before the 3rd day prior to the last day of the month for milk received during the first 15 days of the month at the Class III price (or basic formula price) for the previous month; and

(2) On or before the 16th day after the end of the month for milk received during the month at the following rates:

(i) The butterfat price per pound for the butterfat contained in such milk, plus:

(ii) The milk protein price per pound for the pounds of protein contained in Class II and Class III use and the skim milk price per hundredweight for Class I use of such milk: plus

(iii) The difference between the Class I price adjusted pursuant to § 1139.52 and the Class III price multiplied by the hundredweight of such milk classified as Class I; plus

(iv) The difference between the Class II and Class III prices multiplied by the hundredweight of such milk classified as Class II; plus

(v) The amount assessed by the market administrator with respect to such milk pursuant to § 1139.85; less

(vi) Payments made pursuant to paragraph (e)(1) of this section.

9. Revise 1139.75(a) to read as follows:

§ 1139.75 Location and zone differentials for producers and nonpool milk.

(a) In making payments computed pursuant to § 1139.72 and in crediting handlers for payment due pursuant to § 1139.71(a)(2)(i) the market administrator shall adjust the weighted average differential price by an amount equal to the plant location adjustment specified in § 1139.52 applicable at the plant where the milk was first received from producers, except that the weighted average differential applicable at any location shall not be less than zero.

* * * * *

The following text will not appear in the Code of Federal Regulations:

Marketing Agreement Regulating the Handling of Milk in the Great Basin Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1139.1 to 1139.86, all inclusive, of the order regulating the handling of milk in the Great Basin marketing area (7 CFR part 1139) which is annexed hereto; and

II. The following provisions:

§ 1139.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of August 1992, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Diary Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1139.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

_____

(Signature)
By _____
(Name)

_____

(Address)
(Seal)
(Title)
Attest _____
Date _____

[FR Doc. 93–3233 Filed 2–10–93; 8:45 am]
BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R–0795]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed revisions to capital adequacy guidelines.

SUMMARY: The Board of Governors of the Federal Reserve System (Board, Federal Reserve or FRB) is proposing to amend its capital adequacy guidelines for state member banks and bank holding companies to establish a limitation on

the amount of certain deferred tax assets that may be included in (that is, not deducted from) the Tier 1 capital calculation for risk-based and leverage capital purposes. Under the proposal, deferred tax assets that can be realized through carrybacks to taxes paid on income earned in prior periods generally would not be subject to limitation for regulatory capital purposes. On the other hand, deferred tax assets that can only be realized if an institution earns taxable income in the future would be limited for regulatory capital purposes to the amount that the institution is projected to realize within one year of the quarter-end report date—based on the institution's projection of taxable income for that year—or 10 percent of Tier 1 capital, whichever is less. Deferred tax assets in excess of these limitations would be deducted from Tier 1 capital and from assets for purposes of calculating both the risk based and leverage capital ratios. The capital proposal was developed on a consistent basis by the Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (hereafter, the "federal banking agencies" or the "agencies") in response to the Financial Accounting Standards Board's (FASB) issuance of Statement No. 109, "Accounting for Income Taxes" (FASB 109) in February 1992. This FASB accounting standard must be adopted by state member banks and bank holding companies for regulatory reporting and financial reporting purposes no later than the first quarter of 1993, or the beginning of their first fiscal year thereafter, if later.

DATES: Comments on the proposed revisions to the Federal Reserve Board's risk-based and leverage capital guidelines should be submitted on or before March 15, 1993.

ADDRESSES: Comments on the Federal Reserve Board's proposal, which should refer to Docket No. R–0795 may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenues, NW., Washington, DC 20551; or delivered to room B–2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Charles H. Holm, Project Manager, (202) 452–3502; John M. Frech, Supervisory Financial Analyst, (202) 452–2275; Nancy J. Rawlings, Senior Financial Analyst, (202) 452–3059, Regulatory Reporting and Accounting Issues Section; Barbara J. Bouchard, Senior Financial Analyst, (202) 452–3072, Policy Development Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

1. Background

Characteristics of Deferred Tax Assets

Deferred tax assets are assets that reflect, for financial reporting purposes, benefits of certain aspects of the tax laws. Deferred tax assets may arise because of specific limitations under tax laws of different tax jurisdictions that require that certain net operating losses (*i.e.*, when, for tax purposes, expenses exceed revenues) or tax credits be carried forward if they cannot be used to recover taxes previously paid. These "tax carryforwards" are realized only if the institution generates sufficient future taxable income during the carry forward period.

Deferred tax assets may also arise from the tax effects of certain events that have been recognized in one period for financial statement purposes but will result in deductible amounts in a future period for tax purposes, *i.e.*, the tax effects of "deductible temporary differences". For example, many depository institutions and bank holding companies may report higher income to taxing authorities than they reflect in their regulatory reports [1] because their loan loss provisions are expensed for reporting purposes but are not deducted for tax purposes until the loans are charged off.

Deferred tax assets arising from an organization's deductible temporary differences may or may not exceed the amount of taxes previously paid that the organization could recover if the differences fully reversed at the report date. Some of these deferred tax assets may theoretically be "carried back" and recovered from taxes previously paid. On the other hand, when such deferred tax assets exceed such previously paid tax amounts, they will be realized only if there is sufficient future taxable income during the carryforward period.[2]

FASB 109

In February 1992, the FASB issued Statement No. 109, which supersedes Accounting Principles Board Opinion No. 11 (APB 11) and FASB Statement No. 96. FASB 109 provides guidance on many aspects of accounting for income taxes, including the accounting for deferred tax assets. FASB 109 potentially allows some state member banks and bank holding companies to record significantly higher deferred tax assets than previously permitted under generally accepted accounting principles (GAAP) and the federal banking agencies' prior reporting policies. Unlike the general practice under previous standards, FASB 109 permits the reporting of deferred tax assets that are dependent upon future taxable income.[3] However, FASB 109 requires the establishment of a valuation allowance to reduce the net deferred tax asset to an amount that is more likely than not (*i.e.*, a greater than 50 percent likelihood) to be realized.

FASB 109 is effective for fiscal years beginning on or after December 15, 1992, but early adoption of this standard was encouraged by the FASB. The adoption of this standard could result in the reporting of additional deferred tax assets in Call Reports and FR Y–9C reports that would directly increase an institution's undivided profits (retained earnings) and thus its Tier 1 capital.

Concerns Regarding Deferred Tax Assets That Are Dependent Upon Future Taxable Income

Certain regulatory concerns exist with respect to including in capital deferred

[1] State member banks are required to file quarterly Consolidated Reports of Condition and Income (Call Reports) with the Federal Reserve. Bank holding companies with total consolidated assets of $150 million or more file Consolidated Financial Statements for Bank Holding Companies (FR Y–9C reports) on a quarterly basis with the Federal Reserve.

[2] Hereafter, such deferred tax assets and deferred tax assets arising from tax carryforwards are referred to as "deferred tax assets that are dependent upon future taxable income."

[3] Prior supervisory policies of the OCC and FDIC, as set forth in Banking Circular 202 and Bank letter BL–36–85, respectively, limited the reporting of deferred tax assets in the regulatory reports filed by national banks and insured state nonmember banks to the amount of taxes previously paid which are potentially available through carryback of net operating losses. As such, the OCC and FDIC did not permit the reporting of deferred tax assets that are dependent upon future taxable income in the Call Reports filed by national and insured state nonmember banks. The FRB and OTS did not issue policies explicitly addressing the recognition of deferred tax assets. Consequently, state member banks and savings institutions were able to report deferred tax assets in accordance with GAAP. Prior to FASB 109, GAAP, as set forth in APB 11 and FASB 96, also for the most part did not permit the reporting of deferred tax assets that are dependent upon future taxable income.

tax assets that are dependent upon future taxable income. Realization of such assets depends on whether a banking organization has sufficient future taxable income during the carryforward period. Since a banking organization that is in a net operating loss carryforward position is often experiencing financial difficulties, its prospects for generating sufficient taxable income in the future are uncertain. In addition, the condition of and future prospects for an organization often can and do change very rapidly in the banking environment. This raises concerns about the realizability of deferred tax assets that are dependent upon future taxable income, even when an organization appears on the surface to be sound and well-managed. Thus, for many organizations, such deferred tax assets may not be realized and, for other organizations, there will be a high degree of subjectivity in determining the realizability of this asset.

In addition, as an organization's condition deteriorates, it is less likely that deferred tax assets that are dependent upon future taxable income will be realized. Therefore, the organization would be expected under FASB 109 to reduce its deferred tax assets through increases to the asset's valuation allowance. Additions to this allowance would reduce the organization's regulatory capital at precisely the time it needs capital support the most. Thus, the reporting of deferred tax assets that are dependent upon future taxable income raises, for safety and soundness reasons, a supervisory concern.

Moreover, net operating loss carryforwards of an acquired banking organization can be severely limited to the acquirer when an acquisition or change in control occurs. If an acquisition is structured as a taxable asset purchase, the net operating loss carryforwards are generally extinguished. In addition, if an acquisition or change in control qualifies as a tax-free reorganization, a strict limitation (Section 382 of the Internal Revenue Code) on the use of the acquired institution's net operating loss carryforwards generally applies. This limitation is based on the value of the acquired institution at the time of its acquisition, and thus the potential value of a net operating loss carryforward to a prospective purchaser tends to decline as the institution's financial condition weakens.

Because of these concerns, in March 1992, the Federal Reserve and the other federal banking agencies issued separate letters to the banking organizations under their supervision expressing concerns about FASB 109 and stated that banking organizations should not adopt FASB 109 for regulatory reporting purposes until the agencies had determined the appropriate regulatory reporting and capital treatment.[4]

FFIEC Request for Comment

On August 3, 1992, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment on various regulatory reporting and capital treatments for deferred tax assets of depository institutions (57 FR 34135). In the comment request, the agency staffs indicated that, while no final decision would be made until all comments were received, their preference would be to limit the amount of deferred tax assets that could be reported to the amount that could be recovered through the carryback of losses against taxes previously paid (hereafter referred to as the "carryback approach"). Under the carryback approach, depository institutions' deferred tax assets that are dependent upon future taxable income could not be reported as assets for regulatory reporting purposes and, thus, would be excluded from regulatory capital.

The FFIEC received 198 comment letters in response to its request for comment, primarily from banks, thrifts, and holding companies. The vast majority of the commenters indicated that they believe that strong reasons exist for adopting FASB 109 for both regulatory reporting and capital purposes. These commenters generally asserted that deferred tax assets that are dependent upon future taxable income are valuable assets for many institutions and that FASB 109 provides sufficient criteria for measuring these assets and for distinguishing those institutions that will be able to realize these assets from those that will not. Furthermore, the commenters indicated that, under the carryback approach, the agencies were effectively proposing a liquidation value approach to deferred tax assets and that such an approach is inconsistent with the going concern concept used for measuring other assets and liabilities.

Commenters also noted that tax laws have changed significantly in the last several years, and many banking organizations will have a longer carryforward period (*i.e.*, 15 years) than they now have to absorb all losses beginning in 1994. (For these organizations, the carryforward period for losses attributable to bad debts is now five years.) Thus, these commenters indicated there is a greater likelihood that in the future carryforwards will ultimately be realized. Moreover, commenters indicated that, as a result of changes in tax laws that require some banking organizations to deduct charge-offs, rather than provisions for loan losses, for tax purposes, even strong banking organizations may have large amounts of deferred tax assets that are dependent upon future taxable income.

Commenters also expressed concern that the carryback approach could create a difference between the deferred tax assets reported in GAAP financial statements and regulatory reports, thereby creating an additional reporting burden for institutions. Commenters also questioned whether banking organizations could compete equally with other financial services companies if the carryback approach were imposed.

Some commenters indicated that, if the agencies did limit deferred tax assets, they should permit the recognition of some deferred tax assets that are dependent upon future taxable income and should set the limitation for capital purposes rather than for reporting purposes.

II. Proposal

The Federal Reserve and the other agencies remain concerned about the realizability and characteristics of deferred tax assets that are dependent upon future taxable income. On the other hand, the agencies believe that many of the comments received in response to the FFIEC request for comment have merit. In this regard, some relatively strong organizations have large amounts of deferred tax assets that are dependent upon future taxable income. Such deferred tax assets could not be reported under the carryback approach. Yet there is a high likelihood in some cases that such assets will be realized. Thus, the agencies believe that the recognition of some amounts of deferred tax assets that are dependent upon future taxable income is appropriate. Furthermore, the agencies believe that their supervisory concerns regarding deferred tax assets can be adequately addressed by setting forth a limitation through the capital standards rather than through reporting instructions. Such an approach would not result in a difference between GAAP and regulatory reporting requirements.

Therefore, after careful consideration of the comments received, the FFIEC decided that banks and savings associations should adopt FASB 109 for

[4] OTS's letter indicated that savings associations could adopt the provisions of FASB 109, except that any deferred tax asset could not exceed what was allowed to be reported under APB 11 or FASB 96.

reporting purposes in Call Reports and Thrift Financial Reports (TFRs) beginning in the first quarter of 1993 (or the beginning of their first fiscal year thereafter, if later). Furthermore, the Board decided that bank holding companies should adopt FASB 109 in FR Y–9C Reports at the same time.

The FFIEC, in reaching its decision on regulatory reporting, also recommended that each of the federal banking and thrift regulatory agencies should amend its regulatory capital standards to limit the amount of deferred tax assets that are dependent upon future taxable income that can be included in regulatory capital to the lesser of:

(1) The amount of deferred tax assets that is expected to be realized within one year of the quarter-end date,[5] based on an organization's projections of future taxable income (exclusive of tax carryforwards and reversals of existing temporary differences) for that year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize tax carryforwards that will otherwise expire during the year, or

(2) 10 percent of Tier 1 capital.

When the recorded amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, exceeds this limitation, the excess amount is to be deducted from Tier 1 capital and from assets in regulatory capital calculations.[6] Deferred tax assets which can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences would generally not be limited.

The Board is proposing to adopt the recommendation of the FFIEC in full, as summarized immediately above.[7] Furthermore, consistent with the recommendations of the FFIEC, FASB 109, and longstanding policy of the Board and the other agencies, the Board is proposing that the capital limit should be determined on a separate entity basis for each state member bank.[8] However, in some cases, a state member bank's holding company may not have the financial capability to reimburse the institution for tax benefits derived from the institution's carryback of net operating losses or tax credits. In these cases, the amount of carryback potential the bank may consider in calculating the capital limit on deferred tax assets should be limited to the lesser amount which it could reasonably expect to have refunded by its parent. Bank holding companies generally would determine the limit on a consolidated basis.

Consistent with FASB 109, the limit would also be determined on a tax jurisdiction-by-jurisdiction basis. A limit for one jurisdiction (*e.g.*, the United States) in excess of the reported amount of deferred tax assets for that jurisdiction should not be used to effectively increase the limit for other jurisdictions (*e.g.*, the state in which the organization is chartered).

The agencies plan to issue additional regulatory reporting guidance on FASB 109 in the first quarter of 1993. The amount of deferred tax assets that organizations report in their regulatory reports and use to meet capital requirements will be subject to review by examiners.

The proposed capital limitation is intended to balance the Board's concerns about deferred tax assets that are dependent upon future taxable income against the fact that such assets will, in many cases, be realized. The proposed approach generally permits full inclusion of deferred tax assets potentially recoverable from carrybacks, since there is a high likelihood that such amounts will be realized. In addition, the proposed approach also includes those deferred tax assets that are dependent upon future taxable income, if any, that can be recovered from projected taxable income during the next year. The Board is proposing to limit projections of future taxable income to one year because, in general, the Board believes that many organizations are able to make reasonable projections of taxable income for the following twelve month period and then achieve their projected results. However, the reliability of these projections and the ability to actually achieve them tends to decrease significantly beyond that time period. Deferred tax assets that are dependent upon future taxable income are further limited to 10 percent of Tier 1 capital, since the Board believes such assets should not comprise a large portion of an organization's capital base given the uncertainty of realization associated with these assets and the difficulty in selling these assets apart from the organization.

Questions for Comment

While the Board is seeking public comment on all aspects of its proposal on the capital treatment of deferred tax assets, it seeks specific comment on the following questions.

(1) Under previous GAAP as set forth in Accounting Principles Board Opinion No. 16, "Business Combinations," (APB 16) the reported value of an asset (other than goodwill) acquired in a purchase business combination is adjusted for the tax effect of the difference between the market or appraised value of the asset and its tax basis. FASB 109 changes this treatment by requiring that this tax effect be recorded separately in a deferred tax account. This change in treatment could cause a large increase in the reported amount of certain identifiable intangible assets, such as core deposit intangibles, which are deducted for purposes of computing regulatory capital. Should these increases in such identifiable intangible assets be deducted for purposes of computing regulatory capital ratios? Are there any other provisions of FASB 109 which the agencies should consider for purposes of applying a different regulatory capital treatment than has been proposed above?

(2) The Board is interested in receiving comments on ways of reducing the potential burden associated with this proposal and requests comments on this matter. For example, is a limitation based on projections of future taxable income difficult to implement? Would it be simpler to base a capital limitation on deferred tax assets without

[5] For purposes of determining the limit in (1) above, the Board proposes that state member banks and bank holding companies should assume that all temporary differences fully reverse at the report date. Other than this provision, the one-year cutoff for projections of future taxable income, and the inclusion of an organization's tax planning strategies as part of those projections, state member banks and bank holding companies should adhere to FASB 109 when determining this limit. Consistent with FASB 109 and the separate entity method discussed later in this proposal, the Board proposes to permit the netting of deferred tax liabilities and assets for a particular tax-paying component of a state member bank or bank holding company and within a particular tax jurisdiction. Netting of deferred tax assets and liabilities attributable to different tax-paying components of a state member bank or bank holding company or to different tax jurisdictions would not be permitted.

[6] With respect to the regulatory capital limitation, a transition provision applies to deferred tax assets reported as of September 30, 1992, under APB 11 or FASB 96. For some state member banks and bank holding companies, such reported deferred tax assets may be in excess of the amount otherwise includable in regulatory capital under this proposal. The amount of this excess deferred tax asset would be includable in capital subject to the following phase-out provisions. For these purposes, the amount of this excess deferred tax asset must be amortized each period on a straight-line basis and must be fully amortized within two years. Furthermore, such excess deferred tax assets are subject to previously-existing rules and supervisory policy, including periodic evaluation as to realization and as to their contribution to the banking organization's ability to absorb losses.

[7] Under the Board's risk-based capital guidelines, all deferred tax assets included in capital would continue to be assigned a risk weight of 100 percent.

[8] Under the separate entity method, a bank (together with its consolidated subsidiaries) that is a subsidiary of a holding company is treated as a separate taxpayer rather than as part of the consolidated group of which it is a member.

consideration of future projections of taxable income, such as permitting only healthy organizations to include in capital deferred tax assets that are dependent upon future taxable income up to a specified percentage of Tier 1 capital (*e.g.*, 5 or 10 percent)? Would there be any other method that would be simpler to administer while recognizing the Board's concerns about deferred tax assets? Also, for example, the limitation, as proposed, would be based on the separate entity method. Would another method be more appropriate for determining the limitation on deferred tax assets and for tax-sharing agreements in general?

(3) The proposal would require tax planning strategies to be included as part of an institution's projections of taxable income for the next year. Furthermore, the proposal would require organizations to assume that all temporary differences fully reverse at the report date. In addition, the proposal would permit grandfathering of amounts previously reported if they were in excess of the proposed limitation, provided the excess amounts are amortized on a straight line basis over two years. Comment is specifically requested on the appropriateness of these provisions.

III. Regulatory Flexibility Act Analysis

The Board does not believe that the adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, the vast majority of small banking organizations currently have very limited amounts of net deferred tax assets, which are the subject of this proposal, as a component of their capital structures. Furthermore, adoption of this proposal, in combination with the recent adoption of FASB 109 for regulatory reporting purposes, will allow many organizations to increase the amount of deferred tax assets they include in regulatory capital. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

IV. Paperwork Reduction Act

The following information about paperwork relates only to Federal Reserve (FR) reports, which are approved by the Federal Reserve Board under delegated authority from the Office of Management and Budget.

The proposed amendments to the Capital Adequacy Guidelines would require one additional line item to Schedule HC–I, Part I, of the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More or With More Than One Subsidiary Bank (FR Y–9C; OMB No. 7100–0128). The new item, Memorandum item 8, would be titled "Deferred tax assets disallowed for regulatory capital purposes." The proposed additional item will be reviewed by the Federal Reserve Board under delegated authority from the Office of Management and Budget after consideration of comments received during the public comment period. Comments on the proposed additional item should be submitted to the Federal Reserve under procedures described earlier in this notice.

Description of Affected Report

Report Title: Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank.

This report is filed by all bank holding companies that have total consolidated assets of $150 million or more and by all multibank holding companies regardless of size. The following bank holding companies are exempt from filing the FR Y–9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company *and* have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by 211.23(b) of Regulation K.

Agency Form Number: FR Y 9–C.
OMB Docket Number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank Holding Companies.
Annual Reporting Hours: 148,054.
Estimated Average Hours per Response: Range from 5 to 1,250.
Number of Respondents: 1,598.
Small businesses are affected.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

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

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 321–338, 248(a), 248(c), 461, 481–486, 601, 611, 1814, 1823(j), 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(i), 78o–4(c)(5), 78q, 78q–1, and 78w.

Appendix A—[Amended]

2. Appendix A to part 208 is amended by adding paragraph II.B.(iv) to read as follows:

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *
B. * * *
(i) * * *
(ii) * * *
(iii) * * *

(iv) Deferred tax assets—portions are deducted from the sum of core capital elements in accordance with section II.B.4. of this appendix.

* * * * *

3. Appendix A to part 208 is amended by revising footnote 19 in paragraph II.B.3.; by removing footnote designator 20 from the end of paragraph II.B.3.; by adding paragraph II.B.4.; and by adding footnote designator 20 in paragraph II.B.4. and revising footnote 20 to read as follows:

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *
B. * * *
1. * * *
2. * * *
3. * * *[19]

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be

[19] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143 (Federal Reserve Regulatory Service 4–172.1; 68 Federal Reserve Bulletin 413 (1982)). In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital. The Board intends to monitor nonreciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

included in, that is, not deducted from, a bank's capital may not exceed the lesser of: (a) The amount of these deferred tax assets that the bank is expected to realize within one year of the quarter-end date, based on its projections of future taxable income for that year,[20] or (b) 10 percent of Tier 1 capital. For purposes of calculating this limitation, Tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships. The recorded amount of such deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of this limitation is to be deducted from a bank's core capital elements in determining Tier 1 capital. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences generally would not be deducted from capital. However, regardless of the above limitations, the amount of carryback potential a bank may consider in calculating the capital limit on deferred tax assets may not exceed the amount which it could reasonably expect to have refunded by its parent.

Appendix B—[Amended]

4. Appendix B to part 208 is amended by revising footnote 2 and by revising the last sentence of the second paragraph in section II., to read as follows:

II. The Tier 1 Leverage Ratio

* * * * *

* * *[2] * * * As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income ("Call Report"), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4.[3]

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

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

Appendix A—[Amended]

2. Appendix A to part 225 is amended by adding paragraph II.B.(iv) to read as follows:

II. Definition of Qualifying Capital for the Risk Based Capital Ratio

* * * * *

A. * * *
B. * * *
(i) * * *
(ii) * * *
(iii) * * *

(iv) Deferred tax assets—portions are deducted from the sum of core capital elements in accordance with section II.B.4. of this appendix.

* * * * *

3. Appendix A to part 225 is amended by revising footnote 22 in paragraph II.B.3.; by removing footnote designator 23 from the end of paragraph II.B.3.; by adding paragraph II.B.4.; and by adding footnote designator 23 in paragraph II.B.4. and revising footnote 23 to read as follows:

II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

* * * * *

A. * * *
B. * * *
1. * * *
2. * * *
3. * * *[22]

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a bank holding company's capital may not exceed the lesser of: (a) the amount of these deferred tax assets that the bank holding company is expected to realize within one year of the quarter-end date, based on its projections of future taxable income for that year,[23] or (b) 10 percent of Tier 1 capital. For purposes of calculating this limitation, Tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships. The recorded amount of such deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of this limitation is to be deducted from a bank holding company's core capital elements in determining Tier 1 capital. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences generally would not be deducted from capital.

Appendix D—[Amended]

4. Appendix D to part 225 is amended by revising footnote 3 and by revising the last sentence of the second paragraph in section II., to read as follows:

II. The Tier 1 Leverage Ratio

* * * * *

* * *[3] * * * As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the banking organization's Consolidated Financial Statement ("FR Y–9C Report"), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of Tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of Tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve

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[20] Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize tax carryforwards that will otherwise expire during the year.

[2] At the end of 1992, Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. of Appendix A of this part.

[22] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143 (Federal Reserve Regulatory Service 4–172.1; 68 Federal Reserve Bulletin 413 (1982)). In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital. The Board intends to monitor nonreciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

[23] Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize tax carryforwards that will otherwise expire during the year.

[3] At the end of 1992, Tier 1 capital for bank holding companies includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

determines should be deducted from Tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4.[4]

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Board of Governors of the Federal Reserve System, February 1, 1993.

William W. Wiles,

Secretary of the Board.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Choking Hazards Associated With Toys and Articles Intended for Children Three Years of Age and Older; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has decided to terminate a proceeding for the development of requirements to address risks of choking deaths and injuries to children younger than three years of age which are associated with toys and other articles intended for children three years old and older. The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 26, 1990.

On March 18, 1992, the Commission voted to terminate this proceeding and to withdraw the ANPR published on June 26, 1990. The Commission took this action after considering written comments received in response to the ANPR and other correspondence concerning the proceeding; information about choking deaths of children younger than three years of age which were associated with toys and games intended for children three years old and older during the years 1980 through 1991, annual sales of toys and games intended for children three and four years old, the number of children younger than three years of age, the effectiveness of requirements for labeling to address choking hazards to children younger than three years of age which may be associated with toys and games intended for children three and four years old, the potential costs of such labeling requirements to toy manufacturers, and other written materials prepared by the Commission staff; or oral briefing presented by the Commission staff; and other information.

The Commission has concluded that evidence is not available to demonstrate that toys and games which contain small parts and which are intended for children three and four years old present an unreasonable risk of choking death or injury to children younger than three. For that reason the Commission finds no reasonable necessity to issue mandatory requirements for those toys and games.

FOR FURTHER INFORMATION CONTACT: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban certain toys and articles which are intended for children younger than three years of age and which present a choking, aspiration, or ingestion hazard because they contain small parts. These regulations are codified at 16 CFR 1500.18(a)(9) and part 1501.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission began a rulemaking proceeding to consider a possible amendment of the small parts regulations for toys and other articles intended for children younger than three years of age (1).[1] After considering comments submitted by interested parties and information developed by the Commission staff (2)–(10), the Commission concluded that the provisions of the small parts regulations have been effective to prevent choking deaths and injuries to children younger than three years of age. For this reason, the Commission published a notice in the **Federal Register** of June 26, 1990 (55 FR 26076), to terminate the proceeding initiated in 1988 (12).

In its review of the small parts regulations, the Commission considered an analysis of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (4). The purpose of that analysis was to provide a comprehensive examination of the types of products involved in choking-related deaths of children that occurred after the small parts regulations were issued. That analysis examined reports of 146 choking-related deaths received by the Commission from January, 1980, through April, 1989, and indicated that some of the toys involved in these fatalities may have been developmentally appropriate for children three years of age and older. In the majority of cases, however, manufacturers' recommended ages for the toys involved in these fatalities were not available (4).

At the time the Commission decided to terminate the proceeding for the possible amendment of the small parts rules for toys and other articles intended for children younger than three years of age, the Commission also decided to begin a new rulemaking proceeding to consider risks of choking deaths and injuries to children younger than three years of age which may be associated with toys intended for children three years old and older. In the **Federal Register** of June 26, 1990 (55 FR 26082), the Commission published an ANPR under the authority of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to begin that proceeding (13).

B. Statutory Authority

Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an "unreasonable risk of personal injury" because the article or any of its parts may be aspirated or ingested or because of any other aspect of its design or manufacture.

The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). A toy or children's article which is subject to a rule issued under provisions of sections 3(e) through (i) of the FHSA is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)). The introduction into interstate commerce of a banned hazardous substance is prohibited by section 4 of the FHSA (15 U.S.C. 1263).

As specified by section 3(f) of the FHSA (15 U.S.C. 1262(f)), the ANPR

[4] Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. of Appendix A to this Part.

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 420, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 504–0800.

identified the products under consideration as toys and other articles which are intended for children three to about six years of age and which contain or consist of small parts that may present a choking hazard to children younger than three years of age. The ANPR described the regulatory alternatives under consideration by the Commission. These alternatives included issuance of a rule to require labeling of toys and other articles which are intended for use by children from three to approximately six years old and which have small parts to warn of choking hazards to children younger than three years of age.

In accordance with section 3(f) of the FHSA, the ANPR included information about existing standards relevant to the proceeding. The ANPR solicited comments from interested persons about the product and risk of injury identified in that notice; invited interested persons to submit an existing standard as the proposed regulation; and invited interested persons to submit a statement of intention to develop or modify a voluntary standard to address risks of choking deaths and injuries to children younger than three years of age associated toys and other articles intended for children three years old and older (13). In response to the ANPR, the Commission received comments from 14 individuals and organizations (18). The Commission also received 17 communications concerning this rulemaking proceeding after the close of the period for receipt of comments on the ANPR (20), (21), (23)–(37).

C. Information Considered by the Commission

On December 30, 1991, the Commission staff transmitted to the Commission a briefing package of information relevant to the proceeding concerned with choking hazards associated with toys and other items intended for children three years old and older (14)–(21).

The ANPR of June 26, 1990, announced that the Commission was considering development of a rule applicable to toys and "other articles" intended for children three years old and older (13). After considering comments received in response to the ANPR and other information, the staff recommended that the scope of any proposed rule should be limited to "toys and games" intended for children who are three and four years old. The staff also recommended that any proposed rule should be further limited to toys and games containing small parts when offered for sale to consumers; use and abuse testing should not be required (14), (16)–(19).

The briefing package provided information about reports received by the Commission of choking deaths to children associated with toys and other children's articles during the years 1980 through July, 1991. Eight of these reports contained information about children younger than three years of age who died after choking on a toy, game, or other article which appeared to be suitable for children three years old or older (15). (These reports did not include cases in which the accident victims choked on balloons, small balls, or marbles. The Commission initiated separate proceedings to consider choking hazards to children which may be associated with those products. See the **Federal Register** notices published on June 26, 1990, at 55 FR 26077, 26080, and 26084). Only two of the reported choking deaths of children younger than three years of age involved toys or games which would come within the scope of the proposed rule recommended by the Commission staff (15).

The staff estimated that the population of the United States younger than three years of age is about 11 million (38).

The briefing package also contained information about sales of toys and games intended for children three and four years old. The staff estimated that about 370 million toys and games intended for that age group are sold each year, and that about 185 million of those toys contain small parts. The staff estimated that about 150 million toys and games which are intended for children three and four years old and which have small parts are sold in packages (17).

The briefing package discussed studies of labeling effectiveness reported in technical literature, results of a survey of consumers concerning toy labeling, and work by the Commission staff to determine the effectiveness of labeling on packages of toys and games intended for children three and four years old containing small parts to warn adults of the choking hazard to children younger than three years of age (16). That work included developing prototypes of labels for packages of toys and games containing small parts to warn of choking hazards to children younger than three years of age. The prototype labels were presented to focus groups of parents with children ranging in age from 18 months to six years. The focus groups compared the prototype labels developed by the Commission staff with other labels on toy packages and commented on the effectiveness of the prototype and other labels to communicate the choking hazard to children younger than three years of age associated with toys containing small parts (16). However, neither the literature search nor the consideration of prototype labels by focus groups provided information about the numbers of deaths or injuries which could be avoided by issuance of mandatory requirements for labeling packages of toys which are intended for children three and four years old and which contain small parts to warn of choking hazards to children younger than three.

The Commission staff estimated that a rule to require a warning label on packages of toys and games which are intended for children three and four years old and which contain small parts would impose a total cost of about $220,000 each year on all manufacturers and packagers of those products (17). The staff estimated that a warning label for packages of toys and games containing small parts based on the prototype label could reasonably be expected to lead to a change in consumers' behavior at a rate of approximately six per cent (14), (16), (17). However, the staff was not able to estimate the number of choking deaths or injuries that would be avoided as a result of changes in behavior in response to those warning labels (14), (16), (17).

On February 7, 1992, the staff presented an oral briefing to the Commission concerning the proceeding to develop requirements for toys and other articles which are intended for children three years old or older and which have small parts.

D. Action by the Commission

On March 18, 1992, the Commission voted to terminate the rulemaking proceeding applicable to toys and other articles intended for children three years old and older and to withdraw the ANPR published on June 26, 1990.

The ANPR began a proceeding to consider whether certain toys and other articles which are intended for children three years old and older and which contain small parts present a "mechanical hazard." Section 2(s) of the FHSA provides that a toy or children's article may be determined to present a "mechanical hazard" if it presents "an unreasonable risk of personal injury" because it may be aspirated or ingested or because of any other aspect of its design or manufacture.

In order to make a determination that a product presents an "unreasonable risk of injury," relevant judicial

decisions state that the Commission must consider:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

See *Southland Mower* v. *CPSC*, 619 F.2d 499, at 508–509 (5th Cir. 1980); *Aqua Slide 'n' Dive* v. *CPSC*, 569 F.2d 831, at 839–840 (5th Cir. 1978); and *Forester* v. *CPSC*, 559 F.2d 774, at 789 (D.C. Cir. 1977).

Additionally, section 3(i) of the FHSA provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must make a regulatory analysis which includes a description of the potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury, as articulated in relevant judicial decisions, to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury associated with toys and games which are intended for children three and four years old and which have small parts is that children younger than three years of age may choke on small parts of those products. Choking injuries may result in death, and therefore have the potential to be of the utmost severity.

However, the likelihood of a fatality in which a child younger than three years of age chokes on a small part from a toy or game intended for children three years old or older is relatively remote. Approximately 185 million toys and games which are intended for children three and four years old and which contain small parts are sold each year in the United States. The population of the United States younger than three years of age is approximately 11 million. The Commission has reports of only two incidents in which children younger than three years of age died after choking on a small part from a toy or game which may have been intended for children three years old or older during the period from 1980 through July, 1991.

The likelihood that children younger than three years of age may choke on small parts from toys or games intended for older children is also foreseeable by parents and other consumers. The risk of injury associated with small parts from such toys and games is not a "hidden hazard."

The Potential of Mandatory Requirements To Reduce the Frequency and Severity of the Risk of Injury

The Commission considered information about current labeling practices by manufacturers and packagers of toys and games and studies of labeling effectiveness. However, the Commission has no information to demonstrate that issuing mandatory labeling requirements for packages of toys and games which are intended for children three and four years old and which contain small parts would reduce either the frequency or severity of choking injuries associated with those products to children younger than three years of age.

The Effect of Mandatory Requirements on the Cost, Utility, and Availability of the Product

The annual cost to all manufacturers and packagers of a rule to require labeling of packages of toys and games which are intended for children three and four years old and which contain small parts is estimated to be about $220,000. Approximately 150 million toys and games sold each year may be subject to such a rule. Available information indicates that issuance of such a rule would impose a relatively low cost on toy manufacturers and packagers, and could be expected to have little effect on the utility or availability of toys and games subject its requirements. However, the relatively low cost of such a rule does not by itself justify issuance of mandatory requirements.

E. Conclusions by the Commission

From its consideration of all available information about risks of choking injuries to children younger than three years old associated with toys and games which are intended for children three and four years old and which have small parts, the Commission concludes that:

(1) To date, information has not been developed to establish that toys and games which are intended for children three and four years old and which have small parts present an unreasonable risk of injury to children younger than three years of age;

(2) Consequently, information has not been developed to establish that issuance of a mandatory rule to require labeling of toys and games which are intended for children three and four years old and which have small parts is reasonably necessary; and

(3) If this proceeding were continued, such information is not likely to be developed.

The Commission also concludes that information is not now available or likely to be developed to support the finding that the excepted benefits from a rule to require labeling of toys and games which are intended for children three and four years old and which have small parts to warn of choking hazards to children younger than three years of age would bear a reasonable relationship to its costs. Such a finding is required by section 3(i) of the FHSA to issue a rule to ban unlabeled packages of toys and games which are intended for children three and four years old and which have small parts.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 26, 1990 (55 FR 26082) to initiate a proceeding for development of requirements to address risks of choking deaths and injuries associated with toys and other articles which are intened for children three years old and older and which have small parts.

Dated: February 5, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

2. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

3. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 27, 1988.

4. "Analysis of Choking Related Hazards Associated with Children's Products" by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September, 1989.

5. "A Physiological Review of Toys Causing Choking in Children" by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September, 1989.

6. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

7. Memorandum from Terrance R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

8. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

9. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

10. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages; memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

11. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

12. **Federal Register** notice, "Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission, 2 pages, June 26, 1990 (55 FR 26076.

13. **Federal Register** notice, "Choking Hazards Associated With Toys and Articles Intended for Children Three Years of Age and Older; Request for Comments and Information," published by the Consumer Product Safety Commission, 3 pages, June 26, 1990 (55 FR 26082).

14. Memorandum to the Commission from Marilyn Wind, Directorate for Health Sciences, concerning options to address choking hazards, 23 pages, December 30, 1991.

15. Memorandum from Deborah K. Tinsworth and Suzanne Cassidy, EPHA, to Marilyn Wind, HSPS, concerning updated information on choking deaths, 5 pages, August 15, 1991.

16. Memorandum from Shelley Waters Deppa, EPHF, to Marilyn Wind, HSPS, concerning choking hazard labels for toys, 198 pages, August 23, 1991.

17. Memorandum from Terrance R. Karels, ECPA, to Marilyn Wind, Project Manager, concerning children's choking hazards, 38 pages, October 1, 1991.

18. Comments in response to ANPR of June 26, 1990, 113 pages.

19. Memorandum from Lori Saltzman, Directorate for Health Sciences, to Marilyn Wind, Project Manager, concerning staff analysis of comments on ANPR, 37 pages, August 23, 1991.

20. Letter from Michael R. Lemov to Marilyn L. Wind, Directorate for Health Sciences, concerning voluntary standard for labeling of vending machines adopted by National Bulk Vendors Association, with attachments, 5 pages, July 1, 1991; letter from Michael R. Lemov to Marilyn L. Wind, Directorate for Health Sciences, concerning voluntary standard for labeling of vending machines, with attachment, 2 pages, July 2, 1991.

21. Letter from Toy Manufacturers of America, Inc., to Shelley Deppa, concerning proposed labeling requirements for toys, 2 pages, July 24, 1991.

22. Log of meeting of Commission staff members with ASTM subcommittee on October 16, 1991, 3 pages.

23. Letter from Michael R. Lemov to Chairman Jones-Smith concerning labeling requirements for toys and articles intended for children three years old and older, with enclosures, 14 pages, February 19, 1992.

24. Letter from Consumer Federation of America to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosure, 6 pages, February 20, 1992.

25. Letter from Consumer Affairs Committee, Americans for Democratic Action to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, February 24, 1992.

26. Letter from Johns Hopkins University, Injury Prevention Center to Chairman Jones-Smith concerning labeling of toys, with enclosures, 9 pages, February 25, 1992.

27. Letter from National Association of State Public Interest Research Groups to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 24 pages, February 25, 1992.

28. Letter from California Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, February 27, 1992.

29. Letter from Oregon State Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 19 pages, February 27, 1992.

30. Letter from the Coalition for Consumer Health and Safety to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

31. Letter from Consumers Union to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 5, 1992.

32. Letter from New Jersey Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

33. Letter from Public Citizen to Chairman Jones-Smith concerning labeling and other requirements for toys, 1 page, March 10, 1992.

34. Letter from Connecticut Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 12, 1992.

35. Letter from Empire State Consumers Association to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 17, 1992.

36. Letter from Dan Morales and others to Chairman Jones-Smith concerning labeling and other requirements for toys, 4 pages, March 17, 1992.

37. Letter from Toy Manufacturers of America, Inc., to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 17, 1992.

38. Memorandum to the Commission from Marilyn L. Wind, Directorate for Health Sciences, concerning additional information about choking hazards associated with marbles and small balls, with attachments, 13 pages, February 26, 1992.

39. Vote sheet, "Regulatory options to address choking hazards associated with toys and children's articles," 7 pages, December 30, 1991.

40. News release, "Commission Decides Not to Propose Labeling of Marbles, Balloons, and Balls for Choking Hazard," with attachments, 8 pages, March 18, 1992.

41. Statement of Chairman Jones-Smith concerning children's choking hazards, 7 pages, March 18, 1992.

42. Statement of Commissioner Dawson concerning children's choking hazards, 9 pages, March 18, 1992.

43. Statement of Commissioner Gall concerning children's choking hazards, 5 pages, March 18, 1992.

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16 CFR Chapter II

Choking Hazards Associated With Small Balls; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has decided to terminate a proceeding for the development of requirements for small balls to address risks of choking deaths and injuries to children associated with those products The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 26, 1990.

On March 18, 1992, the Commission voted to terminate this proceeding and to withdraw the ANPR published on June 26, 1990. The Commission took this action after considering written comments received in response to the ANPR and other correspondence concerning the proceeding; information about choking deaths of children associated with small balls during the years 1980 through 1991, annual sales of small balls, effectiveness of warning labels and other requirements to address choking hazards associated with small balls, the number of children younger than 10 years old, the potential costs of warning labels and other requirements to manufacturers and packagers of small balls and toys and games containing accessible small balls, and other written materials prepared by the Commission staff; an oral briefing presented by the Commission staff; and other information.

The Commission has concluded that evidence is not available to demonstrate that small balls currently offered for sale

to consumers present an unreasonable risk of choking death or injury to children. For that reason the Commission finds no reasonable necessity to issue labeling or other requirements for small balls.

FOR FURTHER INFORMATION CONTACT: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban certain toys and articles which are intended for children younger than three years of age and which present a choking, aspiration, or ingestion hazard because they contain small parts. These regulations are codified at 16 CFR 1500.18(a)(9) and part 1501.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission began a rulemaking proceeding to consider a possible amendment of the small parts regulations for toys and other articles intended for children younger than three years of age (1).[1] After considering comments submitted by interested parties and information developed by the Commission staff (2)–(10), the Commission concluded that the provisions of the small parts regulations have been effective to prevent choking deaths and injuries to children younger than three years of age. For this reason, the Commission published a notice in the **Federal Register** of June 26, 1990 (55 FR 26076), to terminate the proceeding initiated in 1988 (12).

In its review of the small parts regulations, the Commission considered an analysis of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (4). The purpose of that analysis was to provide a comprehensive examination of the types of products involved in choking-related deaths of children that occurred after the small parts regulations were issued. That analysis examined reports of 146 choking-related deaths received by the Commission from January, 1980, through April, 1989, including 32 associated with small balls.

At the time the Commission decided to terminate the proceeding for the possible amendment of the small parts rules for toys and other articles intended for children younger than three years of age, the Commission also decided to begin four new rulemaking proceedings to consider risks of choking deaths and injuries to children which may be associated with specific categories of toys, including small balls. In the **Federal Register** of June 26, 1990 (55 FR 26080), the Commission published an ANPR under the authority of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to begin in a proceeding to consider development of requirements for small balls (13).

B. Statutory Authority

Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an "unreasonable risk of personal injury" because the article or any of its parts may be aspirated or ingested or because of any other aspect of its design or manufacture.

The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). A toy or children's article which is subject to a rule issued under provisions of sections 3(e) through (i) of the FHSA is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)). The introduction into interstate commerce of a banned hazardous substance is prohibited by section 4 of the FHSA (15 U.S.C. 1263).

In accordance with section 3(f) of the FHSA (15 U.S.C. 1262(f)), the ANPR concerning small balls identified the products under consideration as balls which are intended for use by children and which have a diameter of less than approximately 1.75 inches. The ANPR also discussed regulatory alternatives under consideration by the Commission. These alternatives included issuance of a rule to require labeling on packages of games of skill which are intended for children three years of age and older and which contain or consist of small balls to warn of choking hazards to children associated with small balls. The ANPR also discussed the possibility of establishing a minimum diameter ranging from approximately 1.68 inches to approximately 1.75 inches for children's balls which are not part of a game or skill or which are part of a toy or other article intended for children younger than three years of age.

In accordance with section 3(f) of the FHSA, the ANPR included information about existing standards relevant to the proceeding. The ANPR solicited comments from interested persons about the product and risk of injury identified in that notice; invited interested persons to submit an existing standard as the proposed regulation; and invited interested persons to submit a statement of intention to develop or modify a voluntary standard to address risks of choking deaths and injuries to children associated with small balls (13). In response to the ANPR, the Commission received comments from 12 individuals and organizations (18). The Commission also received 17 communications concerning the rulemaking proceeding for small balls after the close of the period for receipt of comments on the ANPR (20), (22)–(37).

C. Information Considered by the Commission

On December 30, 1991, the Commission staff transmitted to the Commission a briefing package of information concerning the proceeding for development of requirements to address choking hazards to children associated with small balls (14)–(21).

The briefing package provided information about choking deaths associated with small balls during the years 1980 through July, 1991. During that period, 40 children choked to death on small balls; an average of fewer than four deaths per year. Of the children involved in those incidents, 26 were younger than three years of age; 14 children three years old and older died from choking on small balls (15).

Information was available about the size of the ball, the age of the intended user, and the age of the choking victim in only 13 of the incidents reported to the Commission (39). In eight of those incidents, the children were younger than three years of age (39). In three of those cases, the diameter of the ball was less than 1.25 inches, the minimum required by the small parts regulations.

In nine cases, the diameters of the balls ranged from slightly larger than 1.25 inches to about 1.75 inches.

In five cases involving children younger than three, the diameters of the balls ranged from slightly larger than 1.25 inches to 1.5 inches (39). In two of these cases, information in the case report indicated that the ball may have been intended for children younger than three (39).

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 420, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 504–0800.

Five children ranging in age from three to eight years old died after choking on balls with diameters ranging from less than 1.25 inches to 1.73 inches (39).

The staff estimated that the population of the United States younger than 10 years of age is approximately 37 million, and that the population younger than three years of age is about 11 million (39).

The briefing package also contained information about possible costs and effectiveness of two of the regulatory alternatives discussed in the ANPR: Establishing a minimum diameter for some children's balls, and requiring certain small balls intended for children to be labeled to warn of the choking hazard associated with those products.

The ANPR discussed the possibility of establishing a minimum diameter for those children's balls which are not part of a "game of skill," and requiring labeling on packages of all "games of skill" which are intended for children three years of age and older and which contain small balls to warn of the choking hazard associated with small balls (13). Several comments received in response to the ANPR stated that a definition of the term "game of skill" should be developed if the Commission issued either of those requirements (18). After consideration of those comments, the Commission concluded that the term "game of skill" would be difficult to define for regulatory purposes. (14), (19).

For this reason, the Commission considered the potential costs and benefits of: (a) Establishing a minimum diameter for all children's balls; (b) establishing a minimum diameter for accessible balls in toys and games intended for children younger than three years of age; and (c) requiring a label on all toys and games containing accessible small balls to warn of choking hazards to children associated with those balls.

The briefing package contained estimates that from 150 to 175 million children's balls with diameters less than 1.68 inches are sold each year. Additionally, about 60 to 70 million toys and games containing small balls are estimated to be sold each year (17).

A rule to establish a minimum diameter of 1.68 inches for all children's balls would increase costs to manufacturers for materials, packaging, and transportation. The aggregate increase in detail costs to consumers of a requirement for a minimum diameter of 1.68 inches for all children's balls is estimated to be about $48 million a year (17). Such a requirement would not prevent all choking deaths to children associated with small balls, but could be expected to avoid about 90 per cent of all children's choking deaths involving small balls. Information available to the Commission indicates that such a requirement could be expected to prevent about three deaths every two years at a cost of approximately $32 million for each life saved (17).

The Commission also considered the possibility of developing a rule to establish a minimum diameter greater than 1.25 inches (the size now required by the small parts regulations) for all accessible balls in toys and games intended for children younger than three years of age. However, information available to the Commission indicates that less than one per cent of all toys and games intended for that age group contains accessible small balls with diameters smaller than 1.7 inches (40).

Information about potential costs and benefits of a rule to require labeling of all toys and games containing accessible balls with a diameter less than 1.68 inches was also considered by the Commission. The cost of such a labeling requirement was estimated to range from about $60,000 to $140,000 a year. A mid-point average cost for a labeling rule was estimated to be about $100,000 a year (17).

The briefing package also discussed studies of labeling effectiveness reported in technical literature, results of a survey of consumers concerning toy labeling, and work by the Commission staff to determine the effectiveness of labeling toys and games containing small balls to warn adults of the choking hazard which they present to children (16). That work included developing prototypes of labels to warn of choking hazards to children associated with small balls. The prototype labels were presented to focus groups of parents with children ranging in age from 18 months to six years. The focus groups compared the prototype labels developed by the Commission staff with other labels on toy packages and commented on the effectiveness of the prototype and other labels to communicate the risk of death by choking associated with small balls (16).

The staff estimated that a warning label for toys and games containing small balls based on the prototype label could reasonably be expected to lead to a change in consumers' behavior at a rate of approximately three per cent (14), (16), I17). However, neither the literature search nor the consideration of prototype labels by focus groups provided information about the number of deaths or injuries which could be avoided by issuance of mandatory requirements for labeling of toys and games containing small balls to warn of choking hazards to children (14), (16), (17).

On January 29, 1992, the staff presented an oral briefing to the Commission concerning choking hazards associated with small balls.

D. Action by the Commission

On March 18, 1992, the Commission voted to terminate the rulemaking proceeding applicable to small balls and to withdraw the ANPR published on June 26, 1990.

The ANPR began a proceeding to consider whether some small balls intend for use by children present a "mechanical hazard." Section 2(s) of the FHSA provides that a toy or children's article may be determined to present a "mechanical hazard" if it presents "an unreasonable risk of personal injury" because it may be aspirated or ingested or because of any other aspect of its design or manufacture.

In order to make a determination that a product presents an "unreasonable risk of injury," relevant judicial decisions state that the Commission must consider:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

See *Southland Mower* v. *CPSC, 619 F.2d 499, at 508–509 (5th Cir. 1980), Aqua Slide 'n' Dive* v. *CPSC,* 569 F.2d 831, at 839–840, (5th Cir. 1978); and *Forester* v. *CPSC,* 559 F.2d 774, at 789 (D.C. Cir. 1977).

Additionally, section 3(i) of the FHSA provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must make a regulatory analysis which includes a description of the potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits" expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury, as articulated in relevant judicial decisions, to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury to children associated with small balls is that of choking if a small ball becomes lodged in a child's throat. Choking injuries may result in death, and therefore have the potential to be of the utmost severity.

However, the likelihood that a child may choke on a small ball is relatively remote. Information available to the Commission indicates the number of balls with diameters less than 1.68 inches sold for use by children ranges from 150 to 175 million units each year. An additional 60 to 70 million toys and games containing small balls are also sold each year. The population of the United States younger than 10 years of age is approximately 37 million. On average fewer than four children a year choked to death on small balls during the period from 1980 through July, 1991.

The likelihood that children may choke on small balls is also foreseeable by parents and other consumers. The risk that a child may choke on a small ball is not a "hidden hazard."

The Potential of Mandatory Requirements to Reduce the Frequency and Severity of the Risk of Injury

The Commission considered information about the effectiveness of three types of mandatory requirements to reduce risks of choking injuries to children associated with small balls.

(a) Establishing a minimum diameter for all children's balls. A rule to establish a minimum diameter of 1.68 inches for all children's balls could be expected to avoid approximately 90 per cent of all choking deaths associated with small balls: about three deaths every two years.

(b) Increasing the minimum diameter for all balls intended for children younger than three years of age. A rule to increase the minimum diameter of accessible balls in toys and games intended for children younger than three years of age from 1.25 inches to 1.68 inches would be expected to affect less than 1 per cent of all such products. Such a rule would have avoided only two of the choking deaths during a period of more than 11 years for which information was reported about the size of the ball, the age of the child for which it was intended, and the age of the choking victim.

(c) Requiring a label on all toys and games containing accessible small balls to warn of choking hazards. The Commission has no information to demonstrate that issuing mandatory requirements for labeling of toys and games to warn of choking hazards associated with small balls would reduce either the frequency or severity of choking injuries to children associated with small balls.

The Effect of Mandatory Requirements on the Cost, Utility, and Availability of the Product

The Commission also considered information about the anticipated costs of each of the three types of rules.

(a) Establishing a minimum diameter for all children's balls. The total increase in retail costs to consumers resulting from a rule to require a minimum diameter of 1.68 inches is estimated to be approximately $48 million a year. Although such a rule could be expected to avoid about three deaths every two years, the cost for each life saved would be approximately $32 million. On the basis of available evidence, the Commission is unable to find that the anticipated benefits of a rule to establish a minimum diameter of 1.68 inches for all children's balls could be expected to bear a reasonable relationship to the estimated costs of such a rule.

(b) Increasing the minimum diameter of all balls intended for children younger than three years of age. Information was not available about the dollar costs of a rule to increase the minimum diameter of accessible balls in toys and games intended for children younger than three years of age. However, the costs of such a rule would be low because less than one percent of all such toys are estimated to have accessible balls with diameters greater than 1.25 inches but smaller than 1.7 inches.

(c) Requiring a label on all toys and games containing accessible small balls. The cost of a rule to require labeling of toys and games containing accessible small balls is estimated to be approximately $100,000 a year. However, in view of the absence of any information to show that a labeling rule would be effective to reduce or eliminate choking deaths or injuries associated with small balls, the relatively low cost of such a rule does not by itself justify the issuance of such a rule.

E. Conclusions by the Commission

From its consideration of all available information about risks of choking injuries to children associated with small balls and mandatory requirements to reduce those risks, the Commission concludes that:

(1) To date, information has not been developed to establish that small balls present an unreasonable risk of injury to children;

(2) Consequently, information has not been developed to establish that issuance of a mandatory rule to establish a minimum diameter for some or all children's balls or to require labeling of toys and games containing accessible small balls is reasonably necessary; and

(3) If this proceeding were continued, such information is not likely to be developed.

The Commission also concludes that information is not now available or likely to be developed to support the finding that the expected benefits from a rule to establish a minimum diameter for some or all children's balls or to require labeling of toys and games containing accessible small balls would bear a reasonable relationship to its costs. Such a finding is required by section 3(i) of the FHSA to issue a rule to establish a minimum diameter for some or all children's balls or to require labeling of toys and games containing accessible small balls.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 26, 1990 (55 FR 26080) to initiate a proceeding for development of requirements to address risks of choking deaths and injuries associated with small balls.

Dated: February 5, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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2. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

3. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 27, 1988.

4. "Analysis of Choking Related Hazards Associated with Children's Products" by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September, 1989.

5. "A Physiological Review of Toys Causing Choking in Children" by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September, 1989.

6. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

7. Memorandum from Terrance R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

8. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

9. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

10. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and other Articles Intended for Use by Children Age 3 to 6 years," 3 pages; memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

11. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

12. **Federal Register** notice, "Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission, 2 pages, June 26, 1990 (55 FR 26076.

13. **Federal Register** notice, "Choking Hazards Associated With Small Balls; Request for Comments and Information," published by the Consumer Product Safety Commission, 3 pages, June 26, 1990 (55 FR 26080).

14. Memorandum to the Commission from Marilyn Wind, Directorate for Health Sciences, concerning options to address choking hazards, 23 pages, December 30, 1991.

15. Memorandum from Deborah K. Tinsworth and Suzanne Cassidy, EPHA, to Marilyn Wind, HSPS, concerning updated information on choking deaths, 5 pages, August 15, 1991.

16. Memorandum from Shelley Waters Deppa, EPHF, to Marilyn Wind, HSPS, concerning choking hazard labels for toys, 198 pages, August 23, 1991.

17. Memorandum from Terrance R. Karels, ECPA, to Marilyn Wind, Project Manager, concerning children's choking hazards, 38 pages, October 1, 1991.

18. Comments in response to ANPR of June 26, 1990, 113 pages.

19. Memorandum from Lori Saltzman, Directorate for Health Sciences, to Marilyn Wind, Project Manager, concerning staff analysis of comments on ANPR, 37 pages, August 23, 1991.

20. Letter from Toy Manufacturers of America, Inc., to Shelley Deppa, concerning proposed labeling requirements for toys, 2 pages, July 24, 1991.

21. Log of meeting of Commission staff members with ASTM subcommittee on October 16, 1991, 3 pages.

22. Letter from David J. Weaver to Chairman Jones-Smith concerning requirements for small balls, 1 page, February 19, 1992.

23. Letter from Consumer Federation of America to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosure, 6 pages, February 20, 1992.

24. Letter from Consumer Affairs Committee, Americans for Democratic Action to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, February 24, 1992.

25. Letter from John Hopkins University, Injury Prevention Center to Chairman Jones-Smith concerning labeling of toys, with enclosures, 9 pages; February 25, 1992.

26. Letter from National Association of State Public Interest Research Groups to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 24 pages, February 25, 1992.

27. Letter from California Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, February 27, 1992.

28. Letter from Oregon State Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 19 pages, February 27, 1992.

29. Letter from The Coalition for Consumer Health and Safety to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

30. Letter from Consumers Union to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 5, 1992.

31. Letter from New Jersey Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

32. Letter from Public Citizen to Chairman Jones-Smith concerning labeling and other requirements for toys, 1 page, March 10, 1992.

33. Letter from Safe Kids Campaign to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 12, 1992.

34. Letter from Connecticut Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 12, 1992.

35. Letter from Empire State Consumers Association to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 17, 1992.

36. Letter from Dan Morales and others to Chairman Jones-Smith concerning labeling and other requirements for toys, 4 pages, March 17, 1992.

37. Letter from Toy Manufacturers of America, Inc., to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 17, 1992.

38. Vote sheet, "Regulatory options to address choking hazards associated with toys and children's articles," 7 pages, December 30, 1991.

39. Memorandum to the Commission from Marilyn Wind, Directorate for Health Sciences, concerning additional information about choking hazards associated with marbles and small balls, with attachments, 13 pages, February 26, 1992.

40. Memorandum to the Commission from Marilyn Wind, Directorate for Health Science, concerning additional information about balls with diameters less than 1.75 inches, with attachment, 2 pages, March 10, 1992.

41. News release, "Commission Decides Not to Propose Labeling of Marbles, Balloons, and Balls for Choking Hazard," with attachments, 8 pages, March 18, 1992.

42. Statement of Chairman Jones-Smith concerning children's choking hazards, 7 pages, March 18, 1992.

43. Statement of Commissioner Dawson concerning children's choking hazards, 9 pages, March 18, 1992.

44. Statements of Commissioner Gall concerning children's choking hazards, 5 pages, March 18, 1992.

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16 CFR Chapter II

Choking Hazards Associated With Marbles; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has decided to terminate a proceeding for the development of labeling requirements for packages of marbles to address risks of choking deaths and injuries to children associated with those products. The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 26, 1990.

On March 18, 1992, the Commission voted to terminate this proceeding and to withdraw the ANPR published on June 26, 1990. The Commission took this action after considering written comments received in response to the ANPR and other correspondence concerning the proceeding; information about choking deaths of children associated with marbles during the years 1980 through 1991, annual sales of marbles, effectiveness of warning labels, the number of children younger than 10 years old, the potential costs of warning labels to packagers of marbles, and other written materials prepared by the Commission staff; an oral briefing presented by the Commission staff; and other information.

The Commission has concluded that evidence is not available to demonstrate that packages of marbles currently offered for sale to consumers present an unreasonable risk of choking death or injury to children. For that reason the Commission finds no reasonable necessity to issue labeling requirements for packages of marbles.

FOR FURTHER INFORMATION CONTACT: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban certain toys and articles which are intended for children younger than three years of age and which present a choking, aspiration, or ingestion hazard because they contain small parts. These regulations are codified at 16 CFR 1500.18(a)(9) and part 1501.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission began a rulemaking proceeding to consider a possible amendment of the small parts regulations for toys and other articles intended for children younger than three years of age (1).[1] After considering comments submitted by interested parties and information developed by the Commission staff (2)–(10), the Commission concluded that the provisions of the small parts regulations have been effective to prevent choking deaths and injuries to children younger than three years of age. For this reason, the Commission published a notice in the **Federal Register** of June 26, 1990 (55 FR 26076), to terminate the proceeding initiated in 1988 (12).

In its review of the small parts regulations, the Commission considered an analysis of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (4). The purpose of that analysis was to provide a comprehensive examination of the types of products involved in choking-related deaths of children that occurred after the small parts regulations were issued. That analysis examined reports of 146 choking-related deaths received by the Commission from January, 1980, through April, 1989, including eight associated with marbles.

At the time the Commission decided to terminate the proceeding for the possible amendment of the small parts rules for toys and other articles intended for children younger than three years of age, the Commission also decided to begin four new rulemaking proceedings to consider risks of choking deaths and injuries to children which may be associated with specific categories of toys, including marbles. In the **Federal Register** of June 26, 1990 (55 FR 26084), the Commission published an ANPR under the authority of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to begin a proceeding to consider development of requirements for marbles (13).

B. Statutory Authority

Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an "unreasonable risk of personal injury" because the article or any of its parts may be aspirated or ingested or because of any other aspect of its design or manufacture.

The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). A toy or children's article which is subject to a rule issued under provisions of sections 3 (e) through (i) of the FHSA is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)). The introduction into interstate commerce of a banned hazardous substance is prohibited by section 4 of the FHSA (15 U.S.C. 1263).

As specified by section 3(f) of the FHSA (15 U.S.C. 1262(f)), the ANPR concerning marbles discussed the regulatory alternatives under consideration by the Commission. These alternatives included issuance of a rule to require labeling of packages of marbles to warn of choking hazards to children.

In accordance with section 3(f) of the FHSA, the ANPR included information about existing standards relevant to the proceeding. The ANPR solicited comments from interested persons about the product and risk of injury identified in that notice; invited interested persons to submit an existing standard as the proposed regulation; and invited interested persons to submit a statement of intention to develop or modify a voluntary standard to address risks of choking deaths and injuries to children associated with marbles (13). In response to the ANPR, the Commission received comments from 10 individuals and organizations (18). The Commission also received 10 communications concerning the rulemaking proceeding for marbles after the close of the period for receipt of comments on the ANPR (20), (22)–(30).

C. Information Considered by the Commission

On December 30, 1991, the Commission staff transmitted to the Commission a briefing package of information concerning the proceeding for development of requirements to address choking hazards to children associated with marbles (14)–(21).

The briefing package provided information about choking deaths associated with marbles during the years 1980 through July 1991. During that period, 10 children choked to death on marbles; an average of less than one death per year. Of the children involved in those incidents, one was younger than four years of age; nine were younger than three (15). The staff estimated that the population of the United States younger than 10 years of age is approximately 37 million, and that the population younger than three years of age is about 11 million (32).

The briefing package also contained information about sales of marbles. The staff estimated that about 1.5 billion marbles are sold each year. Of that total, about 450 million marbles (approximately 30 percent) are estimated to be sold for games or play use. The remainder are sold for ornamental or industrial use. The staff estimated that about 11.3 million individual packages of marbles are sold each year (17).

The briefing package discussed studies of labeling effectiveness reported in technical literature, results of a survey of consumers concerning toy labeling, and work by the Commission staff to determine the effectiveness of labeling on packages of marbles to warn adults of the choking hazard to children associated with marbles (16). That work included developing prototypes of labels for packages of marbles to warn of choking hazards to children. The prototype labels were presented to focus groups of parents with children ranging in age from 18 months to six years. The focus groups compared the prototype labels developed by the Commission staff with other labels on toy packages and commented on the effectiveness of the prototype and other labels to communicate the risk of death by choking associated with marbles (16). However, neither the literature search nor the consideration of prototype labels by focus groups provided information about the numbers of deaths or injuries which could be avoided by issuance of mandatory requirements for labeling

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 420, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 504–0800.

packages of marbles to warn of choking hazards to children.

The Commission staff estimated that a rule to require a warning label on packages of marbles would impose a total cost of about $17,500 each year on all packagers (17). The staff estimated that a warning label for packages of marbles based on the prototype label could reasonably be expected to lead to a change in consumers' behavior at a rate of approximately one percent (14), (16), (17). However, the staff was not able to estimate the number of choking deaths or injuries associated with marbles that would be avoided as a result of changes in behavior in response to warning labels on packages of marbles (14), (16), (17).

On January 22, 1992, the staff presented an oral briefing to the Commission concerning the proceeding to develop requirements for marbles.

D. Action by the Commission

On March 18, 1992, the Commission voted to terminate the rulemaking proceeding applicable to marbles and to withdraw the ANPR published on June 26, 1990.

The ANPR began a proceeding to consider whether packages of marbles without labels to warn of choking hazards to children present a "mechanical hazard." Section 2(s) of the FHSA provides that a toy or children's article may be determined to present a "mechanical hazard" if it presents "an unreasonable risk of personal injury" because it may be aspirated or ingested or because of any other aspect of its design or manufacture.

In order to make a determination that a product presents an "unreasonable risk of injury," relevant judicial decisions state that the Commission must consider:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

See *Southland Mower* v. *CPSC*, 619 F.2d 499, at 508–509 (5th Cir. 1980); *Aqua Slide 'n' Dive* v. *CPSC*, 569 F.2d 831, at 839–840 (5th Cir. 1978); and *Forester* v. *CPSC*, 559 F.2d 774, at 789 (D.C. Cir. 1977).

Additionally, section 3(i) of the FHSA provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must make a regulatory analysis which includes a description of the potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury, as articulated in relevant judicial decisions, to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury to children associated with marbles is that of choking on the product. Choking injuries may result in death, and therefore have the potential to be of the utmost severity.

However, the likelihood of a choking incident is relatively remote. Approximately 1.5 billion marbles are sold each year in the United States, of which approximately 450 million are sold to consumers in packages. The population of the United States younger than 10 years of age is approximately 37 million. On average about one child a year choked to death on a marble during the period from 1980 through July, 1991.

The likelihood that children may choke on marbles is also foreseeable by parents and other consumers. Information obtained from focus groups indicates that parents recognize that marbles pose a choking hazard and are not intended for young children. Consequently, the risk of injury associated with marbles is not a "hidden hazard."

The Potential of Mandatory Requirements to Reduce the Frequency and Severity of the Risk of Injury

The Commission considered information about current labeling practices by packagers of marbles and studies of labeling effectiveness. However, the Commission has no information to demonstrate that issuing mandatory labeling requirements for packages of marbles would reduce either the frequency or severity of choking injuries to children associated with marbles.

Additionally, the Commission considered information indicating that a rule to require labeling of marbles sold in packages would be applicable to only about 30 per cent of all marbles sold in the United States. Information concerning choking deaths of children associated with marbles does not indicate whether any of those marbles were sold in packages, or how any of the children obtained the marbles.

The Effect of Mandatory Requirements on the Cost, Utility, and Availability of the Product

The annual cost to all packagers of a rule to require labeling of packages of marbles is estimated to be about $17,500. Approximately 11.3 million packages of marbles are sold each year. Although available information indicates that issuance of mandatory labeling requirements would have little effect on the cost, utility, or availability of packages of marbles, that fact alone does not justify issuance of such requirements.

E. Conclusions by the Commission

From its consideration of all available information about risks of choking injuries to children associated with marbles and mandatory requirements for labeling of packages of marbles to reduce those risks, the Commission concludes that:

(1) To date, information has not been developed to establish that unlabeled packages of marbles present an unreasonable risk of injury to children;

(2) Consequently, information has not been developed to establish that issuance of a mandatory rule to require labeling of packages of marbles is reasonably necessary; and

(3) If this proceeding were continued, such information is not likely to be developed.

The Commission also concludes that information is not now available or likely to be developed to support the finding that the expected benefits from a rule to require labeling of packages of marbles would bear a reasonable relationship to its costs. Such a finding is required by section 3(i) of the FHSA to issue a rule to ban unlabeled packages of marbles.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 26, 1990 (55 FR 26084) to initiate a proceeding for development of requirements to address risks of choking deaths and injuries associated with marbles.

Dated: February 5, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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5. "A Physiological Review of Toys Causing Choking in Children" by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September, 1989.

6. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

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11. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

12. **Federal Register** notice, "Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission, 2 pages, June 26, 1990 (55 FR 26076.

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15. Memorandum from Deborah K. Tinsworth and Suzanne Cassidy, EPHA, to Maryilyn Wind, HSPS, concerning updated information on choking deaths, 5 pages, August 15, 1991.

16. Memorandum from Shelley Waters Deppa, EPHF, to Marilyn Wind, HSPS, concerning choking hazard labels for toys, 198 pages, August 23, 1991.

17. Memorandum from Terrance R. Karels, ECPA, to Marilyn Wind, Project Manager, concerning children's choking hazards, 38 pages, October 1, 1991.

18. Comments in response to ANPR of June 26, 1990, 113 pages.

19. Memorandum from Lori Saltzman, Directorate for Health Sciences, to Marilyn Wind, Project Manager, concerning staff analysis of comments on ANPR, 37 pages, August 23, 1991.

20. Letter from Toy Manufacturers of America, Inc., to Shelley Deppa, concerning proposed labeling requirements for toys, 2 pages, July 24, 1991.

21. Log of meeting of Commission staff members with ASTM subcommittee on October 16, 1991, 3 pages.

22. Letter from National Association of State Public Interest Research Groups to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 24 pages, February 25, 1992.

23. Letter from California Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, February 27, 1992.

24. Letter from Oregon State Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 19 pages, February 27, 1992.

25. Letter from the Marble Collectors' Society of America to the Consumer Product Safety Commission concerning labeling of packages of marbles, 2 pages, March 2, 1992.

26. Letter from New Jersey Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

27. Letter from Public Citizen to Chairman Jones-Smith concerning labeling and other requirements for toys, 1 page, March 10, 1992.

28. Letter from Connecticut Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 12, 1992.

29. Letter from Empire State Consumers Association to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 17, 1992.

30. Letter from Toy Manufacturers of America, Inc., to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 17, 1992.

31. Vote sheet, "Regulatory options to address choking hazards associated with toys and children's articles," 7 pages, December 30, 1991.

32. Memorandum to the Commission from Marilyn Wind, Directorate for Health Sciences, concerning additional information about choking hazards associated with marbles and small balls, with attachments, 13 pages, February 26, 1992.

33. News release, "Commission Decides Not to Propose Labeling of Marbles, Balloons, and Balls for Choking Hazards," with attachments, 8 pages, March 18, 1992.

34. Statement of Chairman Jones-Smith concerning children's choking hazards, 7 pages, March 18, 1992.

35. Statement of Commissioner Dawson concerning children's choking hazards, 9 pages, March 18, 1992.

36. Statement of Commissioner Gall concerning children's choking hazards, 5 pages, March 18, 1992.

[FR Doc. 93–3290 Filed 2–10–93; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR CHAPTER II

Choking Hazards Associated With Balloons; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has decided to terminate a proceeding for the development of labeling or other requirements for balloons to address risks of choking deaths and injuries to children associated with those products. The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 26, 1990.

On March 18, 1992, the Commission voted to terminate this proceeding and to withdraw the ANPR published on June 26, 1990.[1] The Commission took this action after considering written comments received in response to the ANPR and other correspondence concerning the proceeding; information about choking deaths of children associated with balloons during the years 1980 through 1991, annual sales of balloons, effectiveness of warning labels, the number of children younger than 10 years old, the potential costs of warning labels to the balloon industry, and other written materials prepared by the Commission staff; an oral briefing presented by the Commission staff; and other information.

The Commission concluded that evidence is not available to demonstrate that balloons in packages currently offered for sale to consumers present an unreasonable risk of choking death or injury to children. For that reason the Commission finds no reasonable necessity to issue labeling requirements for packages of balloons.

FOR FURTHER INFORMATION CONTACT: Marilyn Wind, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

[1] The Commission decided to terminate this proceeding and to withdraw the ANPR published on June 16, 1990, by a 2–1 vote with Chairman Jones-Smith dissenting. Copies of the Commissioners' separate statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban certain toys and articles which are intended for children younger than three years of age and which present a choking, aspiration, or ingestion hazard because they contain small parts. These regulations are codified at 16 CFR 1500.18(a)(9) and part 1501. Part 1501 exempts balloons and several other categories of products from its provisions. See 16 CFR 1501.3(a).

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission began a rulemaking proceeding to consider a possible amendment of the small parts regulations for toys and other articles intended for children younger than three years of age (1).[2] After considering comments submitted by interested parties and information developed by the Commission staff (2)–(10), the Commission concluded that the provisions of the small parts regulations have been effective to prevent choking deaths and injuries to children younger than three years of age. For this reason, the Commission published a notice in the **Federal Register** of June 26, 1990 (55 FR 26076), to terminate the proceeding initiated in 1988 (12).

In its review of the small parts regulations, the Commission considered an analysis of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (4). The purpose of that analysis was to provide a comprehensive examination of the types of products involved in choking-related deaths of children that occurred after the small parts regulations were issued. That analysis examined reports of 146 choking-related deaths received by the Commission from January, 1980, through April, 1989, including 63 associated with balloons.

At the time the Commission decided to terminate the proceeding for the possible amendment of the small parts rules for toys and other articles intended for children younger than three years of age, the Commission also decided to begin four new rulemaking proceedings to consider risks of choking deaths and injuries to children which may be associated with specific categories of toys, including balloons. In the **Federal Register** of June 26, 1990 (55 FR 26077), the Commission published an ANPR under the authority of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to begin a proceeding to consider development of requirements for balloons (14).

B. Statutory Authority

Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an "unreasonable risk of personal injury" because the article or any of its parts may be aspirated or ingested or because of any other aspect of its design or manufacture.

The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). A toy or children's article which is subject to a rule issued under provisions of sections 3(e) through (i) of the FHSA is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)). The introduction into interstate commerce of a banned hazardous substance is prohibited by section 4 of the FHSA (15 U.S.C. 1263).

As specified by section 3(f) of the FHSA (15 U.S.C. 1262(f)), the ANPR concerning balloons discussed the regulatory alternatives under consideration by the Commission. These alternatives included issuance of a rule to require labeling of balloon packages to warn of choking hazards to children. The ANPR also discussed the possibility that other technical requirements might be developed to eliminate or reduce choking hazards associated with balloons. One example given in the ANPR was the possibility of adding a bittering agent to the material used in the production of balloons. Addition of a bittering agent might make the taste of balloons sufficiently unpleasant to children that they would not want to keep balloons in their mouths.

In accordance with section 3(f) of the FHSA, the ANPR included information about existing standards relevant to the proceeding. The ANPR solicited comments from interested persons about the product and risk of injury identified in that notice; invited interested persons to submit an existing standard as the proposed regulation; and invited interested persons to submit a statement of intention to develop or modify a voluntary standard to address risks of choking deaths and injuries to children associated with balloons (14). In response to the ANPR, the Commission received comments from 11 individuals and organizations (19). The Commission also received 17 communications concerning the rulemaking proceeding for balloons after the close of the period for receipt of comments on the ANPR (21), (23)–(38).

C. Information Considered by the Commission

On December 30, 1991, the Commission staff transmitted to the Commission a briefing package of information concerning the proceeding for development of requirements to address choking hazards to children associated with balloons (15)–(22).

The briefing package provided information about choking deaths associated with balloons during the years 1980 through July, 1991. During that period, 76 children choked to death on balloons or balloon fragments; an average of about seven deaths per year. Of the children involved in those incidents, 34 were younger than three years of age; 42 were three years old or older (16). The staff estimated that the population of the United States younger than 10 years of age is approximately 37 million, and that the population younger than three years of age is about 11 million (40).

The briefing package also contained information about sales of balloons. The staff estimated that about 1.2 billion latex balloons are sold each year. Of that total, about 770 million latex balloons (64 percent) are estimated to be sold in packages to consumer each year. The number of individual packages of balloons sold each year is estimated to range from 75 to 130 million units. More than 400 million latex balloons (about 35 percent of the total) are sold to corporate accounts, primarily for promotional purposes. An additional 120 million balloons (about one per cent of the total) are sold as decorator balloons (18).

The briefing package discussed studies of labeling effectiveness reported in technical literature, results of a survey of consumers concerning toy labeling, and work by the Commission staff to determine the effectiveness of labeling on packages of balloons to warn adults of the choking hazard to children associated with balloons (17). That work included developing prototypes of labels for packages of balloons to warn of choking hazards to children. The

[2] Numbers in parentheses indentify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 6501 Westward Avenue, room 420, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 504–0800.

prototype labels were presented to focus groups of parents with children ranging in age from 18 months to six years. The focus groups compared the prototype labels developed by the Commission staff with labels currently used on balloon packages and commented on the effectiveness of the prototype and other labels to communicate the risk of death by choking associated with balloons (16). However, neither the literature search nor the consideration of prototype and existing labels by focus groups provided information about the numbers of deaths or injuries which could be avoided by issuance of mandatory requirements for labeling packages of balloons to warn of choking hazards to children.

The Commission staff estimated that a rule to require a warning label on balloon packages would impose a total cost on the regulated industry of about $167,000 each year (18). The staff estimated that a warning label on balloon packages based on the prototype label could reasonably be expected to lead to a change in consumers' behavior at a rate of approximately one per cent (15), (17), (18). However, the staff was not able to estimate the number of choking deaths or injuries associated with balloons that would be avoided as a result of changes in behavior in response to warning labels on packages of balloons (15), (17), (18).

The briefing package also contained information about provisions for labeling of balloon packages in a voluntary standard for toy safety. That information included the text of the labeling statement, provisions applicable to size of lettering, placement of the label, prominence and contrast of the label, and information about the extent of conformance with the labeling provisions of the voluntary standard by the balloon industry (15), (17), (20).

The briefing package also stated that no feasible technical requirements are known to the staff which could eliminate or adequately reduce risks of choking deaths to children associated with balloons (15), (19), (20).

On January 15, 1992, the staff presented an oral briefing to the Commission concerning the proceeding to develop requirements for balloons.

D. Action by the Commission

On March 18, 1992, the Commission voted to terminate the rulemaking proceeding applicable to balloons and to withdraw the ANPR published on June 26, 1990.

The ANPR began a proceeding to consider whether packages of balloons without labels to warn of choking hazards to children present a "mechanical hazard." Section 2(s) of the FHSA provides that a toy or children's article may be determined to present a "mechanical hazard" if it presents "an unreasonable risk of personal injury" because it may be aspirated or ingested or because of any other aspect of its design or manufacture.

In order to make a determination that a product presents an "unreasonable risk of injury," relevant judicial decisions state that the Commission must consider:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

See *Southland Mower* v. *CPSC*, 619 F.2d 499, at 508–509 (5th Cir. 1980); *Aqua Slide 'n' Dive* v. *CPSC*, 569 F.2d 831, at 839–840 (5th Cir. 1978); and *Forester* v. *CPSC*, 559 F.2d 774, at 789 (D.C. Cir. 1977).

Additionally, section 3(i) of the FHSA provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must make a regulatory analysis which includes a description of the potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury, as articulated in relevant judicial decisions, to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury to children associated with balloons is that of choking when an uninflated balloon or fragment of a balloon becomes lodged in a child's airway. Choking injuries may result in death, and therefore have the potential to be of the utmost severity.

However, the likelihood of a choking incident is relatively remote. Approximately 1.2 billion balloons are sold each year in the United States, of which approximately 770 million are sold to consumers in packages. As many as 130 million packages of balloons may be sold each year. The population of the United States younger than 10 years of age is approximately 37 million. On average about seven children younger than ten years of age died in choking incidents associated with balloons each year during the period from 1980 through July, 1991.

The Potential of Mandatory Requirements To Reduce the Frequency and Severity of the Risk of Injury

The Commission considered information about provisions of a voluntary standard applicable to labeling of packages of balloons, current labeling practices by packagers of balloons, and studies of labeling effectiveness. However, the Commission has no information to demonstrate that issuing mandatory requirements for labeling of packages of balloons would reduce either the frequency or severity of choking injuries to children associated with balloons.

Additionally, the Commission considered information indicating that a rule to require labeling of balloons sold in packages would apply to about 64 per cent of all balloons sold in the United States. A rule to require labeling of all packages of balloons would not affect the more than 400 million balloons sold individually each year. Information concerning choking deaths of children associated with balloons does not indicate whether any of those balloons were sold in packages, or how any of the children obtained the balloons.

The Effect of Mandatory Requirements on the Cost, Utility, and Availability of the Product

The annual cost to all packagers of a rule to require labeling of packages of balloons is estimated to be about $167,000. As many as 130 million packages of balloons each year might be subject to such a rule. Although available information indicates that issuance of mandatory labeling requirements would have little effect on the cost, utility, or availability of packages of balloons, that fact alone does not justify issuance of such requirements.

E. Conclusions by the Commission

From its consideration of all available information about risks of choking injuries to children associated with balloons and mandatory requirements for labeling of packages of balloons to reduce those risks, the Commission concludes that:

(1) To date, information has not been developed to establish that unlabeled packages of balloons present an unreasonable risk of injury to children;

(2) Consequently, information has not been developed to establish that issuance of a mandatory rule to require labeling of balloon packages is reasonably necessary; and

(3) If this proceeding were continued, such information is not likely to be developed.

The Commission also concludes that information is not now available or likely to be developed to support the finding that the expected benefits from a rule to require labeling of balloon packages to warn of choking hazards to children would bear a reasonable relationship to its costs. Such a finding is required by section 3(i) of the FHSA to issue a rule to ban unlabeled packages of balloons.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 26, 1990 (55 FR 26077) to initiate a proceeding for development of requirements to address risks of choking deaths and injuries associated with balloons.

Dated: February 5, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

2. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

3. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 27, 1988.

4. "Analysis of Choking Related Hazards Associated with Children's Products" by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September, 1989.

5. "A Physiological Review of Toys Causing Choking in Children" by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September, 1989.

6. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

7. Memorandum from Terrance R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

8. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

9. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

10. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages; memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

11. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

12. Letter from Elaine A. Tyrrell, Project Manager, to Ms. Rose Dougherty, F 15 Committee Staff Manager, ASTM Standards Coordination, dated April 30, 1990, concerning comments of the staff of the Consumer Product Safety Commission on revision of F 963–86, Consumer Safety Specification on Toy Safety, to include labeling of balloons.

13. **Federal Register** notice, "Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission, 2 pages, June 26, 1990 (55 FR 26076).

14. **Federal Register** notice, "Choking Hazards Associated With Balloons; Request for Comments and Information," published by the Consumer Product Safety Commission, 3 pages, June 26, 1990 (55 FR 26077).

15. Memorandum to the Commission from Marilyn Wind, Directorate for Health Sciences, concerning options to address choking hazards, 23 pages, December 30, 1991.

16. Memorandum from Deborah K. Tinsworth and Suzanne Cassidy, EPHA, to Marilyn Wind, HSPS, concerning updated information on choking deaths, 5 pages, August 15, 1991.

17. Memorandum from Shelley Waters Deppa, EPHF, to Marilyn Wind, HSPS, concerning choking hazard labels for toys, 198 pages, August 23, 1991.

18. Memorandum from Terrance R. Karels, ECPA, to Marilyn Wind, Project Manager, concerning children's choking hazards, 38 pages, October 1, 1991.

19. Comments in response to ANPR of June 26, 1990, 113 pages.

20. Memorandum from Lori Saltzman, Directorate for Health Sciences, to Marilyn Wind, Project Manager, concerning staff analysis of comments on ANPR, 37 pages, August 23, 1991.

21. Letter from Toy Manufacturers of America, Inc., to Shelley Deppa, concerning proposed labeling requirements for toys, 2 pages, July 24, 1991.

22. Log of meeting of Commission staff members with ASTM subcommittee on October 16, 1991, 3 pages.

23. Letter from Consumer Federation of America to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosure, 6 pages, February 20, 1992.

24. Letter from Consumer Affairs Committee, Americans for Democratic Action, to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, February 24, 1992.

25. Letter from Johns Hopkins University, Injury Prevention Center, to Chairman Jones-Smith concerning labeling of toys, with enclosures, 9 pages, February 25, 1992.

26. Letter from National Association of State Public Interest Research Groups to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 24 pages, February 25, 1992.

27. Letter from California Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, February 27, 1992.

28. Letter from Oregon State Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 19 pages, February 27, 1992.

29. Letter from Coalition for Consumer Health and Safety to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 19 pages, February 27, 1992.

30. Letter from Consumers Union to Chairman Jones-Smith concerning labeling of toys, 3 pages, March 5, 1992.

31. Letter from New Jersey Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 5, 1992.

32. Letter from The Balloon Council to Chairman Jones-Smith concerning labeling of Balloon Packages, 2 pages, March 5, 1992.

33. Letter from Public Citizen to Chairman Jones-Smith concerning labeling and other requirements for toys, 1 page, March 10, 1992.

34. Letter from Safe Kids Campaign to Chairman Jones-Smith concerning labeling and other requirements for toys, 2 pages, March 12, 1992.

35. Letter from Connecticut Public Interest Research Group to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 12, 1992.

36. Letter from Empire State Consumers Association to Chairman Jones-Smith concerning labeling and other requirements for toys, with enclosures, 3 pages, March 17, 1992.

37. Letter from Dan Morales and others to Chairman Jones-Smith concerning labeling and other requirements for toys, 4 pages, March 17, 1992.

38. Letter from Toy Manufacturers of America, Inc., to Chairman Jones-Smith concerning labeling and other requirements for toys, 3 pages, March 17, 1992.

39. Memorandum to the Commission from Marilyn L. Wind, Directorate for Health Sciences, concerning additional information about choking hazards associated with balloons, with attachments, 13 pages, February 25, 1992.

40. Memorandum to the Commission from Marilyn L. Wind, Directorate for Health Sciences, concerning additional information about choking hazards associated with marbles and small balls, with attachments, 13 pages, February 26, 1992.

41. Vote sheet, "Regulatory options to address choking hazards associated with toys and children's articles," 7 pages, December 30, 1991.

42. News release, "Commission Decides Not to Propose Labeling of Marbles, Balloons,

and Balls for Choking Hazard," with attachments, 8 pages, March 18, 1992.

43. Statement of Chairman Jones-Smith concerning children's choking hazards, 7 pages, March 18, 1992.

44. Statement of Commissioner Dawson concerning children's choking hazards, 9 pages, March 18, 1992.

45. Statement of Commissioner Gall concerning children's choking hazards, 5 pages, March 18, 1992.

[FR Doc. 93-3289 Filed 2-10-93; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-17-90]

RIN 1545-A057

Reporting Requirements for Recipients of Points Paid on Residential Mortgages; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to [IA-17-90], which was published in the **Federal Register** for Thursday, December 31, 1992 (57 FR 62526). The proposed regulations relate to the reporting of points paid on residential mortgages.

FOR FURTHER INFORMATION CONTACT: James L. Atkinson on (202) 622-4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections provide regulations under 6050H of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations IA-17-90 which was the subject of FR Doc. 92-31187, is corrected as follows:

§ 1.6050H-1 [Corrected]

On page 62529, third column, § 1.6050H-1(f)((2)(iii), fourth line of the paragraph, "paragraph (f)(5) of this section), even" is corrected to read "paragraph (f)(4) of this section), even".

Cynthia Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-3182 Filed 2-10-93; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-56-90]

RIN 1545-A078

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships In Which One or More (but not all) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C); Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to [PS-56-90], which was published in the **Federal Register** for Wednesday, December 30, 1992 (57 FR 62266). The proposed regulations relate to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations.

FOR FURTHER INFORMATION CONTACT: Christopher G. Kehoe at (202)-622-3080 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction provide regulations under section 514(c)(9)(E) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations PS-56-90 which was the subject of FR Doc. 92-30430, is corrected as follows:

§ 1.514 [Corrected]

On page 62274, second column, § 1.514(c)-2(n)(3), first line in the column, the language "thought VI of Notice 90-41, 90-1 C.B." is corrected to read "through VI of Notice 90-41, 1990-1 C.B.".

Cynthia Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-3184 Filed 2-10-93; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[IA-57-89]

RIN 1545-AN73

Consolidated Returns-Alternative Minimum Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (IA-57-89), which was published in the **Federal Register** for Wednesday, December 30, 1992 (57 FR 62251). The notice of proposed rulemaking relates to the computation of the alternative minimum tax by consolidated groups.

FOR FURTHER INFORMATION CONTACT: Martin Scully, Jr. (202)-622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections provide regulations under sections 53 through 59, 1502, and 1552 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulation (IA-57-89), which was the subject of FR Doc. 92-31086, is corrected as follows:

1. On page 62254, column 1, in the preamble under the heading "*B. Carryover of Consolidated MTC to Separate Return Years*", third full paragraph in the column, fifth line, the language, "method S would be allocated $10 of" is corrected to read "method S would be allocated".

§ 1.1502-55 [Corrected]

2. On page 62262, column 3, § 1.1502-55(h)(5)(ii), lines 6 through 8, the language "of the consolidated credits (other than the consolidated MTC) allowable under part IV of

subchapter A of chapter 1 of" is corrected to read "of the consolidated credits allowable under subparts A, B, D, E, and F of part III of subchapter A of chapter 1".

§ 1.1502–55 [Corrected]

3. On page 62264, column 1, § 1.1502–55(h)(6)(v), paragraph (ii)(c) of *Example 1*, lines 3 and 4 of the paragraph following the table, the language "computed with S2's items is more than that amount computed without S2's items, S2 has" is corrected to read "computed without S2's items more than that amount computed with S2's items, S2 has".

Cynthia Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–3185 Filed 2–10–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA65

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rulemaking on approval requirements for testing and approval of flame-resistant conveyor belts to be used in underground mines.

DATES: Written comments must be received on or before March 26, 1993.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances, MSHA, room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: On December 24, 1992, MSHA published a proposed rule (57 FR 61524) to implement new procedures and requirements for testing and approval of flame-resistant conveyor belts for use in underground mines. The proposed revisions would replace MSHA's existing test for the flame-resistance of conveyor belts and make conforming amendments to safety standards which require the use of such belts.

The comment period was scheduled to close on February 22, 1993. The Agency is extending the comment period to March 26, 1993 in response to requests from the mining community. All interested parties are encouraged to submit comments prior to that date.

Dated; February 3, 1993.

Edward C. Hugler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 93–3216 Filed 2–10–93; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 191

[FRL–4593–6]

Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes; Hearings and Dockets

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings on proposed standards and establishment of dockets.

SUMMARY: This is a notice of public hearings on the proposed amendments to 40 CFR parts 144 and 191. These proposed amendments pertain to environmental radiation protection standards for the disposal of spent nuclear fuel, high-level and transuranic radioactive wastes.

This is also a notice of the establishment of dockets in three locations in New Mexico for the purpose of keeping the public informed on the 40 CFR parts 144 and 191 rulemaking and the Agency's rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act.

DATES: The public hearings will take place from noon to 9 p.m. (with a dinner break from 5:30 p.m. to 6:30 p.m.), Tuesday, February 23 through Thursday, February 25, 1993, at the locations given below. There will be provision for an extension to Friday, February 26, if the Agency finds it necessary. For speakers to receive scheduled times to testify, requests to speak must be received on or before February 18, 1993. Speakers not registered on or before February 18 may register at the door and will be scheduled if time permits.

Information related to 40 CFR parts 144 and 191 rulemaking will be available in the dockets at the locations listed below by February 12, 1993.

ADDRESSES: The hearings will be held at the Park Inn International, 3706 National Parks Highway, Carlsbad, NM, on February 23, 1993; at the Albuquerque Convention Center, 401 Second Street, NW., Albuquerque, NM, on February 24, 1993; and at the Ramada Inn, 2907 Cerillos Road, Santa Fe, NM, on February 25 (and February 26, if deemed necessary by the Agency), 1993. To testify, send registration requests and the following information: Name, Address, Organizational Affiliation (if any), Desired Hearing Date and Place, Times available to testify, and Daytime phone to Jim Toole, AST, 2121 Crystal Drive, Suite 514, Arlington, VA 22202, or call Mr. Toole directly at (703) 920–1864. Registrations must be received on or before February 18. AST will contact individuals by phone to confirm registration.

EPA currently has one official docket (for purposes of judicial review) for the parts 144 and 191 rulemaking: Docket No. R–89–01, located in room M–1500, Waterside Mall, 401 M St., SW., Washington, DC 20460. EPA has established separate, official dockets in Washington for other rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act. (Docket Nos. A–92–56, A–92–57, A–93–02) A.T.S.

The Agency is in the process of establishing dockets at three locations in New Mexico for the parts 144 and 191 rulemaking and other rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act. The dockets in New Mexico will be located at the Municipal Library, 101 S. Halegueno, Carlsbad, NM; the Meem Library, St. John's College, 1160 Camino Cruz Blanca, Santa Fe, NM; and the Government Publications Department, Zimmerman Library, University of New Mexico, Albuquerque, NM.

All three locations in New Mexico will contain informational dockets for the parts 144 and 191 rulemaking, i.e., they will only contain major items from the official docket plus all those documents added to the official docket since October 1992. The Carlsbad and Santa Fe locations will also be informational dockets for all these rulemakings and EPA will keep these dockets as up-to-date and complete as possible. The Albuquerque location will keep official dockets for other rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, 202–233–9310 or the 24-hour information line, 202–233–9716.

SUPPLEMENTARY INFORMATION: The subject of the public hearings is the

proposed amendments to 40 CFR parts 144 and 191.

Individual speakers will be allocated 5 minutes and individuals testifying on behalf of groups or organizations will be allocated 10 minutes for an oral presentation exclusive of the time consumed by questions from the government panel and answers to these questions.

Dated: February 5, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–3196 Filed 2–10–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 194

[FRL–4593–7]

Criteria for the Certification of Compliance with Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The U.S. Environmental Protection Agency intends to develop criteria for certifying compliance with 40 CFR part 191, Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes. These criteria will be developed pursuant to the Agency's authority under the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act which requires the Agency to issue proposed criteria by October 30, 1993 and final criteria by October 30, 1994. These criteria will be used by the Agency in certifying whether or not the WIPP facility complies with the 40 CFR part 191 disposal standards.

DATES: To be of maximum value, comments on today's notice should be received within 30 days of the date of publication of this notice in the **Federal Register**. Comments received after that date will be considered to the extent possible.

ADDRESSES: Comments should be submitted, in duplicate, to Docket No. A–92–56, Air Docket, room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in Docket No. A–92–56 located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Caroline Petti, Office of Radiation and Indoor Air (6602J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 233–9310.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of defense transuranic (TRU) radioactive waste. TRU wastes are materials containing elements having atomic numbers greater than 92 in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes, with half-lives greater than twenty years, per gram of waste. Most TRU wastes are items that have become contaminated as a result of activities associated with the production of nuclear weapons; e.g., rags, equipment, tools, and contaminated organic and inorganic sludges.

Congress authorized the development of the WIPP in 1979 for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States. (Pub. L. 96–164). Before beginning disposal of radioactive waste at the WIPP, DOE must demonstrate that the WIPP will comply with the Environmental Protection Agency's (EPA) radioactive waste disposal regulations at 40 CFR part 191 (Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes).

On October 30, 1992 the Waste Isolation Pilot Plant Land Withdrawal Act was enacted. (Pub. L. 102–579.) Among other things, the new law specifies the terms and conditions for the DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development. The law provides an extensive role for EPA in reviewing the DOE's activities at the WIPP including the role of certifying whether or not the WIPP will comply with the Agency's radioactive waste disposal standards.

Under the new law, EPA is required to develop criteria for the Administrator's certification of compliance with 40 CFR part 191. EPA is required to issue proposed compliance criteria by October 30, 1993 and to issue final compliance criteria by October 30, 1994.

In promulgating compliance criteria pursuant to the WIPP Land Withdrawal Act, EPA intends to specify requirements for implementing the 40 CFR part 191 disposal standards and to clarify compliance-related ambiguities which may currently exist. The Agency is requesting information and comments pertinent to the development of 40 CFR part 191 compliance criteria. Listed below are specific questions or areas of inquiry on which the Agency is soliciting comment at this time; however, in developing proposed and final compliance criteria, the Agency may address other issues.

1. What is the appropriate analytical "degree of confidence" for determining compliance with the long-term numerical disposal standards (40 CFR part 191)? The question arises because of the uncertainties associated with the long-term assessments required by these standards; unequivocal numerical proof of compliance with the standards is neither necessary nor likely to be obtained. Therefore, it is incumbent upon the Agency to define an acceptable level of certainty for compliance with the standards. Should the Agency require a specific statistical test for determining compliance or specify a more general "level of confidence" necessary for compliance?

2. The accuracy of 40 CFR part 191 compliance assessments is based, in part, on the accuracy of the assumed composition of the expected waste inventory. What methods and quality assurance measures should be employed to assure and confirm the accuracy and/or adequacy of the radionuclide inventory estimates assumed for WIPP compliance assessment? The question arises because of the uncertainties associated with DOE's TRU waste characterization information and approach.

3. Compliance with the 40 CFR part 191 disposal standards involves modeling projections of disposal system performance. What types of models (e.g., geo-chemical, ground-water flow, transport, etc.) should be used to demonstrate compliance and how should EPA determine that those models are adequate?

4. What methods or procedures should be employed to assure the

quality and completeness of data used in determining WIPP's compliance with 40 CFR part 191?

5. Compliance with 40 CFR part 191 is determined by evaluating the degree to which various processes and events affecting the performance of a disposal system are likely to lead to radionuclide releases and radiation doses to members of the public. The Agency is interested in any suggestions for guidance or criteria (e.g., simplifying assumptions) aimed at reducing uncertainty or undue speculation which may be associated with these assessments.

6. EPA's 40 CFR part 191 disposal standards include a set of qualitative Assurance Requirements (See 40 CFR 191.14) designed to provide the confidence needed for long-term compliance with the quantitative requirements of the standards. The Assurance Requirements address such things as institutional controls at disposal sites, monitoring and the use of engineered barriers to isolate wastes from the environment. In what ways, or pursuant to what processes, should EPA specify criteria which addresses compliance with these requirements?

7. The U.S. Nuclear Regulatory Commission has issued regulations and guidance establishing procedures, criteria, terms and conditions for licensing low-level and high-level radioactive waste disposal facilities. (See 10 CFR part 61 and 10 CFR part 60.) To what extent should EPA consider adopting, with or without modification, these NRC requirements in our compliance criteria?

8. Are there other issues EPA should address in proposing compliance criteria?

List of Subjects in 40 CFR 194

Environmental protection, Radiation protection, Transuranic radioactive waste, Waste treatment and disposal.

Dated: February 1, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 93–3195 Filed 2–10–93; 8:45 am]

BILLING CODE 6560–50–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 29)]

Rail General Exemption Authority—Petition of AAR To Exempt Rail Transportation of Selected Commodity Groups[1]

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking public comment on whether to exempt from its regulation rail transportation of the commodity groups set forth in appendix A to this document. If exempted, these commodities would be added to the list of exempt commodities, as set forth in the proposed revisions.[2]

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by February 26, 1993. We will issue a service list of the parties of record shortly thereafter. Petitioner shall furnish each party on the list with a copy of its petition within 10 days after the service list is issued. Initial written comments must be filed within 30 days after service of the service list. All parties will have 50 days after service of the service list to reply. The exact filing dates will be specified in the notice accompanying the service list. Comments must be served upon all other parties of record.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Ex Parte No. 346 (Sub-No. 29) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Marc A. Lerner, (202) 927–6289 Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) has petitioned for an exemption under 49 U.S.C. 10505 for the rail transportation of 31 selected commodity groups.[3] AAR seeks exemption from our regulation for all rail carriers nationwide. As discussed below, we are instituting this rulemaking.

Sectin 10505 requires us to grant an exemption when we find that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a (NRTP); and (2) either (a) The transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from an abuse of market power. AAR contends that its proposal meets these criteria.

AAR states that the subject commodities are proposed for exemption for one or more of the following reasons: (1) The commodity is already predominantly handled in exempt service (generally boxcars), and an exemption would ensure that all rail movements of the commodity have the same regulatory status; (2) the rail market share is so small that railroads are not a competitive factor, and exemption would be an avenue toward promoting more effective rail competition against other modes; (3) the commodity is readily substituted for, and thus competes with, other products which are already exempt from regulation; and (4) much of the traffic presently moves under rail

[1] Originally entitled Rail General Exemption Authority—Petition of AAR to Exempt Rail Transportation of 31 Selected Commodity Groups. The specific number has been dropped because use of an exact number is unnecessary and may also be inaccurate in terms of the number of groups finally exempted—particularly since 3 groups have already been proposed for exemption elsewhere. (See n.3, infra.)

[2] Our proposed amendatory language consists of the chart in § 1039.11 in its entirely, as modified by AAR's proposal. We have also made updates to the section and corrections where necessary. In addition, we have deleted STCCs 37–11, 37–14, and 41–118 for the reasons stated below. Because exemption of the rail transportation of the specific commodity groups proposed for exemption in STCCs 13 and 33 would result in exemption of all of the commodities in STCCs 13 and 33, we have proposed exemption of those two STCCs in their entirety. Finally, we note that exemption of the rail transportation of the commodities described in STCC Nos. 24–1, 24–2, 24–3, and 24–9 would leave only STCC No. 24–4, wooden containers, in STCC 24. Consequently, on our own, we are proposing exemption of STCC No. 24–4 as well, which would result in exemption of STCC 24 in its entirety, subject, of course, to public comment.

[3] As noted, the Commission has already proposed exemption of two of the commodity groups included in this petition, *i.e.*, STCC Nos. 37–11 (motor vehicles) and 37–14 (motor vehicle parts or accessories). See Ex Parte No. 346 (Sub-No. 27), Rail General Exemption Authority—Transportation Equipment, unprinted decision served July 9, 1992 (57 FR 30709, July 10, 1992); and unprinted decision narrowing scope of proposed exemption served August 20, 1992 (57 FR 37763, August 20, 1992 (57 FR 37763, August 20, 1992). Consequently, consideration of those two groups will be excluded at the outset from this proposal. Moreover, certain comments in the Sub-No. 27 proceeding have asked the Commission to exempt also STCC 41–118 (used vehicles) as part of that proceeding. Consequently, we will also not consider that commodity here.

Accompaning the proposal are supporting verified statements from representatives of AAR and the following AAR member railroads: Union Pacific Railroad Company, Chicago and North Western Transportation Company, the Atchison, Topeka and Santa Fe Railway Company, Consolidated Rail Corporation, Norfolk Southern Corporation, CSX Transportation, Inc., and Burlington Northern Railroad Company. Various exhibits are also attached.

transportation contracts and, thus, is already barely regulated. AAR adds that, in all cases, transportation of the commodity is highly competitive, shipper opposition will be minimal, and support will be considerable.

AAR further argues that regulation of these commodities is not necessary to carry out the NRTP at 49 U.S.C. 10101a. According to AAR, while the transportation of the traffic is highly competitive, an exemption would further increase competition for this traffic and promote numerous NRTP goals.[4]

Moreover, AAR claims, the involved rail transportation is limited in scope, because, for most commodity groups, the rail market share is quite small. Also, according to AAR , the traffic is subject to effective intermodal, intramodal, and geographic competition, making regulation unnecessary to protect shippers from market power abuse.[5]

The traffic covered by this exemption proposal is varied in nature and substantial. We invite comment and data concerning the proposal. We hope that shipper responses will allow us to differentiate readily between those commodity groups that truly present no problem to those that do, and thus proceed expeditiously to exempt the former while holding the latter for further consideration in a second notice before final decision.[6]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of our proposal is to reduce unnecessary regulation and associated burdens. The economic impact on small entities, if any, will be reduce their administrative costs and is not likely to be significantly within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904, and 5 U.S.C. 553.

Decided: January 26, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden. Vice Chairman Simmons and Commissioner McDonald dissented with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904, and 5 U.S.C. 553.

2. In § 1039.11, the chart in paragraph (a) is proposed to be revised to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
13	6001–T, eff. 1–1–92	Crude petroleum, natural gas or gasoline.
14 1	do	Dimension stone, quarry.
14 2	do	Crushed or broken stone or riprap.
14 411	do	Sand (aggregate or ballast).
14 412	do	Gravel (aggregate or ballast).
14 715	do	Rock salt, crude, crushed, lump or screened.
20	do	Food or kindred products except
		20 32 Canned specialties.
		20 33 Canned fruits, jams, jellies, preserves or vegetables.
		20 4 Grain mill products.
		20 6 Sugar, beet or cane.
		20 8 Beverages or flavoring extracts.
		20 911 Cottonseed oil, crude or refined.
		20 914 Cottonseed cake or meal or by-products.
		20 92 Soybean oil or by-products.
		20 93 Nut or vegetable oils or by-products.
22	do	Textile mill products.
23	do	Apparel or other finished textile products or knit apparel.
24	do	Lumber or wood products.
25	do	Furniture or fixtures.
26	do	Pulp, paper or allied products except.
		26 1 Pulp or pulp mill products.
		26 211 Newsprint.
		26 212 Ground wood paper, uncoated.
		26 213 Printing paper, coated or uncoated, etc.

[4] According to AAR, these include vigorous competition, reasonable rates, improved service, increased efficiency, greater ratemaking flexibility, financially healthier railroads, and decreased regulation allowing railroads to respond more quickly to shipper demand for rate quotes than under the present tariff or contract systems.

[5] AAR acknowledges that the proposed exemptions would undoubtedly contain the same exceptions as in prior proceedings. For example, the exemptions would not reach car hire and car service (But see, Joint Petition for Rulemaking on Railroad Car Hire Compensation, 9 I.C.C.2d 80 (1992)). As such, the AAR proposal would exclude private tank car allowances from the exemption. We are somewhat concerned about the discrepancy this might cause between continuing antitrust immunity for joint consideration of tank car allowances while eliminating antitrust immunity with respect to freight rates of any of the commodities proposed for exemption here that are susceptible to movement in tank cars. Accordingly, comments on this particular question would be particularly welcome. Also, class III railroad protections identical to those in Rail Exemption—Lumber or Wood Products, 7 I.C.C.2d 673 (1991) would be retained.

[6] AAR states in its petition that, rather than filing any additional evidence or argument in initial response to the NPR, for reasons of expediency it will submit any further relevant evidence or argument in reply to any public comments that may be submitted in response to the NPR. However, we caution AAR that rebuttal must be confined to issues raised in the initial comments.

STCC No.	STCC tariff	Commodity
		26 214 Wrapping paper, wrappers or coarse paper.
		26 218 Sanitary tissue stock.
		26 471 Sanitary tissues or health products.
		26 6 Building paper or building board except 26 613 Wallboard.
27	.....do	Printed matter.
28 133	.....do	Carbon dioxide.
28 195 22–23	.....do	Iron chloride, liquid.
28 195 27–30	.....do	Iron sulphate.
28 195 68–69	.....do	Ferrous sulphate.
28 5	.....do	Paints, enamels, lacquers, shellacs or varnishes, or allied products.
28 991	.....do	Salt, common.
29 1	.....do	Products of petroleum refining.
29 913	.....do	Petroleum coke.
29 914	.....do	Coke produced from coal.
29 915	.....do	Distillate or residual fuel oil from coal refining.
29 919	.....do	Coal or petroleum products, nec.
30	.....do	Rubber or miscellaneous plastics products except
		30 111 Rubber pneumatic tires or parts.
31	.....do	Leather or leather products.
32	.....do	Clay, concrete, glass or stone products except
		32 95 Nonmetallic earths or minerals, ground or treated in any other manner except 32 952 15 Cinders, clay, shale (expanded shale), slate or volcanic (not pumice stone), or haydite.
33	.....do	Primary metal products, including galvanized.
34	.....do	Fabricated metal products except
		34 6 Metal stampings.
		34 919 40 Radioactive material shipping containers, etc.
35	.....do	Machinery except
		35 11 Steam engines, turbines, turbine generator sets, or parts.
		35 85 Refrigerators or refrigeration machinery or complete air conditioning units.
36	.....do	Electrical machinery, equipment or supplies except
		36 12 Power, distribution or specialty transformers.
		36 21 Motors or generators.
38	.....do	Instruments, photographic goods, optical goods, watches or clocks.
39	.....do	Miscellaneous products of manufacturing.

* * * * *

APPENDIX A—COMMODITIES PROPOSED BY AAR FOR EXEMPTION

STCC No.	Description
13–1	Crude Petroleum or Natural Gas.
13–2	Natural Gasoline.
14–1	Dimension Stone, Quarry.
14–2	Crushed or Broken Stone or Riprap.
14–411	Sand (aggregate or ballast).
14–412	Gravel (aggregate or ballast).
14–715	Rock Salt.
20–131	Lard.
20–139	Meat Products.
20–143	Grease or Inedible Tallow.
24–1	Primary Forest or Wood Raw Materials.
26–613	Wallboard.
28–133	Carbon Dioxide.
28–5	Paints, Enamels, Lacquers, Shellacs.
28–991	Salt, Common.
29–1	Petroleum Products.
29–913	Petroleum Coke.
29–914	Coke Produced from Coal.
29–915	Distillate or Residual Fuel Oil from Coal.
29–919	Coal or Petroleum, nec.
32–4	Hydraulic Cement.
32–741	Lime or Lime Plaster.
32–952–15	Cinders, Clay, Shale, Slate.
33–11	Blast Furnace Products (pig Iron, slag).
33–12	Primary Iron or Steel Products (plates, pipes, rods).
33–2	Iron or Steel Castings.
33–3	Nonferrous Metal Primary Smelter Products (ingots, pigs).
35–31	Construction Machinery or Equipment.
37–11	Motor Vehicles (cars, trucks).
37–14	Motor Vehicle Parts.
41–118	Used Vehicles.

[FR Doc. 93–3305 Filed 2–10–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period for the Proposed Listing of the Coastal California Gnatcatcher (Polioptila californica californica) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a report examining the taxonomic status of the California gnatcatcher. The report was prepared by a committee convened by the Service. The report concluded that the coastal California gnatcatcher (*Polioptila californica californica*) is a valid subspecies, and that the southern limit of its range is approximately 30 degrees north latitude in Baja California, Mexico. The Service invites further comment from the public on this taxonomic issue.

DATES: Comments from all interested parties must be received by March 3, 1993.

ADDRESSES: Comments concerning this notice or requests for available documents should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (619/431–9440).

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey D. Opdycke, Field Supervisor, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION: .

Background

In response to the September 17, 1991, proposed rule to list the coastal California gnatcatcher (*Polioptila californica californica*) as an endangered species (56 FR 47053), the Service received a number of comments that questioned the taxonomic validity of the subspecies, or that challenged some of the taxonomic information used by the Service (e.g., Atwood 1990, 1991). On November 19, 1992, the Building Industry Association and other

groups filed suit in the United States District Court in the District of Columbia seeking to delay a final decision on the proposed listing of the gnatcatcher. The suit specifically requested an opportunity to review the underlying primary data used by Atwood (1990, 1991).

To help clarify the taxonomic issue, the Service requested taxonomists to conduct a review of the available information on the taxonomy of the California gnatcatcher, and to reach a conclusion regarding the validity of the coastal California subspecies *Polioptila californica californica*. The review was conducted by Service taxonomists, Dr. Richard C. Banks, and Dr. Alfred L. Gardner of the National Museum of National History in Washington, D.C. Their review concluded that the coastal California gnatcatcher is a valid subspecies, and that its range extends to about 30 degrees north latitude in Baja California, Mexico.

The Service announces the availability of the report prepared by Banks and Gardner (1992). A letter prepared by Mr. Robert Thornton dated October 22, 1992, a detailed example of a comment questioning the taxonomic status of the California gnatcatcher, is an attachment to the report prepared by Banks and Gardner (1992). The public may submit further comments on this issue to the Service.

References Cited

Atwood, J.L. 1990. Status review of the California gnatcatcher (*Polioptila californica*). Unpublished technical report, Manomet Bird Observatory, Manomet, Massachusetts. 79 pp.

Atwood, J.L. 1991. Subspecies limits and geographic patterns of morphological variation in California gnatcatcher (*Polioptila californica*). Bull. So. Calif. Acad. Sci. 90:118–133.

Banks, R.C. and A.L. Gardner. 1992. Review of the Taxonomic Status of the California Gnatcatcher (*Polioptila californica californica*). Report Submitted to the U.S. Fish and Wildlife Service, Portland, Oregon.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recording requirements, and Transportation.

Dated: February 4, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–3304 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

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

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Transgenic Animal Working Group Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC):

The ABRAC Transgenic Animal Working Group will meet in room 3109, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, on April 8, 1993, from 9 a.m. to approximately 3 p.m. The Working Group, at the request of the USDA Food Safety and Inspection Service, will review and discuss a draft decision tree and policy for transgenic food animals.

The meeting of the working group is open to the public. Persons may participate in the meeting as time and space permit.

Further information may be obtained from Dr. Daniel Jones, Deputy Director, Office of Agricultural Biotechnology, Room 1001, Rosslyn Plaza E, 14th Street and Independence Avenue SW., Washington, DC 20250. Telephone (703) 235–4419.

Done at Washington, DC, this 3rd day of February, 1993.

Bruce Stillings,

Acting Assistant Secretary, Science and Education.

[FR Doc. 93–3281 Filed 2–10–93; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

[3410–11]

Appeal Exemption; Timber Sales; Sequoia National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Merry Mule, Sugar Run, and Spear Home Tract Insect Salvage Timber Sale Decisions, Hot Springs Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decisions related to the harvest and restoration of lands affected by drought-induced timber mortality covered under the Merry Mule, Sugar Run, and Spear Home Tract Insect Salvage Timber Sales on the Hot Springs Ranger District. These salvage sales are being considered in response to the continuing timber mortality, which is resulting from six years of drought and related insect and disease infestations on the Hot Springs Ranger District.

The proposed timber sales include areas from the northern to southern portions of the District. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. This drought condition has caused a high degree of stress within the trees that reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark beetles. The Hot Springs District is experiencing drought-related mortality well above average for the District and the Forest.

Trees subject to insect attack act as hosts for producing new broods of insects. The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of affected timber helps to reduce the growth rates of insect populations and minimize value and volume loss in salvaged timber. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control difficult as witnessed three summers ago when the Stormy Complex fires burned approximately 24,000 acres on the Hot Springs and Greenhorn Districts.

The areas to be harvested consist of approximately 8,000 acres with an estimated volume of 750 MBF (thousand board feet) on the Merry Mule, 16,000 acres with an estimated volume of 1,000 MBF on the Sugar Run, and approximately two acres with an estimated volume of 55 MBF on the Spear Home Tract. The harvesting will be done by helicopter and ground-based logging systems. No new specified road construction will be proposed for this salvage operation. Existing roads and landings will be used. Approximately one mile of temporary road is being proposed for each the Merry Mule and Sugar Run timber sales.

Salvage logging, especially helicopter logging, is costly when compared to logging green timber sales because of the typically low volumes per acre removed and the scattered nature of the dead trees. To be economically feasible, timber value must be high enough to compensate for the higher logging costs. If dead timber is not removed promptly, the decline in value and volume caused by deterioration will prevent economical removal by both ground-based and helicopter logging systems. For this reason, it is necessary to remove dead and dying timber as soon as possible.

Exempting these decisions from appeal will enable salvage harvest operations to begin in the early spring of 1993, providing environmental analyses support the decisions to do so.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions relating to the harvest and restoration of lands following drought-induced timber mortality covered by the Merry Mule, Sugar Run, and Spear Home Tract environmental analyses on the Hot Springs Ranger District of the Sequoia National Forest.

EFFECTIVE DATE: This decision will be effective February 11, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Sandra H. Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784–1500.

SUPPLEMENTARY INFORMATION: The environmental analyses for these proposals will be documented in decisions memos. Pursuant to 40 CFR 1501.7, scoping was initiated on November 10, 1992. The District is expected to complete the environmental documentation for all the proposed projects by the end of February, 1993. The environmental documents and related maps will be available for public review at the Hot Springs Ranger Station, Rt. 4, Box 548, California Hot Springs, CA. 93207 and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the central portion of the Hot Springs District covers approximately 70,000 acres. Within this area approximately 24,000 acres and 1.8 million board feet (MMBF) is presently being proposed for salvage. The value to the Forest Service of 1.8 MMBF of salvage volume is estimated at $450,000. This does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. Tulare County will share in 25% of the revenue collected from these timber sales. Normal contractual rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention and fuels reduction.

Salvage projects are not expected to adversely affect snag dependent wildlife species. Snags will be left in numbers to meet or exceed the guidelines stated in the Sequoia National Forest Land and Resource Management Plan and Mediated Land Management Plan 1990 Settlement Agreement, and the Regional guidelines of three to four snags per acre in suitable spotted owl habitat. There will be no salvage harvesting in designated California Spotted Owl Habitat Areas (SOHAs). Harvest activities will not occur within 1,000 feet of any giant sequoia grove.

Any threatened or endangered plants or animals located within the project areas will be protected. The nesting and roosting areas for the California Condor (*Gymnogyps Californianus*) will be excluded from cutting. Four "sensitive" species, spotted owl (*Strix occidentalis occidentalis*), northern goshawk (*Accipiter gentilis*), fisher (*Martes pennanti*) and marten (*Martes americana*) have been found within the project area in the past. Any threatened or endangered wildlife species that is identified during salvage preparation or operations will be protected using current contract provisions. Reports for sensitive species and cultural resources will be completed prior to approval of the environmental document. All sensitive plants or cultural resources will be protected using current contract provisions. Sequoia National Forest Riparian Standards and Guidelines will be applied in the areas that will be harvested.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during the 1993 field season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Dated: February 4, 1993.

Philip H. Bayles,

Acting Regional Forester.

[FR Doc. 93–3212 Filed 2–10–93; 8:45 am]

BILLING CODE 3410–11–M

West Lake Timber Sale; Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, temporary road construction and motorized access restrictions on roads and trails west of Hebgen Lake, located in the Henry's Lake Mountains, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, Montana. The proposed action involves revising the Forest Plan Travel Map to reflect resultant changes made to the area's transportation system. The purpose of the proposed action is to increase vegetable age class diversity, improve timber productivity, contribute to providing a continuous supply of wood products, provide elk habitat security and prevent road surface erosion and stream sedimentation.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including timber and road management, within the area. The proposed actions of timber harvest, reforestation, road construction, motorized access road and trail restrictions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATES: Written comments and suggestions should be received within 45 days following publication of this notice.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Gary L. Benes, District Ranger, Hebgen Lake Ranger District, Gallatin National Forest, Box 520, West Yellowstone, Montana, 59758.

FOR FURTHER INFORMATION CONTACT: Alan Vandiver, EIS Team Leader, Hebgen Lake Ranger District, Gallatin National Forest, Phone (406) 646–7369.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 2000 acres of forested land which has been designated as suitable for timber management by the Gallatin Forest Plan. The timber harvest operations and general administration of National Forest lands will require 0.2 miles of temporary road construction. Motorized access restrictions will involve 34 miles of roads and 6 miles of trails to wheeled vehicles.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The purpose of timber harvest and reforestation in the West Hebgen area is to: (1) Increase vegetative age class diversity; (2) improve timber productivity by replacing slow-growing mature and overmature stands with younger, more vigorously growing trees; (3) contribute to the Gallatin National Forest Plan objective of providing a continuous supply of timber. The purpose of temporary road construction is to access stands of timber to be harvested.

The purpose of restricting motorized access is to: (1) provide for elk habitat security; (2) prevent road surface erosion and stream sedimentation.

The project area consists of approximately 2000 acres of National Forest land located in T11S, R3E, Sec 36; T12S, R3E, Sec 1, 12, 13, 24, 25 and 36; T13S, R3E, Sec 1; T125, R4E, Sec 6, 18, 29, 30, 31 and 32; and T13S, R4E, Sec 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20 and 21.

The decision to make is what, if anything, should be done in the West Hebgen Project Area to: (a) Increase vegetative age class diversity and timber productivity (b) contribute to a continuous supply of wood products (c) increase elk habitat security and (d) decrease road surface erosion and stream sedimentation.

The areas of proposed timber harvest and reforestation would occur within Management Areas 13 and 5. Timber harvest would occur only on suitable timber land. Motorized access restrictions would occur in Management Areas 5, 7, 13 and 15. Below is a brief description of the applicable management direction.

Management Area 5—These areas are travel corridors that receive heavy recreation use. Timber harvest is appropriate as long as it maintains and improves the wildlife habitat values and does not limit opportunities for public enjoyment and safety.

Management Area 7—These areas are riparian zones or areas where vegetation is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for timber harvest as long as soil, water, vegetation, fish, and dependent wildlife species are protected. These suitable lands must also be adjacent to other management areas suitable for timber management.

Management Area 13—These areas consist of forested, occupied grizzly bear habitat. The productive Forest lands are available for timber harvest provided grizzly bear habitat objectives are met.

Management Area 15—These areas consist of open grasslands or a mosaic of grasslands or steep rocky slopes interspersed with timber which are located in occupied grizzly bear habitat and provide for dispersed recreation and livestock use. These areas are classified as unsuitable for timber production.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur January 1993 to February 1993. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indrect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The following principle issues have been identified so far:

1. Timber harvest, temporary road construction, motorized access restrictions can have an effect on grizzly bear mortality/risk.
2. Timber harvest can effect the quality of habitat where grizzly bears forage and therefore effect the recovery of the bear.
3. Motorized access restrictions will affect access to public land for a number of recreation activities (hunting, site seeing, berry picking etc.).

Other issues commonly associated with timber harvesting and road construction include: effects on cultural resources, water quality, soils, old growth, and scenery in the area. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June of 1993. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the West Hebgen area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The final EIS is scheduled to be completed by February, 1994.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: February 3, 1993.

David P. Garber,

Forest Supervisor.

[FR Doc. 93–3245 Filed 2–10–93; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

February 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: February 12, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 12, 1993, you are directed to amend the directive dated November 6, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
338/638	627,837 dozen.
339/639	759,606 dozen.
342/642	484,250 dozen.
347/348/647/648	1,647,240 dozen of which not more than 1,235,430 dozen shall be in Categories 347/348 and not more than 783,998 dozen shall be in Categories 647/648.
351/651	793,083 dozen.
448	39,631 dozen.
633	92,871 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–3214 Filed 2–10–93; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

February 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the twelve-month period beginning on October 30, 1992 and extending through October 29, 1992 at a level of 57,171 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the Lao People's Democratic Republic, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54057, published on November 16, 1992.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 16, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on October 30, 1992 and extending through October 29, 1993, in excess of 57,171 dozen [1].

Textile products in Categories 340/640 which have been exported to the United States prior to October 30, 1992 shall not be subject to the limit established in this directive.

For the import period October 30, 1992 through November 23, 1992, you are directed to charge the following amounts to the limit established in this directive:

Category	Amount to be charged
340	2,350 dozen.
640	—0—.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after October 29, 1992.

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–3215 Filed 2–10–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173

Type of Request: Expedited Submission—Approval Date Requested: 30 days after publication in the **Federal Register**

Average Burden Hours/Minutes Per Response: .333 hours

Response Per Respondent: 1

Number of Respondents: 750,000

Annual Burden Hours: 249,750

Annual Responses: 750,000

Needs and Uses: Per sections 504, 505, 508, 510, and 520a, title 10 U.S.C.; sections 351 and 632, title 14 U.S.C.; and section 451, title 50 U.S.C. appendix, applicants must meet minimum standards for enlistment into the Armed Forces. The information collection, which is used by the Military Services and the Coast Guard, gathers the necessary data for determining eligibility in the Armed Forces and for establishing personnel records on those enlisted.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Office: Mr. Edward C. Springer

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20305.

DOD Clearance Officer: Mr. William P. Pearce

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: February 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810–01–M

RECORD OF MILITARY PROCESSING - ARMED FORCES OF THE UNITED STATES

(Before completing this form, read Privacy Act Statement, Warning, and Instructions on back of form.)

Form Approved OMB No. 0704-0173 Expires

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0173), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO

A. SERVICE PROCESSING FOR	B. PRIOR SERVICE	(1) DIEUS (YYMMDD)	C. SELECTIVE SERVICE CLASSIFICATION	D. SELECTIVE SERVICE REGISTRATION NO.
	YES NO	(2) DIERC (YYMMDD)		
	NUMBER OF DAYS			

SECTION I - PERSONAL DATA

1. SOCIAL SECURITY NUMBER

2. NAME (Last, First, Middle Name (and Maiden, if any), Jr, Sr, etc.)

3. CURRENT ADDRESS (Street, City, County, State, Country, ZIP Code)

4. HOME OF RECORD ADDRESS (Street, City, County, State, Country, ZIP Code)

5. CITIZENSHIP (X one)
- a. U.S. AT BIRTH (If this box is marked, also X (1) or (2))
  - (1) NATIVE BORN
  - (2) BORN ABROAD OF U.S PARENT(S)
- b. U.S NATURALIZED
- c. U.S. NON-CITIZEN NATIONAL
- d. IMMIGRANT ALIEN (Specify)
- e. NON-IMMIGRANT FOREIGN NATIONAL (Specify)

6. SEX
- a. MALE
- b. FEMALE

8. MARITAL STATUS (Specify)

9. NUMBER OF DEPENDENTS

7. a. RACIAL CATEGORY
- (1) AMERICAN INDIAN/ALASKAN NATIVE
- (2) BLACK/NEGRO/AFRICAN AMERICAN
- (3) ORIENTAL/ASIAN/PACIFIC ISLANDER
- (4) WHITE/CAUCASIAN
- (5) OTHER (Specify)

7. b. ETHNIC CATEGORY
- (1) SPANISH / HISPANIC YES NO
- (2) OTHER (Specify)

10. DATE OF BIRTH (YYMMDD)

11. RELIGIOUS PREFERENCE (Optional)

12. EDUCATION (Yrs / Highest Ed Gr Compl)

13. PROFICIENT IN FOREIGN LANGUAGE (If Yes, specify If No, enter NONE) 1st 2nd

14. VALID DRIVER'S LICENSE (X one) YES NO (If Yes, list State, number, and expiration date)

15. PLACE OF BIRTH (City, State and Country)

SECTION II - EXAMINATION AND ENTRANCE DATA PROCESSING CODES

FOR OFFICE USE ONLY - DO NOT WRITE IN THIS SECTION - GO ON TO PAGE 2, QUESTION 23

16. APTITUDE TEST RESULTS

a. TEST ID	b. TEST SCORES											
	AFQT PERCENTILE	GS	AR	WK	PC	NO	CS	AS	MK	MC	EI	VE

17. DEP ENLISTMENT DATA

a. DATE OF DEP ENLISTMENT (YYMMDD)	b. PROJ ACTIVE DUTY DATE (YYMMDD)	c. ES	d. RECRUITER IDENTIFICATION	e. PROGRAM ENLISTED FOR	f. T-E MOS AFS	g. WAIVER	h. PAY GRADE

18. ACCESSION DATA

a. ENLISTMENT DATE (YYMMDD)	b. ACTIVE DUTY SERVICE DATE (YYMMDD)	c. PAY ENTRY DATE (YYMMDD)	d. TOE	e. WAIVER	f. PAY GRADE	g. DATE OF GRADE (YYMMDD)	h. ES	i. YRS HIGHEST ED GR COMPL

j. RECRUITER IDENTIFICATION	k. PROGRAM ENLISTED FOR	l. T-E MOS AFS	m. PMOS/AFS	n. YOUTH	o. OA	p. TRANSFER TO (UIC)

19. SERVICE REQUIRED CODES

1	2																								
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	
51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140

DD Form 1966/1, Draft

PREVIOUS EDITION IS OBSOLETE

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 USC Sections 504, 505, 508, 510, 520a, and EO 9397

PRINCIPAL PURPOSE(S): DD Form 1966 is the basic form used by all the Military Services and the Coast Guard for obtaining data used in determining eligibility of applicants and for establishing records for those applicants who are accepted.

ROUTINE USE(S): None

DISCLOSURE: Voluntary; however, failure to answer all items on this form, except questions labeled as "Optional," may result in denial of your enlistment application.

WARNING

Information provided by you on this form is FOR OFFICIAL USE ONLY and will be maintained and used in strict compliance with federal laws and regulations. The information provided by you becomes the property of the United States Government, and it may be consulted throughout your military service career, particularly whenever either favorable or adverse administrative or disciplinary actions related to you are involved.

YOU CAN BE PUNISHED BY FINE, IMPRISONMENT OR BOTH IF YOU ARE FOUND GUILTY OF MAKING A KNOWING AND WILLFUL FALSE STATEMENT ON THIS DOCUMENT.

INSTRUCTIONS

(Read carefully BEFORE filling out this form.)

1. Read Privacy Act Statement above before completing form.
2. Type or print LEGIBLY all answers; If the answer is "None" or "Not Applicable," so state. "OPTIONAL" questions may be left blank.
3. Unless otherwise specified, write all dates as 6 digits (with no spaces or marks) in YYMMDD fashion. February 13, 1988 is written 880213.

RECORD OF MILITARY PROCESSING - ARMED FORCES OF THE UNITED STATES

(Before completing this form, read Privacy Act Statement, Warning, and Instructions on back of form.)

Form Approved
OMB No 0704-0173
Expires

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0173), Washington, DC 20503

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A. SERVICE PROCESSING FOR	B. PRIOR SERVICE	(1) DIEUS (YYMMDD)	C. SELECTIVE SERVICE CLASSIFICATION	D. SELECTIVE SERVICE REGISTRATION NO.
	YES NO	(2) DIERC (YYMMDD)		
	NUMBER OF DAYS			

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1. SOCIAL SECURITY NUMBER	2. NAME (Last, First, Middle Name (and Maiden, if any), Jr., Sr., etc.)
3. CURRENT ADDRESS (Street, City, County, State, Country, ZIP Code)	4. HOME OF RECORD ADDRESS (Street, City, County, State, Country, ZIP Code)

5. CITIZENSHIP (X one)	6. SEX	7. a. RACIAL CATEGORY
a. U. S. AT BIRTH (If this box is marked, also X (1) or (2))	a. MALE	(1) AMERICAN INDIAN/ALASKAN NATIVE
(1) NATIVE BORN	b. FEMALE	(2) BLACK/NEGRO/AFRICAN AMERICAN
(2) BORN ABROAD OF U.S. PARENT(S)	8. MARITAL STATUS (Specify)	(3) ORIENTAL/ASIAN/PACIFIC ISLANDER
b. U. S. NATURALIZED		(4) WHITE/CAUCASIAN
c. U. S. NON-CITIZEN NATIONAL		(5) OTHER (Specify)
d. IMMIGRANT ALIEN (Specify)	9. NUMBER OF DEPENDENTS	7. b. ETHNIC CATEGORY
e. NON-IMMIGRANT FOREIGN NATIONAL (Specify)		(1) SPANISH / HISPANIC YES NO
		(2) OTHER (Specify)

10. DATE OF BIRTH (YYMMDD)	11. RELIGIOUS PREFERENCE (Optional)	12. EDUCATION (Yrs / Highest Ed Gr Compl)	13. PROFICIENT IN FOREIGN LANGUAGE (If Yes, specify. If No, enter NONE.)	1st	2nd
			/		

14. VALID DRIVER'S LICENSE (X one) YES NO (If Yes, list State, number, and expiration date)	15. PLACE OF BIRTH (City, State and Country)

SECTION II - EXAMINATION AND ENTRANCE DATA PROCESSING CODES

FOR OFFICE USE ONLY - DO NOT WRITE IN THIS SECTION - GO ON TO PAGE 2, QUESTION 23

16. APTITUDE TEST RESULTS

a. TEST ID	b. TEST SCORES											
	AFQT PERCENTILE		GS	AR	WK	PC	NO	CS	AS	MK	MC	EI	VE

17. DEP ENLISTMENT DATA

a. DATE OF DEP ENLISTMENT (YYMMDD)	b. PROJ ACTIVE DUTY DATE (YYMMDD)	c. ES	d. RECRUITER IDENTIFICATION	e. PROGRAM ENLISTED FOR	f. T-E MOS/AFS	g. WAIVER	h. PAY GRADE

18. ACCESSION DATA

a. ENLISTMENT DATE (YYMMDD)	b. ACTIVE DUTY SERVICE DATE (YYMMDD)	c. PAY ENTRY DATE (YYMMDD)	d. TOE	e. WAIVER	f. PAY GRADE	g. DATE OF GRADE (YYMMDD)	h. ES	i. YRS HIGHEST ED GR COMPL

j. RECRUITER IDENTIFICATION	k. PROGRAM ENLISTED FOR	l. T-E MOS/AFS	m. PMOS/AFS	n. YOUTH	o. OA	p. TRANSFER TO (UIC)

19. SERVICE REQUIRED CODES

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110
111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140

19a. DEP/ ACCESSION RECORD *(To be completed by MEPS personnel)*

WRK AND STATUS CODE	DATE OF ACTION	O/C	WRK AND STATUS CODE	DATE OF ACTION	O/C

DD Form 1966/1 (ADP), Draft PREVIOUS EDITION IS OBSOLETE Page 1 ADP)

A F FC F-, USE (DA, Y

20. NAME (Last, First, Middle Initial)	21. SOCIAL SECURITY NUMBER

SECTION III - OTHER PERSONAL DATA

22. EDUCATION

a. List all high schools and colleges attended. *(List dates in YYMM format.)*

(1) FROM	(2) TO	(3) NAME OF SCHOOL	(4) LOCATION	(5) GRADUATE YES	(5) GRADUATE NO

	YES	NO
b. Have you ever been enrolled in ROTC, Junior ROTC, Sea Cadet Program or Civil Air Patrol?		
23. MARITAL/DEPENDENCY STATUS AND FAMILY DATA *(If "Yes," explain in Section VI, "Remarks.")*		
a. Is anyone dependent upon you for support?		
b. Is there any court order or judgment in effect that directs you to provide alimony or support for children?		
c. Do you have an immediate relative (father, mother, brother, or sister) who: (1) is now a prisoner of war or is missing in action (MIA); or (2) died or or became 100% permanently disabled while serving in the Armed Services?		
d. Are you the only living child in your immediate family?		
24. PREVIOUS MILITARY SERVICE OR EMPLOYMENT WITH THE US GOVERNMENT *(If "Yes," explain in Section VI, "Remarks.")*		
a. Are you now or have you ever been in any regular or reserve branch of the Armed Forces or in the Army National Guard or Air National Guard?		
b. Have you ever been rejected for enlistment, reenlistment, or induction by any branch of the Armed Forces of the United States?		
c. Are you now or have you ever been a deserter from any branch of the Armed Forces of the United States?		
d. Have you ever been employed by the United States Government?		
e. Are you now drawing, or do you have an application pending, or approval for: retired pay, disability allowance, severance pay, or a pension from any agency of the government of the United States?		
25. ABILITY TO PERFORM MILITARY DUTIES *(If "Yes," explain in Section VI, "Remarks.")*		
a. Are you now or have you ever been a conscientious objector? *(That is, do you have, or have you ever had, a firm, fixed, and sincere objection to participation in war in any form or to the bearing of arms because of religious belief or training?)*		
b. Have you ever been discharged by any branch of the Armed Forces of the United States for reasons pertaining to being a conscientious objector?		
c. Is there anything which would preclude you from performing military duties or participating in military activities whenever necessary *(i.e., do you have any personal restrictions or religious practices which would restrict your availability?)*		
26. SEXUAL ORIENTATION		
a. Are you a homosexua *(a) person(s) of one's s* DELETED *havior directed at both sexes.)*		
~~b. Do you intend to engage in homosexual acts *(sexual relations with another person of the same sex)*?~~		
27. DRUG USE AND ABUSE *(If "Yes," explain in Section VI, "Remarks.")*		
Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), or anabolic steroid, except as prescribed by a licensed physician?		

SECTION IV - CERTIFICATION

28. CERTIFICATION OF APPLICANT *(Your signature in this block must be witnessed by your recruiter.)*

a. I certify that the information given by me in this document is true, complete, and correct to the best of my knowledge and belief. I understand that I am being accepted for enlistment based on the information provided by me in this document: that if any of the information is knowingly false or incorrect, I could be tried in a civilian or military court and could receive a less than honorable discharge which could affect my future employment opportunities.

b. TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	c. SIGNATURE	d. DATE SIGNED *(YYMMDD)*

29. DATA VERIFICATION BY RECRUITER *(Enter description of the actual documents used to verify the following items.)*

a. NAME *(X one)*	b. AGE *(X one)*	c. CITIZENSHIP *(X one)*	
(1) BIRTH CERTIFICATE	(1) BIRTH CERTIFICATE	(1) BIRTH CERTIFICATE	
(2) OTHER *(Explain)*	(2) OTHER *(Explain)*	(2) OTHER *(Explain)*	
d. SOCIAL SECURITY NUMBER (SSN) *(X one)*	e. EDUCATION *(X one)*	f. OTHER DOCUMENTS USED	
(1) SSN CARD	(1) DIPLOMA		
(2) OTHER *(Explain)*	(2) OTHER *(Explain)*		

DD Form 1966/2, Draft

Page

30. NAME (Last, First, Middle Initial)	31. SOCIAL SECURITY NUMBER

32. CERTIFICATION OF WITNESS

a. I certify that I have witnessed the applicant's signature above and that I have verified the data in the documents required as prescribed by my directives. I further certify that I have not made any promises or guarantees other than those listed and signed by me. I understand my liability to trial by courts-martial under the Uniform Code of Military Justice should I effect or cause to be effected the enlistment of anyone known by me to be ineligible for enlistment.

b. TYPED OR PRINTED NAME (Last, First, Middle Initial)	c. PAY GRADE	d. RECRUITER I. D.	e. SIGNATURE	f. DATE SIGNED (YYMMDD)

33. SPECIFIC OPTION / PROGRAM ENLISTED FOR, MILITARY SKILL, OR ASSIGNMENT TO A GEOGRAPHICAL AREA GUARANTEES

a. SPECIFIC OPTION / PROGRAM ENLISTED FOR (Completed by Guidance Counselor, MEPS Liaison NCO, etc., as specified by sponsoring service - use clear text English.)

b. I fully understand that I will not be guaranteed any specific military skill or assignment to a geographic area except as shown in Item 30.a. above and annexes attached to my Enlistment/ Reenlistment Document (DD Form 4).	c. APPLICANT'S INITIALS

34. CERTIFICATION OF RECRUITER OR ACCEPTOR

a. I certify that I have reviewed all information contained in this document and, to the best of my judgment and belief, the applicant fulfills all legal policy requirements for enlistment. I accept him/her for enlistment on behalf of the United States (Enter Branch of Service) _____ and certify that I have not made any promises or guarantees other than those listed in Item 30 above. I further certify that service regulations governing such enlistments have been strictly complied with and any waivers required to effect applicant's enlistment have been secured and are attached to this document.

b. TYPED OR PRINTED NAME (Last, First, Middle Initial)	c. PAY GRADE	d. RECRUITER I.D. OR ORGANIZATION	e. SIGNATURE	f. DATE SIGNED (YYMMDD)

SECTION V - RECERTIFICATION

35. RECERTIFICATION BY APPLICANT AND CORRECTION OF DATA AT THE TIME OF ACTIVE DUTY ENTRY

a. I have reviewed all information contained in this document this date. That information is still correct and true to the best of my knowledge and belief. If changes were required, the original entry has been marked "See Item 31" and the correct information is provided below.

b. ITEM NUMBER	c. CHANGE REQUIRED

d. APPLICANT		e. WITNESS		
(1) SIGNATURE	(2) DATE SIGNED (YYMMDD)	(1) TYPED OR PRINTED NAME	(2) RANK / GRADE	(3) SIGNATURE

SECTION VI - REMARKS (Specify item(s) being continued by item number. Continue on separate pages if necessary.)

DD FORM 1966/4 ATTACHED (X one)	YES	
	NO	

36. NAME *(Last, First, Middle Initial)*	37. SOCIAL SECURITY NUMBER

USE THIS DD FORM 1966 PAGE ONLY IF EITHER SECTION APPLIES TO THE APPLICANT'S RECORD OF MILITARY PROCESSING.

SECTION VII - PARENTAL / GUARDIAN CONSENT FOR ENLISTMENT

38. PARENT / GUARDIAN STATEMENT(S) *(Line out portions not applicable)*

a. I/we certify that *(Enter name of applicant)* _____ has no other legal guardian other than me / us and I / we consent to his / her enlistment in the United States *(Enter Branch of Service)* _____ I/we certify that no promises of any kind have been made to me/us concerning assignment to duty, training, or promotion during his/her enlistment as an inducement to me/us to sign this consent. I/we hereby authorize the Armed Forces representatives concerned to perform medical examinations, other examinations required, and to conduct records checks to determine his/her eligibility. I/we relinquish all claim to his/her service and to any wage or compensation for such service.

b. FOR ENLISTMENT IN A RESERVE COMPONENT.
I/we understand that, as a member of a reserve component, he/she must serve minimum periods of active duty for training unless excused by competent authority. In the event he/she fails to fulfill the obligations of his/her reserve enlistment, he/she may be recalled to active duty as prescribed by law. I/we further understand that while he/she is in the ready reserve, he/she may be ordered to extended active duty in time of war or national emergency declared by the Congress or the President or when otherwise authorized by law.

c. PARENT

(1) TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	(2) SIGNATURE	(3) DATE SIGNED *(YYMMDD)*

d. WITNESS

(1) TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	(2) SIGNATURE	(3) DATE SIGNED *(YYMMDD)*

e. PARENT

(1) TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	(2) SIGNATURE	(3) DATE SIGNED *(YYMMDD)*

f. WITNESS

(1) TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	(2) SIGNATURE	(3) DATE SIGNED *(YYMMDD)*

39. VERIFICATION OF SINGLE SIGNATURE CONSENT

SECTION VIII - STATEMENT OF NAME FOR OFFICIAL MILITARY RECORDS

40. NAME CHANGE. If the preferred enlistment name (name given in Item 2) is not the same as on your birth certificate, and it has not been changed by legal procedure prescribed by state law, and it is the same as on your social security number card, complete the following:

a. NAME AS SHOWN ON BIRTH CERTIFICATE	b. NAME AS SHOWN ON SOCIAL SECURITY NUMBER CARD

c. I hereby state that I have not changed my name through any court or other legal procedure; that I prefer to use the name of _____ by which I am known in the community as a matter of convenience and with no criminal intent. I further state that I am the same person as the person whose name is shown in Item 2.

d. APPLICANT		e. WITNESS	
(1) SIGNATURE	(2) DATE SIGNED *(YYMMDD)*	(1) TYPED OR PRINTED NAME	(2) PAY GRADE
		(3) SIGNATURE	

DD Form 1966/4, Draft

Page 1

[FR Doc. 93-3239 Filed 2-10-93; 8:45 am]

BILLING CODE 3810-01-C

Department of the Army

Environmental Assessment for Realignment Actions at Rock Island Arsenal, IL

AGENCY: Department of the Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Proposed Action implements the Defense Base Closure Commission's decision to realign the Headquarters, U.S. Army Depot Systems Command (HQ, DESCOM) and the Systems Integration and Management Activity (SIMA–East) from Letterkenny Army Depot (LEAD), Chambersburg, Pennsylvania, to Rock Island Arsenal (RIA), Illinois. In addition, elements of the U.S. Army Armament, Munitions, and Chemical Command (AMCCOM), RIA will transfer to Redstone Arsenal, Huntsville, Alabama. The relocation of workloads to and from Rock Island Arsenal is expected to result in a decrease of 1,610 civilian and 30 military positions on the post.

The alternatives considered in the Environmental Assessment (EA) include the following: The Preferred Alternative, which would accommodate the SIMA–East requirements in Buildings 68 and 110; the Building Renovation Alternative, which would call for the renovation of Building 250 to accommodate the SIMA–East needs; the New Construction Alternative, which would accommodate the SIMA–East requirements in a newly constructed building at the northeast corner of Rodman Avenue and East Avenue; and the No Action Alternative, which provides the baseline at Rock Island Arsenal against which other alternatives can be compared.

There are no alternatives to timing and phasing for the following reasons:

- The preferred schedule minimizes overlap of space requirements for outgoing and incoming positions/personnel.
- Ample space is available to accommodate up to and including complete overlap of space requirements for outgoing and incoming personnel.

No significant environmental effects were identified as a result of the realignment of Rock Island Arsenal, Illinois. Analysis of direct, indirect and cumulative impacts indicates that the proposed action will not significantly affect the quality of the environment. The primary effects are economic in nature. Although adverse in nature, these estimated impacts are considered not to be significant, and are within the range of historical variation for these parameters.

The decreased workforce will result in a subsequent decrease in the amount of resources consumed and wastestreams produced by the personnel at RIA. These resources include potable water, wastewater, and electricity and these decreases are considered insignificant.

Biological, physical, and cultural resources such as native vegetation, wildlife including threatened and endangered species, groundwater, floodplains, historic structures and archeological sites would not be affected by this action.

Based on the environmental impact analyses found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because there would be no significant environmental impact resulting from implementation of the proposed action, an Environmental Impact Statement (EIS) is not required and will not be prepared.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to the U.S. Army Corps of Engineers, Louisville District, ATTN: Mr. Jim Baker, P.O. Box 59, Louisville, KY 40201–0059.

FOR FURTHER INFORMATION CONTACT: Questions regarding this FNSI may be directed to Mr. Jim Baker by calling (502) 582–5774.

Dated: February 2, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health), OASA (IL&E).

[FR Doc. 93–3284 Filed 2–10–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 2–3 March 1993.

Time of Meeting: 0800–1700, each day.

Place: Pentagon.

Agenda: The Army Science Board's 1993 Summer Study Panel on "Innovative Acquisition Strategies for the 90's" will meet to receive briefings on current acquisition procedures and policies; and, features of current acquisition programs and problems. This meeting will be closed to the public in accordance with section 552b. (c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and non-classified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–3246 Filed 2–10–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8–9 March 1993.

Time of Meeting: 0800–1700, each day.

Place: Pentagon.

Agenda: The Army Science Board's 1993 Summer Study Panel on "Missile Programs" will meet to receive briefings on missile defense threats, missile defense Research and Development programs and current Missile defense programs. This meeting will be closed to the public in accordance with Section 552b. (c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–3247 Filed 2–10–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0060]

Clearance Request for Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0060).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Accident Prevention Plans and Recordkeeping.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause "Accident Prevention" (48 CFR 52.236–13) requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by OSHA (OMB Control No. 1220–0029). The FAR requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the contractor must submit a written proposal for implementation of the clause. The Accident Prevention Plan, for projects that are hazardous or of long duration, is analyzed by the Contracting Officer along with the agency safety representatives to determine if the proposed plan will meet the requirement of the safety regulations and applicable statutes. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The Accident Prevention Plan is placed in the contract file for reference.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,106; responses per respondent, 2; total annual responses, 4,212; preparation hours per response, 2; and total response burden hours, 8,424.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 8,424; hours per recordkeeper, .25; and total recordkeeping burden hours, 2,106.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: February 2, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–3190 Filed 2–10–93; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0062]

Clearance Request for Material and Workmanship

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0062).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Material and Workmanship.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (e.g., pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 3,160; responses per respondent, 1.5; total annual responses, 4,740; preparation hours per response, .25; and total response burden hours, 1,185.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

Dated: February 3, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–3191 Filed 2–10–93; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0064]

Clearance Request for Organization and Direction of Work

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0064).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Organization and Direction of Work.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government awards a cost-reimbursement construction contract, the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection

with the work under the contract, and their respective duties. The chart is used in administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 50; responses per respondent, 1; total annual responses, 50; preparation hours per response, 75; and total response burden hours, 38.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

Dated: February 3, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–3192 Filed 2–10–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Office of the Secretary

Office of Administrative Law Judges: Designation of Jurisdiction; Arizona Department of Library, Archives and Public Records

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Office of Administrative Law Judges.

SUMMARY: The Secretary designates the Office of Administrative Law Judges (OALJ) as the forum to hear the appeal of the Arizona Department of Library, Archives and Public Records (the Library) from a determination issued by the Assistant Secretary for Educational Research and Improvement (Assistant Secretary). In a letter dated September 21, 1992, the Assistant Secretary determined that the Library was not in compliance with the statutory requirement, under section 7(a)(2)(A) of the Library Services and Construction Act (LSCA; 20 U.S.C. 351e(a)(2)(A)), to maintain fiscal effort and that the Library had not demonstrated circumstances which would justify a waiver by the Assistant Secretary of that maintenance-of-effort (MOE) requirement.

Compliance with the MOE requirement was necessary for the Library to receive its Title I LSCA grant for Fiscal Year 1992. For that reason, the Assistant Secretary, in the September 21, 1992 letter also gave notice that, if the Library did not satisfy the MOE requirements under Title I of the LSCA, the Secretary would disapprove the Library's State plan for that program for Fiscal Year 1992. The letter advised the Library of its opportunity for an administrative hearing before the Secretary makes a decision about the State plan (See 34 CFR 76.202). On October 16, 1992, the Library appealed the Assistant Secretary's determination and requested an administrative hearing on the matter.

FOR FURTHER INFORMATION CONTACT: Honorable John F. Cook, Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–3727, Telephone (202) 732–1830. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 451(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234(a), and final regulations codified at 34 CFR Part 81, requires the Secretary to establish the OALJ and gives the OALJ jurisdiction to conduct recovery of funds hearings, withholding hearings, cease and desist hearings, and, under section 451(a)(4), "other proceedings designated by the Secretary." The Library's appeal of the determination described above is a proceeding that falls within the meaning of section 451(a)(4).

In 1990, Congress amended provisions of the LSCA that affected the basis used by the Library for calculating MOE. The Secretary granted the Library a waiver of the MOE requirement for Title I of the LSCA for Fiscal Year 1991 based, in general, on a finding that the Library had not been afforded adequate time to comply with the recently amended Federal law. As noted in the letter dated September 21, 1992, the 1991 waiver had no effect for subsequent years.

The Secretary has determined that designation of this appeal to the OALJ pursuant to section 451(a)(4) of GEPA would facilitate an orderly administrative review of the Assistant Secretary's determination according to procedures established by section 451 of GEPA and 34 CFR Part 81, Subpart A. This designation will afford the Library the same rights that are available to other grantees seeking review of similar types of determinations.

Therefore, under the authority of section 451(a)(4) of GEPA (20 U.S.C. 1234(a)(4)) and 34 CFR 81.3(b) of the regulations, the Secretary designates the OALJ as the forum to hear the Library's appeal of the determination issued by the Assistant Secretary on September 21, 1992. The OALJ is to review this appeal in accordance with the final regulations codified at 34 CFR part 81, subpart A.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: February 4, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–3210 Filed 2–10–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Notice of Financial Assistance Program Solicitation

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of Financial Assistance Program Solicitation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.9, it intends to issue a solicitation entitled "Research, Development and Demonstration for Coke Oven Emission Control."

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: John N. Augustine, Contract Specialist, (412) 892–4524.

SUPPLEMENTARY INFORMATION:

Solicitation No.
DE–PS22–92PC92638
Title of Research Effort:
"Research, Development and Demonstration for Coke Oven Emission Control"
Term of Assistance Effort:
Approximately one to four years (12 to 48 months)

The purpose of this assistance action is to solicit applications for cost-shared Cooperative Agreements that would develop and demonstrate technologies to reduce hazardous coke oven emissions. Proposed projects should be designed to enable the domestic coke industry to meet coke oven emission regulations that will be promulgated by

the EPA in accordance with the 1990 Clean Air Act Amendments. These regulations include proposed 1998 and 2010 LAER standards, proposed MACT standards for pushing, quenching, and stack emissions, and standards aimed at further reduction of health risks.

This Program Solicitation calls for applications in the following four areas: (1) Coking Emission Control, (2) Product Recovery Emission Control, (3) Combustion Stack Gas Treatment, and (4) Residual Risk Reduction. Projects in Coking Emission Control should provide technologies that would allow the industry to meet the 1998 and 2010 LAER standards by reducing charging emissions and leaks from oven doors, lids and offtakes. These projects may include charging emissions control, improved door designs or door sealing techniques, improved supplemental sealants or luting materials, improved work practices, pressure controls for individual ovens, leak detection and measurement systems, and other innovations. Projects in Product Recovery Emission Control should demonstrate work practices and technologies to reduce or eliminate pushing and quenching emissions in either recovery or non-recovery ovens. Such technologies may include enclosed systems to receive and cool the coke product, instruments to measure the maturity of coke inside the oven, instruments and methods to measure product recovery emissions, and others. Projects in Combustion Stack Gas Treatment should reduce the emissions that result from the combustion of gases produced in either recovery or non-recovery coke ovens. These projects may include characterization and monitoring of hazardous air pollutants in combustion stack emissions, and development of technologies and work practices for the reduction or treatment of combustion stack gases. Projects in Residual Risk Reduction should deal with the reduction of any health risks still remaining after the established MACT and LAER standards have been met. This includes reduction of fugitive and point source emissions anywhere in the coke producing facility. Projects in this area may focus on prevention of oven crack formation, including novel oven construction methods; reduction or elimination of leaks in the recovery-gas processing plant; more rigorous control of coking, product recovery, and stack gas emissions; accurate detection and measurement of various coke oven emissions; evaluation of the use of flares to control bypass or bleeder-stack emissions; and evaluation of alternative coke oven operations and battery designs.

Each proposed project must be cost-shared, with Federal funding not to exceed 50% of the cost of any project, as directed by the 1990 Clean Air Act Amendments. This Program Solicitation will be available on or about March 1, 1993. The closing date for submission of applications is one year after the solicitation becomes available, and applications may be submitted any time within this one year period. Individual applications received within this one year period shall be submitted for peer review and evaluated upon receipt. Awards will be made periodically on selected applications that have received a favorable evaluation.

This action was previously announced on August 10, 1992 (Volume 57, Number 154).

Dated: January 20, 1993.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–3296 Filed 2–10–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Intent To Sign Two Proposed Billing Credits Contracts

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent.

SUMMARY: BPA File No.: BCR–10. BPA announces its intention to sign two Billing Credit Contracts for two generation projects.

BPA has previously signed other billing credit generation contracts, in addition to the contracts described in this Notice. These prior contract signings were addressed in previous-released **Federal Register** Notices. (57 FR 33501; July 29, 1992 and 57 FR 48792; October 28, 1992)

The Cottrell Hydroelectric project is the reconstruction of an abandoned project located on McCloskey Creek in Western Skamania County, Washington. It includes a 1.8 square mile drainage area with 30 acre-feet of storage; a new 24-foot high, 218-foot long, earth filled diversion structure on McCloskey Creek; a 9,900-foot, 28-inch diameter pipeline with 1,350 feet of hydraulic head; a 3-jet Pelton turbine and 4,400-kilowatt sychronus generator located in a restored powerhouse near the Washougal River; a 5–MVA step-up transformer; and an upgrade of the 12.5-kilovolt distribution system from the powerhouse to the Bonneville Cape Horn Substation. The project expects to begin producing power in September 1994. The Cottrell Hydroelectric project is licensed to Trueman Price, Inc., under Federal Energy Regulatory Commission number 7174.

The South Fork Tolt Hydroelectric project, located in King County, Washington, includes mutual use of the existing South Fork Tolt earth dam, storage reservoir and regulating basin, all part of the City of Seattle's water supply facilities. The project will utilize approximately 1,000 feet of hydraulic head to generate hydroelectric energy. The project facilities will consist of a new 66 inch diameter 5 mile long buried steel pipeline and a powerhouse housing a 15 megawatt (MW) Pelton-type turbine and generator. A diversion outlet structure will channel the water from the powerhouse to an existing regulating basin. The South Fork Tolt Hydroelectric project is licensed to the City of Seattle, Washington, under Federal Energy Regulatory Commission number 2959.

BPA, pursuant to its Billing Credits Policy, as amended August 30, 1984 (49 FR 34395), and its Billing Credit Solicitation July 1990, has negotiated with one public utility district and one municipal body for two generation projects.

The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes three Appendices: Appendix A—Billing Credit Solicitation, appendix B—Issue Resolution Log. Addendum One of the Draft Administrative Record—Customer System Efficiency Improvements (CSEI) Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits are determined. These were previously released for public review (57 FR 1161; January 10, 1992 and 57 FR 9250; March 17, 1992).

Addendum Two of the Administrative Record-Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined for these projects. This addendum was previously released for public review (57 FR 9250).

Responsible Official

Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and Addenda.

DATES: BPA will receive comments on the proposed Billing Credit contracts for

30 days. Payment or credits will not be made or granted until 90 days after the date of a **Federal Register** Notice announcing that the contracts have been signed.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific generation billing credit contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll-free 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, Federal Building, Room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, Room 112, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington, 98807, 509–662–4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 508–522–6226.

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, Room 450, Boise, Idaho 83702, 208–334–9137.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c (b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839a(1) and (d). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. Subsequent to receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average MW of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts. Conservation and CSEI projects are not discussed, in detail, in this Notice.

III. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogeneration projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria. BPA has released previous **Federal Register** Notices announcing the signing of generation projects.

BPA intends to sign two contracts with these public utilities for the following generation projects:

1. Skamania County Public Utility District—Cottrell Hydroelectric project—a hydroelectric project.
2. Seattle City Light—South Fork Tolt Hydroelectric project—a hydroelectric project.

These projects meet the qualifications for billing credits, and BPA has completed its obligations under NEPA. The customers will comply with all applicable environmental requirements in the construction of the project and during the operation phase.

IV. Methodology for Determining Generation Billing Credits

The payment for billing credits (BC) for these customers will be calculated and paid monthly as follows:

As Skamania County Public Utility District is a Metered Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Estimated Firm Energy of the Billing Credit Resource, less the amount of Priority Firm Rate dollars the customer avoids paying as a result of the Billing Credit Resource. The Actual BC is determined annually and compared to the Estimated BC payments for the previous year and any over or under payment is corrected.

As Seattle City Light is a Computed Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Assured Energy Capability of the BC Resource, less the amount of Priority Firm Rate dollars the customer avoids paying as a result of the BC Resource. There is no true-up; this is because the customer is required to maintain the Assured Energy

Capability for the BC Resource, as it must do for all its firm resources under the Power Sales Contract.

V. Materials Available

Copies of the Billing Credits Policy, the Administrative Record, its Appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement office. Refer to the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Stephen Wright,

Assistant Administrator.

[FR Doc. 93–3090 Filed 2–10–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP89–2165–003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 4, 1993.

Take notice that on January 29, 1993, Algonquin Gas Transmission Co., ("Algonquin") tendered for filing the followed revised tariff sheets to its FERC Gas Tariff:

Third Revised Volume No. 1

First Revised Sheet No. 371
1 Rev Original Sheet No. 372
First Revised Sheet No. 374
First Revised Sheet No. 861
First Revised Sheet Nos. 863–866

Algonquin requests a March 1, 1993 effective date. Algonquin states that the revised tariff sheets are submitted to comply with ordering paragraph (B) of the Commission's Order Granting Motion for Reconsideration issued on January 19, 1993, in Docket No. CP89–2165–002.

Algonquin states that copies of the filing have been sent to Algonquin's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–3285 Filed 2–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–16–000]

Notice of Filing

JMC Ocean State Corp.

February 4, 1993.

Take notice that on February 1, 1993, JMC Ocean State Corporation (JMC) filed an application under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, seeking a determination that JMC is an exempt wholesale generator. JMC states that it is a partner in Ocean State Power (OSP) and Ocean State Power II (OSP II). JMC states that OSP and OSP II are two separate Rhode Island general partnerships each of which owns and operates a combined-cycle, wholesale electric generating facility in Burrillville, Rhode Island.

Any person desiring to be heard or objecting to the application for exempt wholesale generator status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 1, 1993, and must be served on the applicant. Protests will be considered by the Commission in determing 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–3286 Filed 2–10–93; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

January 26, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Request to Defer Filing for License Articles 401, 403, and 406

b. *Project No:* 7267–011

c. *Date Filed:* November 24, 1992

d. *Applicant:* Joseph M. Keating

e. *Name of Project:* Tungstar Project

f. *Location:* Morgan Creek/Upper Pine Creek in Inyo County, California

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Joseph M. Keating 847 Pacific Street Placerville, CA 95667

i. *FERC Contact:* John Costello, (202) 219–2914

j. *Comment Date:* March 10, 1993

k. *Description of Project:* The licensee filed a request for interim waiver of license articles 401 (recreation plan), 403 (fish and wildlife mitigation plan), and 406 (construct a meandering channel). The licensee is requesting that the filing requirements for these articles be deferred until after commencement of Phase I construction, but before Phase II construction. This will enable commencement of project construction on two, five-acre parcels known as Mill Sites 2 and 3. The licensee states that the Phase I activities will not affect lands of the United States within the Inyo National Forest.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments failed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426. A motion to intervene must also be served upon the representative of Joseph M. Keating.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. Agencies may obtain a copy of the application directly

from the applicant. If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–3203 Filed 2–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–15–000]

NW Energy (Williams Lake) Limited Partnership; Notice of Filing

February 4, 1993.

On January 29, 1993, NW Energy (Williams Lake) Limited Partnership (NW Energy LP), a limited partnership organized under the laws of British Columbia, Canada, submitted a request under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, seeking a determination that it is an exempt wholesale generator. NW Energy LP states that it is the owner of certain electric generating facilities currently under construction in Williams Lake, British Columbia, Canada (the Facility). NW Energy LP states that the Facility, when completed, will be a 60 MW (net output), wood waste fired electric generating facility in Williams Lake, British Columbia, Canada. NW Energy LP states that it will sell electricity generated at the Facility exclusively at wholesale.

Any person desiring to be heard or objecting to the application for exempt wholesale generator status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., 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 or protests must be filed on or before February 26, 1993, and must be served on the applicant. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–3287 Filed 2–10–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Fusion Energy Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Fusion Energy Advisory Committee (FEAC).

Date and Time: Thursday, March 4, 1993—8:30 a.m.–5:30 p.m. Friday, March 5, 1993—8:30 a.m.–4 p.m.

Place: U.S. Department of Energy, Germantown Auditorium, 19901 Germantown Road, Germantown, Maryland 20874.

Contact: Deborah Lonsdale, U.S. Department of Energy, GTN, Office of Fusion Energy (ER–50), Office of Energy Research, Washington, DC 20585, Telephone: 301–903–4941.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise in the planning, management, and implementation of its Fusion Energy Program.

Tentative Agenda Thursday, March 4, 1993

Status of the International Thermonuclear Experimental Reactor (ITER) Program
Status of Deuterium-Tritium (D–T) Program
Status of the Tokamak Physics Experiment Project
Report on Panel VI on Neutron Interactive Materials Program
Public Comment (10-Minute Rule)

Friday, March 5, 1993

Presentation by Electric Power Research Institute
Continuation of Report on Panel VI on Neutron Interactive Materials Program
FEAC Deliberations
Public Comment (10-minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Deborah Lonsdale at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information 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 February 8, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–3299 Filed 2–10–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–153–NG]

Enron Gas Marketing, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing, Inc. long-term authorization to import near Grand Island, New York up to 32,000 Mcf of natural gas per day and up to 10.6 Bcf per year from Canada for a period of ten years beginning on November 1, 1994, through October 31, 2004. This gas will be consumed at a 1,000-megawatt cogeneration facility to be built by Sithe/Independence Power Partners, L.P. in Scriba, New York.

This order is available for inspection and copying in the Office of Fuels Programs, Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 29, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–3297Filed 2–10–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–158–NG]

Indeck-Yerkes Limited Partnership; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice

that it has issued an order granting Indeck-Yerkes Limited Partnership (Indeck-Yerkes L.P.) authorization to import through existing pipeline facilities near Niagara Falls, New York, up to 1,200 Mcf per day of Canadian natural gas over a period of 4 years, beginning on January 22, 1993, and continuing through October 31, 1996. The gas will be purchased from Northstar Energy Corporation and used to fuel Indeck-Yerkes L.P.'s existing 53-megawatt cogeneration facility in the Town of Tonawanda, New York.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 4, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–3298 Filed 2–10–93; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ELECTION COMMISSION

[Notice 1993–6]

Filing Dates for the Mississippi Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Mississippi has scheduled a special election in the Second Congressional District to fill the U.S. House seat vacated by Representative Mike Espy. There are two possible elections, but only one may be necessary.

- Special General Election: March 30, 1993. If no candidate wins a majority of votes in the Special General Election, the two top vote-getters, regardless of party affiliation, will participate in a Special Runoff.
- Special Runoff Election: April 13, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Mississippi Special General Election and all other political committees not filing monthly which support candidates in this election shall file a 12-day Pre-General Report by March 18, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 10, 1993. If there is a majority winner, committees must also file a Post-General Report by April 29, 1993, with coverage dates from March 11, 1993, through April 19, 1993, and a Mid-Year Report by July 31, 1993, with coverage dates from April 20, 1993, through June 30, 1993.

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held on April 13, 1993. The following information only applies if a Special Runoff Election is held.

All principal campaign committees of candidates in the Special General Election only and all other political committees not filing monthly which support candidates in the Special General Election only shall file a 12-day Pre-General Report by March 18, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 10, 1993, and a Mid-Year Report by July 31, 1993, with coverage dates from March 11, 1993, through June 30, 1993.

All principal campaign committees of candidates who participate in the Special Runoff Election and all other political committees not filing monthly which support candidates in the Special Runoff and in the preceding Special General Election shall file a Pre-General Report by March 18, 1993, with coverage dates from the close of the last report filed, or the committee's first activity, whichever is later, through March 10, 1993, a 12-day Pre-Runoff Report by April 1, 1993, with coverage dates from March 11, 1993, through March 24, 1993, and a Post-Runoff Report by May 13, 1993, with coverage dates from March 25, 1993 through May 3, 1993, and a Mid-Year Report by July 31, 1993, with coverage dates from May 4, 1993, through June 30, 1993.

All unauthorized political committees not filing monthly which support candidates in the Special Runoff only shall file a 12-day Pre-Runoff Report by April 1, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 24, 1993, and a Post-Runoff Report by May 13, 1993, with coverage dates from March 25, 1993, through May 3, 1993, and a Mid-Year Report by July 31, 1993, with coverage dates from May 4, 1993, through June 30, 1993.

CALENDAR OF REPORTING DATES FOR MISSISSIPPI SPECIAL ELECTIONS

Report	Period covered	Reg./cert. mailing date [1]	Filing date
If only one election (03/30) is held, committees must file:			
Pre-General	[2]01/01/93–03/10/93	03/15/93	03/18/93
Post-General	03/11/93–04/19/93	04/29/93	04/29/93
Mid-Year	04/20/93–06/30/93	07/31/93	07/31/93
If two elections are held, all committees involved in only the general election (03/30) must file:			
Pre-General	[2]01/01/93–03/10/93	03/15/93	03/18/93
Mid-Year	03/11/93–06/30/93	07/31/93	07/31/93
If two elections are held, committees involved in the general election (03/30) and the runoff election (04/13) must file:			
Pre-General	[2]01/01/93–03/10/93	03/15/93	03/18/93
Pre-Runoff	03/11/93–03/24/93	03/29/93	04/01/93
Post-Runoff	03/25/93–05/03/93	05/13/93	05/13/93
Mid-Year	05/04/93–06/30/93	07/31/93	07/31/93
If two elections are held, committees involved in only the runoff election (04/13) must file:			
Pre-Runoff	[2]01/01/93–03/24/93	03/29/93	04/01/93
Post-Runoff	03/25/93–05/03/93	05/13/93	05/13/93
Mid-Year	05/04/93–06/30/93	07/31/93	07/31/93

[1] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[2] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: February 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–3198 Filed 2–10–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the Emergency Management Institute.

DATES OF MEETING: March 14–16, 1993.

PLACES: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

TIME: March 14, 1993, 10 a.m.–5 p.m., March 15, 1993, 8:30 a.m.–5 p.m., March 16, 1993, 8:30 a.m.–12 noon.

PROPOSED AGENDA: March 14: The board will welcome 5 newly appointed members, discuss its recently submitted 1993 Annual Report with the EMI Superintendent, and obtain feedback as necessary.

March 15: The board will be briefed on the status of various EMI/FEMA programs, discuss the future of emergency management, and receive a campus tour including EMI's Computer Lab.

March 16: The board will develop its 1993 Workplan and discuss the agenda for its joint session with the National Fire Academy Board of Visitors in June.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1251, on or before March 1, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 3, 1993.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–3243 Filed 2–10–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Zerda Forwarding
519 Commercial Street, 4th Fl.
San Francisco, CA 94111
Sole Proprietor
Deborah Ann Zerda-Andrews

Sea Link Corporation
5460 N. State Road, #7
Ft. Lauderdale, FL 33319
Officers:
Terrence Swonk, President
Erick Castillo, Vice President

Midas Express, Inc.
120 S. Linden Ave.
So. San Francisco, CA 94080
Officers:
Jack Wu, President
Emily Wu, Secretary/Treasurer

Van Esch Trading and Shipping B.V.
6033 W. Century Blvd., #1222
Los Angeles, CA 90045
Officers:
H. van Esch, Sr., President
J. Groenendijk, Proxy Holder
W. van Esch, Managing Director

Amano U.S.C. Corporation
20437 So. Western Ave.
Torrance, CA 90501
Officers:
Kazuyoshi, Oi, President/Treasurer/Secr./Dir.
Hiroshi Yamanashi, Director
Kenichiro Nakamura, Director

Air Waves International Freight Services
1868 Abbottson Street
Carson, CA 90746
Mario Cervantes Bravo
Sole Proprietor

By the Federal Maritime Commission.

Dated: February 5, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–3199 Filed 2–10–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: Executive Committee Meeting, Monday, March 29, 1993, 8 a.m.–9 a.m. Full Committee Meeting, March 29–March 30, 1993, 9:30 a.m.–5 p.m.

PLACE: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

STATUS: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with mental retardation.

CONTACT PERSON FOR MORE INFORMATION: James J. Colarusso, Wilbur J. Cohen Building, room 5325, 330 Independence Avenue, SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: February 1, 1993.

James J. Colarusso,

Acting Executive Director, PCMR.

[FR Doc. 93–3200 Filed 2–10–93; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control and Prevention

Sampling Efficiency of Aerosol Samplers; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

NAME: Sampling Efficiency of Aerosol Samplers.

TIME AND DATE: 10 a.m.–4 p.m., March 3, 1993.

PLACE: Alice Hamilton Laboratory, Energy Activities Conference Room, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

STATUS: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

PURPOSE: To conduct an open review of a NIOSH research project in the Division of Physical Sciences and Engineering entitled "Sampling Efficiency of Aerosol Samplers." This project involves the development of a testing procedure for inhalable dust samplers and use of this procedure to test commercially available and newly developed inhalable dust samplers. The goal of the project is to identify samplers whose performance characteristics match the accepted definition of inhalable dust.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Jerome P. Smith, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R7, Cincinnati, Ohio 45226, telephone 513/841–4222.

Dated: February 5, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–3211 Filed 2–10–93; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 93D–0012]

Uniform Labeling of Drugs for Dairy and Beef Cattle; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle" prepared by the Center for Veterinary Medicine (CVM). This draft guideline was formulated to promote uniform labeling among all cattle drug products and to suggest geometric symbolic representation for categories of drug products. Following the comment period, CVM intends to finalize the guideline.

DATES: Written comments by April 12, 1993.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV–12), Center For Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, or to the contact person (address below). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas J. Jacobs, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8648.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled "Guideline for Uniform Labeling of Drugs for Dairy and Beef Cattle." This draft guideline may be used by the animal drug industry to ensure uniform labeling of cattle products. Use of uniform labeling, including the suggested symbol representation, should result in better controlled drug usage and aid in the reduction of illegal drug residues in milk and meat.

The draft guideline summarizes the codified labeling requirements for over-the-counter (OTC) and prescription (Rx) drugs; in addition, it summarizes guidance issued by CVM in the past.

The draft guideline provides suggested symbolic representations for each category of drug use. The divided square immediately informs the user of its OTC or Rx approval status. The class(es) of cattle for which it is approved is provided in off-set triangles. The guideline also describes circular symbols to denote milk discard times and drug withdrawal times prior to slaughter. These circular symbols have been successfully used on bovine mastitis labels since 1984. The guideline also provides guidance as to the placement and minimum size of each symbol. If these symbolic representations are voluntarily adopted by all cattle drug manufacturers, unintentional misuse of approved drugs should be diminished.

Manufacturers who wish to incorporate these symbols on their label must supplement their existing new animal drug application for approval by CVM.

The guideline represents the agency's position on a procedure or practice at the time of its issuance. A guideline is not a legal requirement. A person may follow the guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with FDA/CVM to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable. The guideline does not bind the agency, and it does not create or confer any rights, privileges, immunities, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may, on or before April 12, 1993, submit written comments on the draft guideline to the Dockets Management Branch (address above) or to the contact person (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–3137 Filed 2–10–93; 8:45 am]

BILLING CODE 4160–01–F

Program Announcement Number FDA–CFSAN–93.1 Cooperative Agreement for Shellfish and Seafood Safety Assistance Project; Availability of Funds for Fiscal Year 1993

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Seafood (OS), is announcing its intention to award without competition a cooperative agreement to the Interstate Shellfish Sanitation Conference (ISSC) in the amount of $165,000 for the first year. Subject to the availability of Federal funds and successful performance, 2 additional years of support without competition are available. This effort will enhance FDA's molluscan shellfish sanitation program and provide the public greater assurance of the quality and safety of these and other seafood products.

FOR FURTHER INFORMATION CONTACT: Robert L. Robins, Grants Management Officer, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, rm. 340, Park Bldg., 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Regarding the programmatic aspects of this project contact: Edward A. Steele, Director, Division of Special Programs, Office of Seafood, Center for Food Safety and Applied Nutrition, 200 C St. SW., Washington, DC 20204, 202–254–3888.

SUPPLEMENTARY INFORMATION: This project is authorized under section 301 of the Public Health Service Act (42 U.S.C. 241). This activity is generally described in the Catalog of Federal Domestic Assistance at 93.103. The Public Health Service (PHS) is committed to "Healthy People 2000." This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

This project will enhance both the effectiveness and uniformity of the molluscan shellfish program by: (1) Improving the flow of information between Federal and State regulatory agencies, industry, and the consumer; and (2) strengthening State activities by providing assistance in such areas as procedural and policy guidance, technical training, research, consumer education, and the assurance of conformity to the National Shellfish Sanitation Program (NSSP).

PHS is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Surveillance, and Data Systems. To obtain a copy of "Healthy People 2000," order: (Full Report; Stock No. 017–001–00474–0) or (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

I. Restricted Eligibility

The Commissioner of Food and Drugs, as authorized by PHS Grants Administration Manual, Part 144.3, has determined that this project should be awarded as a cooperative agreement without competition to the ISSC. Only the ISSC has the established relationships with the necessary State and local governments, the shellfish industry, other Federal agencies, and FDA to achieve the objectives of this project. Therefore, no other applications are solicited or will be accepted.

II. Availability of Funds

FDA will fund this cooperative agreement at a level of approximately $165,000 for total costs for the first year. An additional 2 years of support will be available depending upon fiscal year appropriations, continued support from other government agencies, and successful performance. It is anticipated that this cooperative agreement will commence on or before February 1, 1993. FDA will entertain requests for preaward costs.

III. Background

Molluscan shellfish have been identified as the source of a majority of seafood-borne illnesses and have become a subject of congressional, industry, and public concern. FDA has therefore given high priority to efforts to enhance the agency program and to provide the public greater assurance of the quality and safety of these products. Unique problems associated with the consumption of raw molluscan shellfish, i.e., oysters, clams, mussels, and scallops, led to the establishment of the NSSP in 1925. FDA administers the NSSP and the Manual of Operations, parts I and II, which serves as a guideline for State shellfish sanitation programs and State regulations.

In 1983, the ISSC was formed to provide a formal structure wherein State regulatory authorities can establish updated guidelines, and procedures for the uniform application of those guidelines, for sanitary control of the shellfish industry. The ISSC is a voluntary organization and is open to all persons interested in fostering controls that will assure sources of safe and sanitary shellfish. In 1984, FDA recognized the ISSC through a formal memorandum of understanding (MOU), and continues to recognize it as the primary voluntary national organization of State shellfish regulatory officials that will provide guidance and counsel to the States on matters of sanitary control of shellfish.

IV. Purpose

The ISSC was formed as a partnership of State shellfish control officials representing both environmental and public health agencies; Federal agencies including FDA, the Environmental Protection Agency, and the National Marine Fisheries Services of the Department of Commerce; and representatives from industry, academic, and foreign governments and industries. More than 25 States are members of the ISSC, including all 23 coastal shellfish-producing States.

The proposed cooperative agreement with ISSC is: (1) To address the need to improve information exchange and transfer among States, Federal agencies, industry, and the consumer; and (2) to strengthen State activities by providing them with procedural and policy guidance, technical training, research, and materials for consumer education.

FDA's Office of Seafood will appoint an individual in the Shellfish Sanitation Branch to serve as the agency's coordinator for this project.

V. Substantive Involvement by FDA

To achieve the purpose of this project, ISSC will be responsible for conducting activities under section V.A. of this document, and FDA will be responsible for conducting activities under section V.B. of this document.

A. ISSC Activities

The ISSC will be responsible for performing the following activities:

1. Interact with States in resolving problems between States or between a State and FDA regarding conformity to NSSP.
2. Communicate procedures and policy statements to guide States in executing program.
3. Interact with States in developing uniform and effective evaluation criteria proposals.
4. Provide program auxiliary support in facilitating State involvement in technical training, research, consumer education, maintaining the National Shellfish Register of Classified Estuarine Waters, and a digitized mapping network.

B. FDA/OS Activities

FDA will perform the following activities:

1. FDA intends to cooperate with the ISSC under the terms of its October 1984, MOU with the ISSC.
2. FDA will monitor and evaluate the ISSC's conduct under this agreement.

FDA will take any actions that may be necessary to ensure compliance with this agreement. Future support under this agreement will be contingent upon satisfactory performance of this project and the availability of Federal fiscal year appropriations.

VI. Review Procedure and Evaluation Criteria

A. Review Procedure

The application submitted by the ISSC has undergone dual peer review. The application has been reviewed for scientific and technical merit by a panel of experts based upon the applicable evaluation criteria. FDA has also presented the application to the National Advisory Council, and the Council has concurred in the decision to grant it.

B. Evaluation Criteria

Based on the review process, the agency has reached the following conclusions.

1. The application clearly states an understanding of the purpose and objectives of this cooperative agreement in the overall seafood safety program; the key role and responsibility of the ISSC; and the steps, with a proposed schedule for planning, implementing, and accomplishing the activities, to be carried out under this project.

2. The application describes the applicant's ability to perform the responsibilities under this project by providing qualified staff. The application also demonstrates that the ISSC has the financial and other resources required for this project.

3. The application specifies the intended approach that the ISSC will use to maintain and to continue working with both the States and industry to ensure the exchange of information among the States, industry, and consumers on seafood safety.

4. The application adequately describes how the ISSC will maintain and keep the National Shellfish Register for Classified Estuarine Waters up-to-date.

In addition, the agency has determined that the estimated cost of the project is reasonable. The application includes a detailed budget which indicates: (1) Anticipated costs for personnel, travel, communications and postage, equipment, and supplies; and (2) the sources of funds to meet those needs.

VII. Reporting Requirements

FDA requires an annual Financial Status Report (FSR) (SF–269). Under FDA procedures, the original and two copies of this report must be submitted to the agency's Grants Management Office within 90 days of the budget period expiration date. An annual project progress report is also required. The contents of this report will be suggested by the project officer at a later date.

A final project progress report, FSR, and Invention Statement must be submitted within 90 days from the expiration date of the project period as noted on the Notice of Grant Award.

Project monitoring will be conducted on an ongoing basis, and written reports will be done by the project officer. Monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator, and site visits may be made by either program or grants management staff. The results of the visits will be recorded in the official grant file and will be available to the grantee upon request.

VIII. Mechanism of Support

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including provisions of 42 CFR part 52 and 45 CFR part 74.

Dated: February 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–3219 Filed 2–10–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, January 29, 1993.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. Assessment of the Current Status of Screening and Treatment of Sickle Cell Disease—New—A survey of state health departments and 680 hospitals will be conducted to assess the current status of screening for and treatment of infants with sickle cell disease, to assess laboratory test selection, and to make recommendations for program improvement. Respondents: State or local governments; Businesses or other for-profits, Non-profit institutions; Small businesses or organizations.

Title	Number of respondents	Number of respondents per respondent	Average burden per response (hour)
State Health Departments	51	1	0.42
Hospitals	680	1	.25

Estimated total annual burden.....191 hours

2. Loans for Disadvantaged Students (LDS) and Scholarships for Disadvantaged Students (SDS)—0915–0149—Health professions and nursing schools applying to participate in the Loans for Disadvantaged Students (LDS) and/or Scholarships for Disadvantaged Students (SDS) programs provide information on the application about the schools' programs and the race/ethnicity of full-time students and minority faculty. This information is needed to determine program eligibility. Respondents: Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
SDS Application	1,350	1	5
LDS Applications	150	1	5

Estimated total annual burden.....7,500 hours

3. Pilot Study of New Questions and Data Collection Methods for the National Survey of Family Growth—New—This request is for clearance to conduct a pilot study of new questions and data collection methods for possible use in Cycle V of the National Survey of Family Growth (NSFG). The results will be used to evaluate response differentials to alternative sequences and variations in questionnaire design under a single mode of administration. *Respondents:* Individuals or households. *Number of Respondents:* 2,890; *Number of Responses per Respondent:* 1; Average *Burden Per Response:* .5509 hours; *Estimated Annual Burden:* 1,592 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, D.C. 20503.

Dated: February 8, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–3283 Filed 2–10–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–93–1017; FR–3455–D–01]

Designation of Agency Ethics Officials

AGENCY: Office of the Secretary, HUD.

ACTION: Designation of agency ethics officials.

SUMMARY: The Secretary of Housing and Urban Development is designating the officials who will serve as agency ethics officials.

EFFECTIVE DATE: Feburary 4, 1993.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel for Equal Opportunity and Administrative Law, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2203.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development is designating the officials who will serve as agency ethics officials. "Agency ethics official" is defined at 5 CFR 2635.102 of the Standards of Ethical Conduct for Employees of the Executive Branch, published by the Office of Government Ethics in the **Federal Register** on August 7, 1992 at 57 FR 35006, as the designated agency ethics official or the alternate designated ethics official, referred to in 5 CFR 2638.202(b), and any deputy ethics official, described in 5 CFR 2638.204, who has been delegated the authority to assist in carrying out the responsibilities of the designated agency ethics official.

Accordingly, the following officials are designated to serve as the agency ethics officials for the Department of Housing and Urban Development:

Section A. Designation

(1) *General Counsel.* The General Counsel is the Department's Designated Agency Ethics Official. As the Designated Agency Ethics Official, the General Counsel has primary responsibility for the Department's Standards of Conduct program, and is vested with the duties and responsibilities of a designated agency ethics official as set forth in 5 CFR 2638.203 of the government-wide ethics regulations promulgated by the Office of Government Ethics.

(2) *Assistant Secretary for Administration.* The Assistant Secretary for Administration is the alternate Agency Ethics Official. The Assistant Secretary for Administration is responsible for the day-to-day coordination and management of the Standards of Conduct program. The Assistant Secretary for Administration shall carry out his or her responsibilities under the Standards of Conduct Program through the Department's Office of Ethics.

(3) *Director of the Office of Ethics.* Under the direction of the Assistant Secretary for Administration, the Director of the Office of Ethics will function as a Deputy Agency Ethics Official and will coordinate and manage the Department's Standards of Conduct program. The Director of the Office of Ethics will undertake the day-to-day operation of the Standards of Conduct program.

(4) *Regional Director of Administration.* The Regional Director of Administration, in each Regional Office, will function as a Deputy Agency Ethics Official and will be responsible for implementing the Standards of Conduct program in the Field, as directed by the Office of Ethics.

(5) *Regional Counsel.* The Regional Counsel, in each Regional Office, will serve as a Deputy Agency Ethics Official and is responsible for undertaking those Standards of Conduct program duties, as directed by the Office of General Counsel. The Regional Counsel may redelegate their duties upon approval by the General Counsel.

(6) *The Associate General Counsel for Equal Opportunity and Administrative Law* will serve as a Deputy Agency Ethics Official.

(7) *The Assistant General Counsel for Personnel and Ethics Law* will serve as a Deputy Agency Ethics Official.

(8) *The Inspector General.* The Inspector General will serve as a Deputy Agency Ethics Official with respect to the Office of Inspector General and shall perform all necessary duties involving the Standards of Conduct program for employees of the Office of Inspector General. These duties include the collection, review and maintenance of all Public and Confidential Financial Disclosure Forms submitted by employees of the Office of Inspector General. The Inspector General shall provide advice and guidance to all former, current and prospective employees of the Office of Inspector General regarding matters related to the Standards of Conduct. Legal advice to the Office of Inspector General regarding conflicts of interest and Standards of Conduct shall be provided by the Office of the Associate General Counsel for Program Enforcement.

Section B. Designations Superseded

This Designation supersedes the Designation effective August 19, 1981 (published in the **Federal Register** on August 27, 1981 at 46 FR 43312) and the Revocation of Delegation of Authority effective on August 19, 1991 (published in the **Federal Register** on August 26, 1991 at 56 FR 42084).

Authority: Sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: February 4, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–3207 Filed 2–10–93; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N–93–3575]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the

information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) 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; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) 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, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 3, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Letter of Transmittal/ Servicing Agreement/Resolution of Board Director and Certificate of Authorized Signatures.

Office: Government National Mortgage Association.

Description of the Need for the Information and Its Proposed Use: Form HUD–11700, Letter of Transmittal, is used by issuers to transmit to GNMA required materials to request approval of all applications to become a mortgage-backed securities issuer. Form HUD–11702, Resolution of Board of Directors and Certificate of Authorized Signatures, is used to provide GNMA with the names and signatures of the Board of Directors of the issuer's organization. Form HUD–11707, Servicing Agreement, is used by the issuer to provide assurance to GNMA that servicing of the mortgages backing the securities will be performed at an acceptable standard.

Form Number: HUD–11700, 11702 and 11707.

Respondents: Businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11700	1,250		3.78		.25		1,180
HUD–11702	50		1		.50		25
HUD–11707	1,250		18.7		.25		5,845

Total Estimated Burden Hours: 7,050.

Status: Reinstatement.

Contact: Brenda Countee, HUD, (202) 708–2234; Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 395–6880.

Proposal: 24 CFR part 570 Community Development Block Grant Entitlement Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The information is needed for the submission of the Final Statement and Grantee Performance Report. The report is required by section 104(d) of the House and Community Development Act and is necessary for HUD to perform an annual review of grantees' performance. The information is also used to prepare the Annual Report to Congress on the Community Development Block Grant program.

Form Number: SF–424, HUD–7091.1, 7091.2, HUD–4949.1 thru 4949.6.

Respondents: State or local governments.

Frequency of Submission: Annually and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Report forms	885		2		105		185,850
Recordkeeping	885		1		120		106,200

Total Estimated Burden Hours: 292,050.

Status: Revision.

Contact: James R. Broughman, HUD, (202) 708–1577, Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–3206 Filed 2–10–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Availability of Department of the Interior Comments Finding That Emissions From the Proposed Healy Clean Coal Project Will Have an Adverse Impact on the Air Quality Related Values of Denali National Park and Preserve

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of availability of Department of the Interior comments.

SUMMARY: This notice announces the availability of the Department of the Interior's comments concerning the Alaska Department of Environmental Conservation Draft Air Quality Control Permit and Technical Analysis Report for the existing Healy Generating Facility (Unit 1) and the proposed Healy Clean Coal Project (HCCP). HCCP would be located less than four miles from Denali National Park and Preserve (DNPP), home of Mt. McKinley. DNPP has some of the most pristine air quality in the United States, and is the only national park in the state of Alaska classified as a Class I area under the Clean Air Act (CAA). As the Federal Land Manager for DNPP, the Department of the Interior is required to protect visibility and other air quality related values as part of its stewardship responsibility. Based primarily on predicted visibility impacts, the Department of the Interior has determined that emissions from HCCP will have an adverse impact on the air

quality related values of DNPP. The Department of the Interior is also concerned about potential impacts on DNPP's terrestrial and aquatic resources. Therefore, in accordance with 42 U.S.C. 7475(d)(2)(C) of the CAA, the Department of the Interior recommends denial of the proposed air quality permit.

FOR FURTHER INFORMATION CONTACT: John Bunyak, Acting Chief, Policy, Planning and Permit Review Branch, Air Quality Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225–0287; Telephone Number: (303) 969–2071; Facsimile Machine Number: (303) 969–2822.

The Department of the Interior's comments and supporting documents are available for review and copying at the following locations: (1) U.S. Department of the Interior, National Park Service, Air Quality Division, MS 3229, 1849 C St., NW., Washington, DC 20240; (2) National Park Service, Air Quality Division, Chief, Policy, Planning and Permit Review Branch, P.O. Box 25287, Denver, Colorado 80225–0287; (3) National Park Service, Alaska Region, 2525 Gambell Street, Anchorage, AK 99503; and (4) National Park Service, P.O. Box 9, Denali National Park and Preserve, AK 99755.

Dated: February 5, 1993.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 93–3221 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[ID–020–4320–01]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on March 17, 1993. The meeting will convene at 9:30 a.m. in the conference room of the Bureau of Land Management Office at 200 South 15 East, Burley, Idaho.

Agenda items for the meeting will include: (1) Recognition and awards; (2) Advisory board fund expenditures/signatures; (3) Act on advisory board funded project applications; (4) Secretary/Treasurer's report; (5) Status of FY–93 Range Improvement projects; (6) Review of FY–94 and FY–95 Proposed Range Improvement projects; (7) District policy for well drilling and equipping; (8) Requirements for all new spring developments.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 11:30 a.m. or they may file a written statement for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by March 16, 1993 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATES: March 17, 1993.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678–5514.

Dated: February 3, 1993.

Gerald L. Quinn,

District Manager.

[FR Doc. 93–3248 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–86–M

[UT–040–03–4320–01]

Cedar City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Cedar City District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 of a meeting of the Cedar City District Grazing Advisory Board. Agenda Items will include Kanab/Escalante Resource Management Plan and desert tortoise updates, incentive based grazing, elk management plans, BLM and Advisory Board projects.

DATES: March 25, 1993. The meeting will begin at 9 a.m. at the Cedar City District Office, 176 East D. L. Sargent Drive, Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: District Manager Gordon R. Staker, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801–586–2401.

SUPPLEMENTARY INFORMATION: Grazing Advisory Board Meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Anyone wishing to make a statement should notify the District Manager by Friday, March 21, 1993. A time limit may be established by the District Manager.

Dated: February 3, 1993.

Gordon R. Staker,

District Manager.

[FR Doc. 93–3249 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–DQ–M

[AK–919–03–4830–02–ADVB]

Northern Alaska Advisory Council Public Meeting

The Northern Alaska Advisory Council will hold a public meeting Friday, March 19, 1993, in Fairbanks. The public meeting will be from 8:30 a.m. to 5 p.m. in the training rooms of the Bureau of Land Management's Fairbanks Office Building, 1150 University Ave. Public comments will be taken from 2 to 3 p.m. Written comments may be submitted at the meeting.

The council will discuss:

(1) state land selections and their effect on BLM management in Alaska,
(2) coordinated planning/management, and
(3) enhancement of BLM's public participation process.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844, telephone (907) 474–2231.

Dated: February 3, 1993.

Dee R. Ritchie,

Designated District Manager.

[FR Doc. 93–3213 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–JA–M

[CA060–03–3110–10–B010, CACA–31306]

Realty Action; Exchange of Public and Private Lands, Kern County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action, Exchange of Public and Private Lands in Kern County, California CACA–31306.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 14: W½NE¼, SE¼, NE¼SW¼, E½ SE¼SW¼;
Sec. 22: SE¼SE¼;

San Bernardino Meridian, California

T. 11 N., R. 10 W,
Sec. 8: NW¼NW¼SE¼, E½SW¼.

In exchange for these lands, the United States will acquire private land within the designated Area of Critical Environmental Concern, called the Desert Tortoise Natural Area, in Kern County from landowners of record.

Supplementary Information: The purpose of the exchange is to acquire private land in the Area of Critical Environmental Concern. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchanges will be on an equal value basis. Full equalization of value will be achieved by acreage adjustment or by cash payment in an amount not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations, terms and conditions.

1. A reservation of right-of-way to the United States of ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. Rights-of-way of record.
3. Public easements for ingress and egress.

For further information contact Becki Gonzales, California Desert District 6221 Box Springs Blvd., Riverside, CA 92507.

DATES: Until March 29, 1993, interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

Dated: February 3, 1993.

Alan Stein,

Acting District Manager.

[FR Doc. 93–3250 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–4210–04; CACA 31259]

Realty Action; Exchange of Public Land in Amador, Calaveras and Sacramento Counties, CA; Correction

To notice document 93–736, page 4177, issue of Wednesday, January 13, 1993, in the first column, immediately below Calaveras County, make the following correction: R. 13N. is corrected to R.13E.

D.K. Swickard,

Area Manager.

[FR Doc. 93–3251 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–93–4730–12]

Colorado: Filing of Plats of Survey

February 3, 1993.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., February 3, 1993.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines and certain claim lines, and the subdivision of section 36, T. 3 N., R. 100 W., Sixth Principal Meridian, Colorado, Group No. 853, was accepted December 8, 1992.

The plat representing the dependent resurvey of certain claim lines and a metes-and-bounds survey of Parcel A in lot 1, section 17, T. 6 N., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 1019, was accepted December 16, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the east and west boundaries and subdivisional lines, and the subdivision of certain sections, T. 33 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 856, was accepted December 11, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat (in two sheets) representing the dependent resurvey of portions of the rights-of-way boundaries in certain sections, T. 2 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 884, was accepted December 11, 1992.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 93–3252 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–JB–M

[CO–930–4210–06; COC–54603]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 115 acres of National Forest System lands for 10 years. This withdrawal would allow the Forest Service to maintain administrative alternatives to management of the lands while completing the reports necessary for final determination on land use. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to Forest Service management.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before May 12, 1993.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, 303–239–3708.

SUPPLEMENTARY INFORMATION: On January 25, 1993, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws only (30 U.S.C. ch 2):

Sixth Principal Meridian

Arapaho National Forest

T. 2 S., R. 73 W.,
Sec. 16, 2½SW¼;
Sec. 21, N½NW¼, exclusive of patented (private) land.

The areas described aggregate approximately 115.00 acres of National Forest System lands in Gilpin County.

The purpose of this withdrawal is to allow the Forest Service to maintain administrative alternatives to management of the lands while completing various reports relative to the resources on the land.

For a period of 90 days from the date of publication of this notice, all persons

who wish to submit comments, suggestions, or objections in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, Section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from the mining laws as specified above; unless the application is denied, or cancelled, or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Dated: February 3, 1993.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–3253 Filed 2–10–93; 8:45 am]

BILLING CODE 4310–JB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–338]

Certain Bulk Bags and Process for Making Same; Notice of Commission Determination Not To Review Two Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Two Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determinations (IDs) in the above-captioned investigation granting joint motions to terminate the investigation with respect to respondent Twinpak, Inc. ("Twinpak") on the basis of a settlement agreement and with respect to respondent Fib-Pak, Inc. ("Fib-Pak") on the basis of a license agreement.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3107. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On May 21, 1992, Better Agricultural Goals Corporation and Super Sack Manufacturing Corporation (collectively "complainants") filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation and sale of certain bulk bags that infringe claim 8 of U.S. Letters Patent 4,143,796 and claim 20 of U.S. Letters Patent 4,194,652. On June 5, 1992, complainants filed an amended complaint. On June 18, 1992, the Commission voted to institute an investigation of the complaint and publish notice of its investigation in the **Federal Register** (57 FR 28185 (June 24, 1992)).

On January 8, 1993, complainants and respondent Twinpak jointly moved for termination of this investigation as to Twinpak on the basis of a settlement agreement (Motion Docket No. 338–17). On the same date, complainants and respondent Fib-Pak jointly moved for termination of this investigation as to Fib-Pak on the basis of a license agreement (Motion Docket No. 338–18). The Commission investigative attorney filed papers supporting the joint motions. On January 15, 1993, the presiding administrative law judge issued IDs (Order Nos. 12 and 13) granting the motions. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Issued: February 5, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–3300 Filed 2–10–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32204]

Ozark Mountain Railroad—Construction Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Ozark Mountain Railroad of rail lines totalling approximately 75 miles from Oak Grove, AR, to Branson and Dogwood Canyon/Creek, MO, and Eureka Springs and Harrison, AR.

DATES: The exemption will become effective after the Commission completes its environmental review of the proposed construction. At that time, the Commission will issue a further decision addressing environmental matters and establishing an exemption effective date, if appropriate. Petitions to reopen must be filed by March 3, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32204 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Susan B. Bevill, 1710 Sixth Avenue North, Birmingham, AL 35203.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 4, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–3303Filed 2–10–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. Dana Corporation, Under the Resource Conservation and Recovery Act

In accordance with the policy of the Department of Justice established in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Dana Corporation, Perfect Circle Division*, Civil Action No. IP–91–847–C, was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division, on January 21, 1993. This action was brought on July 31, 1991, to address violations of the minimum technological standards for surface impoundments and landfills, and the land ban requirement established in the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992K, that have occurred at Dana's Richmond, Indiana Sleeve Castings Plant. The Consent Decree requires Dana, *inter alia*, to cease land disposal of hazardous wastes at surface impoundments and a landfill at the Richmond Plant, and to close the surface impoundments and landfill in accordance with a closure and post-closure plan to be approved by the Indiana Department of Environmental Management. The Decree also requires Dana to pay a civil penalty of $1,300,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Dana Corporation, Perfect Circle Division*, DJ Ref. # 90–7–1–639.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the U.S. Department of Justice Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005 (202 624–0892). In requesting a copy, please enclose a check in the amount of $6.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section; Environment and Natural Resources Division.

[FR Doc. 93–2880 Filed 2–10–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Petrotechnical Open Software Corp.

Notice is hereby given that, on January 26, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following additional parties have become new, non-voting members of POSC: Public Petroleum Data Model Association, Calgary, Alberta, Canada; Cambridge Arctic Self Programme, Victoria, B.C., Canada; Minerals Management Service, New Orleans, LA; Platte River Associates, Inc., Denver, CO; KVATRO A/S, Trondheim, Norway; Edinburgh Petroleum Service, Edinburgh, UK; Columbia University, Palisades, NY; Applied Terravision Systems, Inc., Calgary, Alberta, Canada.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on October 19, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 28, 1992, 57 FR 61605.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 93–3254 Filed 2–10–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,882]

American Optical Corp.; Southbridge, MA; Notice of Revised Determination on Reconsideration

On January 26, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the **Federal Register.**

Former workers at the subject firm who produced CR–39 plastic lenses are currently certified under the current petition.

On reconsideration, new information was obtained showing that production of progressive glass lenses at Southbridge was transferred to a company facility in Mexico and all workers producing progressive glass lenses at Southbridge were separated from employment in 1992.

Other findings on reconsideration show increased imports of progressive glass lenses from Mexico in June 1992.

There are no company imports of executive glass lenses. Company officials indicated that executive glass lenses will continue to be produced at Southbridge, Massachusetts.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers producing progressive glass lenses at the American Optical Corporation in Southbridge, Massachusetts were adversely affected by increased imports of articles like or directly competitive with that production at American Optical Corporation in Southbridge, Massachusetts.

In accordance with the provisions of the Act, I make the following revised determinations for the American Optical Corporation's workers in Southbridge, Massachusetts.

All workers of the American Optical Corporation, Southbridge, Massachusetts engaged in employment related to the production of progressive glass lenses who became totally or partially separated from employment on or after April 1, 1992 and all workers engaged in the employment related to the production of CR–39 plastic lenses who became totally or partially separated from employment on or after September 21, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers at American Optical Corporation, Southbridge, Massachusetts engaged in the production of executive glass lenses are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of February 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–3272 Filed 2–10–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,842; Bird products Corp., Palm Springs, CA

TA–W–28,019; Andre Fashions, Passaic, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–28,092; Cyprus Thompson Creek Mining Co., Clayton, ID

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,109; Philips Consumer Electronics Co., Jefferson City, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,827; Tyco Toys, Inc., Morristown, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,073 & TA–W–28,073A; Drill Site Security Systems, Evansville WY and DSS Medical Services, Evansville, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,157; Ogleboy Norton Co., Columbia & Pringle Transportation Div., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,886; Teledyne Merla (Now Operating as Otis Merla Systems), Garland Mfg Center, Garland, TX

U.S. imports of oilfield machinery are negligible.

TA–W–28,051; Parker Technology, Inc., Midland, TX

U.S. imports of oil and gas field machinery were negligible.

TA–W–28,035; Ryan Transportation Service, Inc., Livonia, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,896; Guardian/Qualex, Harvey, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,190; Middle Atlantic Warehouse Distributor, Inc. Tonawanda, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,012; Komatsu Dresser Co., Broadview Parts Depot, Broadview, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–27,978; Thorn Autocall, Inc., Shelby, OH

A certification was issued covering all workers separated on or after October 28, 1991.

TA–W–28,002; Kabba Dress, Nutley, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA–W–27,950 & TA–W–27,950A; Willamette Industries, Inc., Eugene, OR & Veneta, OR

A certification was issued covering all workers separated on or after October 20, 1991.

TA–W–27,847; South Texas Drilling & Exploration, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after September 2, 1991.

TA–W–27,901; The Amphenol Corp., Bendix Connector Operations, Sidney, NY

A certification was issued covering all workers separated on or after September 5, 1992.

TA–W–27,986; ITT Marlow, Midland Park, NJ

A certification was issued covering all workers separated on or after October 28, 1991.

TA–W–28,110; Superior Technology, Inc., Paris, TX

A certification was issued covering all workers separated on or after December 3, 1991.

I hereby certify that the aforementioned determinations were issued during the month of January 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 2, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–3271 Filed 2–10–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 22, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 22, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of February 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Tubeco Steel Mfg. Inc. (wkrs)	Crane, Texas	02/01/93	01/18/93	28,260	Oilfield Anchors and Bolts.
Phillips Petroleum Co. (wkrs)	Bartlesville, OK	02/01/93	01/22/93	28,261	Distribution/Marketing & Engineering.
Phillips 66 Company (wkrs)	Houston, TX	02/01/93	01/22/93	28,262	Distribution/Marketing & Engineering.
Phillips Chemical Company (wkrs)	Pasadena, TX	02/01/93	01/22/93	28,263	Distribution/Marketing & Engineering.
National Refractories & Minerals (IAM)	Moss Landing, CA	02/01/93	01/22/93	28,264	Magnesia.
Thomson Consumer Electronics (IBEW)	Bloomington, IN	02/01/93	01/15/93	28,265	Television Receivers.
Octagon Corporation (The) (wkrs)	Williamsville, NY	02/01/93	01/05/93	28,266	Metal Cutting Machinery.
Mecon Manufacturing (wkrs)	Caribou, ME	02/01/93	01/20/93	28,267	Circuit Breakers.
Pennsylvania Optical (POWA)	Reading, PA	02/01/93	10/26/93	28,268	VAM Reading Glasses.
General Motors Corp., NAO Willow Run (UAW).	Ypsilanti, MI	02/01/93	01/22/93	28,269	Passenger Automobiles.
General Motors Corp., Powertrain (UAW)	Flint, MI	02/01/93	01/22/93	28,270	V-8 Engines.
General Motors Corp., Inland Fisher (UAW)	Euclid, OH	02/01/93	01/22/93	28,271	Seat Cushion Trim Covers.
General Motors Corp., AC Rochester (UAW)	Sioux City, IA	02/01/93	01/22/93	28,272	Fuel Injection Assemblies.
General Motors Corp., NAO Van Nuys (UAW).	Van Nuys, CA	02/01/93	01/22/93	28,273	Passenger Automobiles.
AT&T Technologies (IBEW)	Westminster, CO	02/01/93	01/18/92	28,274	PBX Units.
A&A Materials (wkrs)	Brownsville, TX	02/01/93	01/21/93	28,275	Rags.
Ashland Rubber Products (URW)	Ashland, OH	02/01/93	01/20/93	28,276	Latex Balloons.
British Petroleum (URW)	Hackettstown, NJ	02/01/93	01/20/93	28,277	Coatings for Electrical Wires.
Exxon Prod. Research Co. (wkrs)	Houston, TX	02/01/93	01/08/93	28,278	Oil and Gas.
Barbee, Inc. (L&SW)	Renton, WA	02/01/93	01/25/93	28,279	Softwood Dimensional Lumber.
Bridal Originals (ILGWU)	Bowling Green, MO	02/01/93	01/18/93	28,280	Bridal Gowns & Formal Wear.
Ripley Manufacturing, Inc. (wkrs)	Ravenswood, WV	02/01/93	01/25/93	28,281	Ladies' Dresses, Skirts, Jackets.
Shannopin Mining Co. (UMW)	Pittsburgh, PA	02/01/93	12/08/93	28,282	Steam and Metallurgical Coal.
Poland Processing Co. (wkrs)	Pittsburgh, PA	02/01/93	12/08/93	28,283	Steam & Metallurgical Coal.
GiG Energy (wkrs)	Austin, TX	02/01/93	01/21/93	28,284	Crude Oil.
Gen Corp Automotive (URW)	Marion, IN	02/01/93	01/14/93	28,285	1700 Factory Avenue.
Cox Exploration, Inc. (wkrs)	Corpus Christi, TX	02/01/93	01/21/93	28,286	Oil, Gas Drilling & Exploration.
Shell Mining Co. (wkrs)	Houston, TX	02/01/93	01/20/93	28,287	Coal.
Schlumberger Well-Services (wkrs)	Anchorage, AK	02/01/93	01/19/92	28,288	Oil and Gas Logging Services.
Schlumberger Well-Services (wkrs)	Kenai, AK	02/01/93	01/19/93	28,289	Oil and Gas Services.
Conoco, Inc., Administration (Co)	Houston, TX	02/01/93	01/15/93	28,290	Administrative Offices.
Conoco, Inc. Marketing (Co)	Chattanooga, TN	02/01/93	01/15/93	28,291	Oil and Gas Refined.
Conoco, Inc., Refining (Co)	Lake Charles, LA	02/01/93	01/15/93	28,292	Refined Products.
Conoco, Inc. Calcining (Co)	Moundsville, WV	02/01/93	01/15/93	28,293	Petroleum Coke.
Conoco, Inc., Trading (Co)	Wichita Falls, TX	02/01/93	01/15/93	28,294	Oil and Gas & Refined Products.
Conoco, Inc., Terminals (Co)	Elk Grove, CA	02/01/93	01/15/93	28,295	Asphalt.
Conoco, Inc., Supply (Co)	Grapevine, TX	02/01/93	01/15/93	28,296	Oil and Gas.
Conoco, Inc., Transportation (Co)	Atlanta, GA	02/01/93	01/15/93	28,297	Oil and Gas and Refined Products.
Conoco, Inc., Pipeline (Co)	Billings, MT	02/01/93	01/15/93	28,298	Oil and Gas and Refined Products.

[FR Doc. 93-3273 Filed 2-10-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,705]

UNOCAL Corporation, Lafayette, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at UNOCAL Corporation, Lafayette, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27, 705; UNOCAL Corporation, Lafayette, Louisiana (January 26, 1993)

Signed at Washington, DC this 2nd day of February, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-3269 Filed 2-10-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,895]

Wayne H. Mullin Shoe Patterns, Avon, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Wayne H. Mullin Shoe Patterns, Avon, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's

determination. Therefore, dismissal of the application was issued.

TA-W-27,895; Wayne H. Mullin Shoe Patterns, Avon, Massachusetts (February 2, 1993)

Signed at Washington, DC, this 2nd day of February, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-3270 Filed 2-10-93; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Headache Coal Company, Inc.

[Docket No. M-93-01-C]

Headache Coal Company, Inc., P.O. Box 188, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15-17315) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen monitor instead of machine-mounted methane monitor on permissible three-wheel tractors with drag buckets.

2. Cyprus Shoshone Coal Corporation

[Docket No. M-93-02-C]

Cyprus Shoshone Coal Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Shoshone No. 1 Mine (I.D. No. 48-01186) located in Carbon County, Wyoming. The petitioner proposes to increase the maximum length of the dual longwall input cables from 1,000 feet to 1,250 feet to supply 2,400 volt alternating current from the load center to the longwall controller. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Consolidation Coal Company

[Docket No. M-93-03-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.360(b)(1) (preshift examinations) to its Dilworth Mine (I.D. No. 36-04281) located in Greene County, Pennsylvania. The petitioner proposes to have a certified person check for methane and oxygen and to determine whether the air is traveling in the right direction before allowing workmen in the area that has not been preshifted. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Cyprus Mountain Coals Corporation

[Docket No. M-93-04-C]

Cyprus Mountain Coals Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Star Fire Mine (I.D. No. 15-13936) located in Perry County, Kentucky. The petitioner proposes to use recycled waste oil and diesel fuel to form a blasting agent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Energy West Mining Company

[Docket No. M-93-05-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (aircourses and belt haulage entries) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner proposes to use the belt entry as the return entry during two-entry longwall panel development, and use the belt haulage entry as an intake entry to provide additional face ventilation during longwall panel retreat mining. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Peabody Coal Company

[Docket No. M-93-06-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky. Due to hazardous roof conditions, the petitioner proposes to have a certified person monitor daily for methane and oxygen in the First Submain East, the First East Parallel, and the First Submain North off the First Submain East return aircourse entries and permanent seals outby the overcasts at station 70+40 in entries 6 & 7 of the First Submain North off the First Submain East inby 0+00 in entries 7, 8, and 9 of the First Submain East, in entry 9 of the First Submain North between stations 35+20 and 35+80, and inby the overcast at station 0+00 in entry 1 of the First East Parallel. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. McElroy Coal Company

[Docket No. M-93-07-C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petitioner proposes to establish monitoring stations at the North Return and the Left Return of 2-North before it enters the affected aircourses, and continue using monitoring stations at the 1-South entries of the affected return aircourse daily as described in petition for modification, docket number M-92-142-C. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 15, 1993. Copies of these petitions are available for inspection at that address.

Dated: February 3, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93-3274 Filed 2-10-93; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before March 29, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Federal Crop Insurance Corporation (N1–258–93–1). Appeals and Litigation Staff case files.

2. Department of Commerce, Bureau of the Census (N1–29–93–1). Decennial census pretest, planning, and management records.

3. Department of Commerce, National Oceanic and Atmospheric Administration, National Environmental Satellite, Data, and Information Service (N1–370–92–3). Defense Meteorological Satellite Program data and imagery.

4. Department of Justice (N1–60–93–2). Radiation Exposure Compensation act case files and administrative records.

5. Department of Justice, Civil Division (N1–60–93–3). National Childhood Vaccine Injury Act case files.

6. Department of State, Bureau of Educational and Cultural Affairs (N1–59–93–7). Records relating to the Facilitative East-West exchange program.

7. Court of Veterans Appeals (N1–CVA–93–1). Case files and related records.

8. Federal Communications Commission, Broadcast Bureau (N1–173–92–3). Drafts of questionnaires, form letters, and routine correspondence, 1956–59.

9. Federal Emergency Management Agency (N1–396–92–1). Unscheduled records of the defunct Office of Emergency Preparedness.

Dated: February 4, 1993.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 93–3288 Filed 2–10–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in the Division of Biological Instrumentation and Resources; 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.

Date and Time: Thursday, March 4, 1993 from 8:30 am–6 pm; Friday, March 5, 1993 from 8:30 am—6 pm.

Place: National Science Foundation, 1800 G Street, NW., Room #1242 Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Machi F. Dilworth, Program Director, Biological Instrumentation and Resources, room 312, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–9880.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowships in Plant Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3225 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 15–16, 1993; 8 a.m.–5 p.m.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Costello L. Brown, Program Director, Career Access, HRD room 1225, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7461.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Comprehensive Regional Centers for Minorities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3228 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; 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.

Date and Time: March 8, 1993; 9 a.m. to 5:30 p.m.

Place: NSF, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Robotics and Intelligent Systems, rm. 310, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9572.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3224 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 12–13, 1993; 9 a.m. to 5:30 p.m.

Place: NSF, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Division of Information, Robotics and Intelligent Systems, rm. 310, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9592.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3223 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Integrative Biology and Neuroscience; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date & Time: March 8 & 9, 1993, 8:30 a.m. to 5 p.m.

Place: Room 536, 1800 G Street NW., Washington, DC 20550.

Contact person: Carter Kimsey, Staff Associate, Division of Integrative Biology and Neuroscience, NSF, 1800 G Street NW., Washington, DC 20550. Telephone (202) 357–7905.

Date & Time: March 29 & 30, 1993 8:30 a.m. to 5:00 p.m.

Place: Room 1242–1243, 1800 G Street NW., Washington, DC 20550.

Contact person: Same as above.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning research proposals and nominations submitted to NSF for financial support.

Agenda: To review and evaluate research proposals for planning grants and career advancement awards for women and nominations for NSF young investigator awards as part of the selection process for awards.

Reason for closing: The proposals and nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3229 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 4, 1993; 9:30 a.m. to 5 p.m.; March 5, 1993; 9 a.m. to 1 p.m.

Place: Embassy Square Suites Hotel, 2000 N Street NW., Washington, DC

Type of Meeting: Open.

Working Lunch: Yes.

Contact Person: Ann T. Lanier, Ph.D., Project Director for the Survey of Scientific Engineering R&D Facilities at Colleges and Universities, Division of Science Resources Studies, Room 609L, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations on design of the survey instrument Survey of Scientific and Engineering R&D Facilities at Colleges and Universities, and offer recommendation on the survey methods and procedures.

Agenda: To review and evaluate survey instruments and methods in view of government needs and respondent burden.

Dated: February 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3226 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science Resources Studies; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: March 2–3, 1993; 8:30 a.m. to 5 p.m.

Place: Embassy Square Hotel, 2000 N Street NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Carolyn Arena, Project Director for the Survey of Academic Research Instruments and Instrumentation Needs, Division of Science Resources Studies, rm. L–609, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 634–4673.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on the design of survey instruments for the Survey of Academic Research Instruments and Instrumentation Needs and offer recommendations on survey methods and procedures.

Agenda: To review and evaluate the survey's instruments and collection methods in view of government needs and respondent burden.

Dated: February 8, 1993

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–3227 Filed 2–10–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Co. et al., Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 in response to a request filed by the Toledo Edison Company, Centerior Service Company and the Cleveland Electric Illuminating Company (the licensee), for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Technical Specification (TS) 3/4.1.3.1, "Group Height—Safety and Regulating Rod Groups," and TS 3/4.1.3.3, "Position Indicator Channels." The revision would make administrative changes to the TS 3/4.1.3.1 Action statement to clarify the proper progression of the Action statement. TS 3/4.1.3.3 would be revised to clarify the applicability of the Action statement, and to allow startup or power operation to continue provided the absolute position indicator channels are operable for the affected control rods.

The proposed action is in accordance with the licensee's application for amendment dated April 30, 1992.

The Need for the Proposed Action

The proposed amendment is needed because the current TS 3.1.3.3 prevents plant Mode changes with one or more relative position indicator channels inoperable, although alternate means of rod position indication remain operable. This can result in delays in starting up the plant.

Environmental Impacts of the Proposed Action

The NRC staff has reviewed the potential environmental impact of the proposed amendment. The NRC staff finds that a control rod position indication system subject to TS controls will still be available for each control rod. Accordingly, the NRC staff concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed use of an alternate TS control rod position indication system will not cause significant increase in the nonradiological impacts and will not change any conclusions reached by the staff in the "Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1" dated March 1973 and its supplement dated October 1975. Therefore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission's staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the final Environmental Statements for the Davis-Besse Nuclear Power Station, Unit 1, dated March 1973 and its supplement dated October 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 30, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 3rd day of February 1993.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–3218 Filed 2–10–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co., et al., Brunswick Steam Electric Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The licensee is proposing five changes to the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP), Units 1 and 2.

Proposed Change 1 is to TS 3/4.3.5.5, Chlorine Detection System, revising the Limiting Condition for Operation (LCO), Applicability, Action and Surveillance Requirements sections. The new LCO section would reflect the addition of four chlorine detectors, a trip subsystem within a trip system, a 7-day LCO Action statement for one chlorine detector of either trip subsystem of either or both trip system(s) being inoperable, and a requirement for isolation of the Control Room envelope within one hour with both detectors in a trip subsystem of either trip system inoperable. The Applicability and Action sections would be revised to reference a new Table 3.3.5.5–1, Control Building Emergency Ventilation System Instrumentation. An Operational Conditions requirement is proposed to be added to the Applicability section whenever the chlorine tank car is within the exclusion area. Also proposed is a revision to the Surveillance Requirements section to increase the channel-calibration frequency from refueling to annual.

Proposed Change 2 is to TS 3/4.7.2, Control Room Emergency Filtration System, revising the LCO, Applicability and Action sections. The new LCO section would add operability requirements for radiation and smoke protection modes and for the chlorine protection mode as defined in TS 4.7.2.d.3 and in the Basis section of 3/

4.7.2. The Applicability section would be expanded to include Operational Conditions 4, 5, *, and **. The Action section would be replaced with statements applicable to each Operational Condition.

Proposed Change 3 adds radiation protection and external smoke protection instrumentation associated with the control building emergency ventilation system to the existing TS 3/4.3.5.5, reformats the section into a table format, and renames the section "Control Building Emergency Ventilation System." Also, it revises the LCO, Applicability and Action sections. The new LCO section would add operability requirements for the radiation protection and external smoke protection instrumentation and reformat the existing requirements into a table. The Applicability section would require operability of the chlorine detection instrumentation whenever the chlorine tank car is in the exclusion area and would require operability of the radiation protection and smoke detection instrumentation. Action statements are added to address inoperable chlorine, radiation or smoke detectors.

Proposed Change 4 amends the specific filtration efficiency of TS 4.7.2.b.1 to be consistent with Surveillance Requirements 4.7.2.e and f and the guidance of Generic Letter 83–13.

Proposed Change 5 is to the Surveillance Requirements of TS 4.7.2.d, decreasing the maximum allowable pressure drop across the combined HEPA filters and charcoal absorber banks. Also, various administrative word changes will be made to TS 3/4.3.5.5 and 3/4.7.2, and to their respective Bases sections, to reflect the changes proposed above.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Proposed Change 1

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not affect any of the chlorination system piping system or tank car, which would be the initiating components of a chlorine release event; therefore the probability of a chlorine tank car rupture analyzed in UFSAR [Updated Final Safety Analysis Report] Section 6.4.4.2 will not be increased.

This proposed change maintains the existing OPERABILITY requirements for the Chlorine Isolation Instrumentation and the same ACTION statements for loss of redundancy and loss of function of the system. No additional assumptions in the chlorine tank car rupture analyzed in UFSAR section 6.4.4.2 are introduced or accepted by this change. Therefore there are no increases in the consequences of a chlorine tank car rupture or of any previously evaluated chapter 15 design basis accidents.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is required to reflect Chlorine Detection System configuration changes so that previously unidentified single failures will be eliminated. The proposed change imposes the same OPERABILITY requirements as the existing configuration as well as the same ACTION statements for loss of function and loss of redundancy. Since the detection/isolation components will continue to operate as required and previously unidentified single failures are being eliminated, the proposed change does not create the possibility of an accident of a new or different kind than previously evaluated in the Safety Analysis Report.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change to reflect the new configuration of the Chlorine Isolation Instrumentation trip systems and the addition of chlorine detectors does not change any safety settings. The assumptions of the chlorine tank car rupture analyzed in UFSAR 6.4.4.2 are unchanged; therefore, the results of the analysis remain within the NRC acceptance criteria. The change is surveillance to reflect the new type of sensor will not reduce the reliability of the detection system. Therefore, the proposed change does not involve any reduction in the margin of safety.

Proposed Change 2

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The present LCO requirement to maintain two independent Control Room Emergency Air Filtration Systems OPERABLE is not being affected by this change, therefore the probability of Chapter 15 accidents applicable to this license requirement (Main Steam Line Break (MSLB) and the Loss of Coolant Accident (LOCA) are the most limiting) will not be increased. The additional OPERABILITY requirements for the system during OPERATIONAL CONDITIONS 4 and 5 and during movement of irradiated fuel assemblies in the secondary containment will be the same as in OPERATIONAL CONDITIONS 1, 2, and 3. These requirements were added to ensure that the Control Room will remain habitable for operations personnel during and following all credible accident conditions (e.g., Fuel Handling Accidents) that are applicable during these operational conditions. Since the requirements to operate in the Radiation Protection Mode or to suspend such operations are consistent with the present license requirements, the probability of these accidents will not be increased by this change.

The present license requirement to maintain two independent Control Room Emergency Air Filtration Systems OPERABLE is the same for OPERATIONAL CONDITIONS 1, 2, and 3; therefore the consequences associated with a Main Steam Line Break (MSLB) or a Loss of Coolant Accident (LOCA) are not increased. The addition of the OPERABILITY requirements for the system during OPERATIONAL CONDITIONS 4 and 5 and during movement of irradiated fuel assemblies in the secondary containment ensures that the doses to the control room operators are reduced for accidents during which the total radiological releases are less than the design basis accidents consistent with the assumptions in the habitability analyses; therefore, the consequences of any previously evaluated accidents are not increased by this change.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The additional OPERABILITY requirements to the Control Building Ventilation System are consistent with the OPERABILITY requirements during

OPERATIONAL CONDITIONS 1, 2, and 3. The proposed change does not introduce any new modes of plant operation or create any new credible single failure. The clarification of the Chlorine Protection Mode eliminates the need for Technical Specification Interpretation for Specification 3.7.2 and does not introduce any new modes of plant operation. Therefore, the proposed change does not create the possibility of an accident of a new or different kind than previously evaluated in the Safety Analysis Report.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The additional OPERABILITY requirements to the Control Building Ventilation System are consistent with the OPERABILITY requirements during OPERATIONAL CONDITIONS 1, 2, and 3 and do not reduce any margin of safety or have any impact on 10 CFR part 50, Appendix A, General Design Criterion 19 limits. The clarification of the Chlorine Protection Mode eliminates the need for a Technical Specification Interpretation to Specification 3.7.2 and, therefore, does not reduce any margin of safety.

Proposed Change 3

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change does not affect any of the chlorination system piping system or tank car, which would be the initiating components of a chlorine release event; therefore the probability of a chlorine tank car rupture analyzed in UFSAR Section 6.4.4.2 will not be increased. The current license requirement for Chlorine detection instrumentation is being expanded to include requirements for Radiation Protection and External Smoke Protection Instrumentation and is being renamed Control Building Emergency Ventilation System (CBEVS) Instrumentation. These instruments are only involved in the mitigation of CBEVS design basis events and are not involved in the initiation of any design basis event for the CBEVS System; therefore, the changes to these instruments will not increase the probability of the chapter 15 accidents discussed in Proposed Change 2 above that are applicable to this system.

The addition of Radiation and External Smoke Protection instrumentation requirements associated with the Control Building Emergency Ventilation System to the existing Chlorine Detection Specification does not change any OPERATIONAL requirements of any existing system, nor does it alter any assumptions used in the previously evaluated chapter 15 MSLB, LOCA, or Refueling accidents. The requirements for the instruments input function to the CBEAF already exist. Therefore, the consequences of any of these chapter 15 accidents are not increased by this proposed change.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The addition of Radiation and External Smoke Protection instrumentation requirements associated with the Control Building Emergency Ventilation System to the existing Chlorine Detection Specification does not change any mode of operation of the Control Building Emergency Ventilation System or introduce any credible single failure to the plant system or instrumentation associated with this change. The change will eliminate the need for a Technical Specification Interpretation for Specification 3.3.5.5. Therefore, the proposed change does not create the possibility of an accident of a new or different kind than previously evaluated in the Safety Analysis Report.

The proposed amendment does not involve a significant reduction in the margin of safety. The addition of Radiation and External Smoke Protection instrumentation requirements associated with the Control Building Emergency Ventilation System to the existing Chlorine Detection Specification does not reduce any margin of safety. The instrumentation function inputs to the Control Building Emergency Ventilation System already exist in Technical Specification 3/4.7.2. The change will eliminate the need for a Technical Specification Interpretation for Specification 3.3.5.5. Therefore, the proposed change does not involve any reduction in the margin of safety.

Proposed Change 4

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The equipment impacted by this change is not involved in the initiation of any design basis event which requires a protective action response by the CBEVS System; therefore, the probability of occurrence of any accident previously evaluated [is] not increased by this change.

The efficiency requirements added to this Surveillance Requirement are consistent [with] the current requirements of 4.7.2.e and f and remain bounded by the maximum efficiency assumed in the habitability analyses which ensure that no General Design Criteria Limits will be exceeded. Therefore, the consequences of a chapter 15 analyzed radiation event will not be increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The efficiency requirements added to this Surveillance Requirement are consistent with the current license requirements and do not impose any different or additional operating requirements on the system. No credible single failures are being introduced by this change. Therefore, the proposed change does not create the possibility of an accident of a new or different kind than previously evaluated in the Safety Analysis Report.

3. The proposed amendment does not involve a significant reduction in the margin of safety. A specific efficiency requirement is being added to SURVEILLANCE REQUIREMENT 4.7.2.b that is consistent with existing SURVEILLANCE REQUIREMENTS 4.7.2.e and f and meets the guidance of Generic Letter 83–13. The maximum efficiency assumed in the habitability analyses contained in the NRC staff Safety Evaluations for the Brunswick Plant CBEVS filtration units is 95 percent. The proposed change of greater than or equal to 99 percent efficiency ensures that the assumptions in the NRC staff evaluations remain bounded; therefore, the proposed change does not involve any reduction in the margin of safety.

Proposed Change 5

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The equipment impacted by this change is not involved in the initiation of any design basis event which requires a protective action response by the CBEVS System; therefore, the probability of occurrence of any accident previously evaluated [is] not increased by this change.

The current license requirement to ensure that the filtration train is capable of delivering the required flow rate with filter loading will not be impacted by this change. The revised maximum allowable pressure drop remains bounded by the existing requirement, as demonstrated by the pressure drop calculation. Therefore, the consequences of a chapter 15 analyzed radiation event will not be increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The

revised maximum allowable pressure drop across the filtration system ensures that the system will deliver the required flow rate with margin for filter loading following an accident. The proposed change ensures that the system will perform its intended design function and poses no additional operating modes or new credible single failures. Therefore, the proposed change does not create the possibility of an accident of a new or different kind than previously evaluated in the Safety Analysis Report.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change to revise the maximum allowable pressure drop across the filtration train to less than or equal to 5.25 inches of water, gauge, ensures that the required flow rate can be met with margin for filter loading following an accident. The revised maximum limit remains bounded by the existing requirement; therefore, the proposed change does not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 15, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final

determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 12, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 8th day of February 1993.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Project Directorate II–1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 93–3217 Filed 2–10–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee Noncovered Service Pension Questionnaire.

(2) *Form(s) submitted:* G–209.

(3) *OMB Number:* 3220–0154.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of requests:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 500.

(10) *Average time per response:* .11 hours.

(11) *Total annual reporting hours:* 55.

(12) *Collection description:* Under section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–3189 Filed 2–10–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31820; File No. SR–GSCC–92–14]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Yield Trades Converted to Priced Trades at the Time of Comparison

February 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 6, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below. The Commission is publishing this notice to solicit comment from interested persons and to grant approval of the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow GSCC to continue to compare, convert, and net, prior to the U.S. Treasury Department ("Treasury") auction, trades between participating members in Treasury note and bond issues that have been executed on the basis of the current market yield. Such trades will be eligible for netting if they otherwise meet GSCC eligibility requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 24, 1991, the Commission approved a proposed rule change on a temporary basis that provided authority for GSCC to implement a yield-to-price conversion service and to net trades that have been compared on a yield basis.[2] In January 1992, the Commission approved a proposed rule change that extended GSCC's authority to implement a yield-to-price conversion service and to net trades that have been compared on a yield basis.[3]

On October 16, 1992, GSCC implemented the yield-to-price conversion service and began to net yield trades. Of note in this regard is the high rate of initial participation in the yield-to-price conversion process: 38 netting members, representing 80 percent of all netting members, were initial participants. In view of the successful implementation, and the significance of the yield-to-price conversion service, GSCC requests that the temporary approval of the proposal be made permanent.

Prior to implementing the yield-to-price conversion service, yield trades were compared and reported to members and the data was deleted from GSCC's processing system. Members, therefore, were required to resubmit yield trades after the Treasury auction for final comparison and netting on a final price basis. The proposed rule change allows GSCC to maintain yield trades in its system.

Under the proposal, members submit to GSCC trade data for yield trades by 10 p.m.[4] The member indicates the yield in the appropriate information field and leaves the price field blank.[5] GSCC compares the trade on the basis of the yield, and upon successful comparison, converts the yield trade to a priced trade. Successful comparison occurs only if the information submitted by both sides to the trade agree as to quantity, security identification, contraparty, and trade value.[6] If the trade data does not match, the trade will pend in GSCC's system until the trade is either compared or deleted by GSCC.[7] On each business day, GSCC reports to its members through the comparison system output, each of the member's yield trades that were successfully compared and converted to priced trades.

In some cases, clearing members do not submit the commission amount for the trade or submit conflicting commission amounts. In order to avoid generating uncompared trades because a clearing member has failed to submit the Commission, or the dealer has submitted a commission that does not agree with the commission submitted by the broker, if the trade compares in all other respects, GSCC will compare the trade based on the commission amount submitted by the broker. Once a yield trade is compared by GSCC, it constitutes a valid, binding, and enforceable contract between the parties to the trade to the same degree as if the commission amounts matched. However, it does not constitute a final, binding determination on those members as to the correct commission amount. Clearing members will have an ongoing obligation to resolve any commission discrepancies. To facilitate resolution of commission discrepancies, GSCC makes available to the contraparties of any trade with a commission difference daily reports reflecting previous trade data.

At the time of conversion, GSCC calculates the assumed coupon rate based on the par weighted average yield ("par weighted average") of trades compared by GSCC in each CUSIP[8] adjusted down to the nearest ⅛%. GSCC then uses the assumed coupon rate to convert yield trades to priced trades. During the when-issued period, GSCC uses the conversion price as the basis for calculating daily margin requirements. For example, assume a 30-year Treasury bond will be issued on September 15, 1993. The announcement date of the issue is September 1, 1993, and the auction date is September 8, 1993. If the par weighted average yield for trades compared by GSCC on September 1 is 8.30%, GSCC will adjust the par weighted average yield down to the nearest ⅛% (8.25%) and convert eligible yield trades (in the same CUSIP) that are submitted on September 1 to priced trades using 8.25% as the assumed coupon. If the par weighted average yield for yield trades compared on September 2 is 9%, meaning that the issue is trading at 9%, GSCC will convert eligible yield trades submitted on September 2 to priced trades using 9% as the assumed coupon. Each day GSCC will calculate the assumed prices for the current day's trades and recalculate the assumed prices for previous days' trades using the most recent assumed coupon.

GSCC uses the U.S. Treasury standard conversion formula[9] to convert yield trades.[10] The conversion process generates a price for each trade so that *A* (*i.e.*, the price of the note or bond multiplied by the sum of one, and the nominal rate of return received in semi-annual installments) equals *B* (*i.e.*, the present value of the note or bond plus the assumed coupon rate.)[11] For

[2] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937 (approving the proposal on a temporary basis until January 31, 1992).

[3] Securities Exchange Act Release No. 30170 (January 15, 1992), 57 FR 1774 (approving the proposal on a temporary basis until January 31, 1993).

[4] Consistent with GSCC's procedure for submitting trade data for priced trades, trade data may be submitted on trade day or a subsequent day; however, in order for GSCC to include the data in the automated processing cycle, the data must be submitted by 10 p.m. Any trade data received after automated processing begins will be processed on the following day.

[5] Upon submission of trade data, GSCC will validate and match the information to ensure that the details of each trade are in agreement. Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 at note 14.

[6] In the case of yield trades, the "trade value" is the market yield. In addition, GSCC may permit the member to submit additional identifying data. GSCC Procedure II(B)(1). For example, a member may submit an internal identification number for the contraparty rather than a GSCC identification number. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, and Sonia Burnett, Attorney, Commission (August 13, 1991).

[7] GSCC's Schedule for the Deletion of Uncompared Trade Data provides that uncompared trade data for yield trades will pend in GSCC's comparison system until the issue date or reissue date. GSCC Rule 7 § 4.

[8] The market yield of trades in each CUSIP that are submitted to GSCC on the day that comparison takes place is weighted based on the relative size of each trade.

[9] The formula GSCC uses to convert yield trades appears in a federal reserve bank publication. See Federal Reserve Bank of Richmond, *Buying Treasury Securities*, Part II, Section 8 and Appendix A (1990) (hereinafter referred to as *"Buying Treasury Securities"*). For internal control and surveillance purposes, Government securities dealers use the Treasury Department conversion formula to calculate an assumed coupon rate and an assumed price for their yield trades.

[10] Yield trades between a member who has elected not to participate in the conversion service and a participating member are compared by GSCC, but do not enter the net. Once the trade is compared, the trade data is usually deleted from GSCC's trade processing system. GSCC may retain the trade data submitted by the nonparticipating member to monitor the member's credit exposure. Letter from Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Ester Saverson, Branch Chief, Commission (June 14, 1991).

[11] The U.S. Treasury formula for converting note and bond yields to equivalent prices is:

$P[1+(r/s)(i/2)]=\{C/2\}(r/s)+\{C/2\}a\overline{n}+100v^{n}$, where

P=price per $100, carried to three decimal places;

C=the annual stated interest rate;

i=nominal annual rate of return or yield, based on semi-annual interest payments;

n=number of full semi-annual periods from the issue date to maturity. If the issue date is a coupon frequency date, *n* will be one less than the number of full semi-annual periods remaining to maturity. Coupon frequency dates are the two semi-annual dates based on the maturity date of each note or bond issue;

Continued

example, assume a yield trade occurs on March 20 involving a two-year Treasury note that will be issued on March 31, 1993, with a coupon rate of 7.125%, due on March 31, 1995, with interest payments on September 30 and March 31, and having a yield of 7.19%. The assumed coupon as determined by GSCC would be 7.125,[12] and the converted price of the yield trade would be 99.881 per 100.[13] Each day until the coupon rate is set and publicly available, GSCC recalculates the assumed coupon rate for the issue, converts new yield trades to priced trades and adjusts the prices of previously converted, compared, and netted yield trades.

GSCC nets each participating clearing member's trades with other participating members. Trades involving nonparticipating members are not netted and are deleted from GSCC's system after the trades are reported to members as compared trades.

Consistent with GSCC's procedure for netting forward trades, GSCC calculates a member's forward net settlement position on each successive business day from the first day when the forward trade is successfully compared until the processing cycle immediately prior to the scheduled settlement date for such position ("forward period").

GSCC reports each forward net settlement position by CUSIP number in a report issued on the morning of each business day during the pre-auction period. At that time, the delivery or receive obligation is novated. GSCC, therefore, becomes the counterpart to the net delivery, receive, and related payment obligations between netting members that were created by the yield trades. The netted deliver or receive obligation in the when-issued security is carried on GSCC's books until the settlement date. The netted deliver or receive obligation on forward trades automatically converts into a net settlement position on its scheduled settlement day. At that time, for its own purposes and to lodge the necessary delivery and receive instructions with its clearing bank, GSCC allocates deliver and receive obligations on a random basis to netting members with corresponding receive and deliver obligations of like quantity of the security with the same CUSIP number.

During the pre-auction period, GSCC calculates the clearing fund contribution[14] and the forward mark allocation[15] for participating and nonparticipating members. Converted trades comprising part or all of a netting member's forward net settlement position are included in the calculation of the netting member's clearing fund contribution and forward mark allocation requirement if those trades involve two participating members. If a participating member trades with a nonparticipating member, the trade does not enter the net, so the participating member is not required to pay forward mark allocation or clearing fund contributions for that trade (to the extent the trade would have offset or reduced the participating member's forward mark allocation or clearing fund contribution, the participating member also gains no benefit).

GSCC does not routinely collect forward mark allocations or clearing fund contributions from nonparticipating members. Nevertheless, to monitor nonparticipating members' financial condition and credit exposure, GSCC calculates the nonparticipating members' forward mark allocations and clearing fund requirements based on the assumption that matched trades with participating members were included in the net. If at any time during the pre-auction period GSCC determines that a nonparticipating clearing member no longer satisfies GSCC's membership criteria for financial responsibility reasons,[16] GSCC will collect the forward mark allocation and clearing fund contribution on account of matched trades excluded from the net.[17]

Converted trades remain pendent in GSCC's system until final price data is submitted. Final price data is available, and should be submitted to GSCC on the day of the Treasury auction. At that time, the trades are compared and netted on a final price basis. If the actual price of the trade differs from the conversion price, GSCC will adjust the clearing member's forward mark allocation and clearing fund contribution accordingly. The excess is returned to, or the deficit collected from, the netting member.

GSCC believes the proposed rule change will facilitate the prompt and accurate clearance of securities transactions and the safeguarding of securities and funds consistent with Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change imposes any burden on competition 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

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule change and comments will be

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r=either: (1) the number of days from the issue date to the first interest payment (regular or short first payment period); or (2) the number of days in fractional portion of long first payment period;

s=either: (1) the number of days in the full semi-annual period ending on the first interest payment date (regular or short first payment period), or (2) the number of days in the full semi-annual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment;

$v=1/(1+i/2)$;

v^n=present value of *1* due at the end of *n* periods, which is $1/(1+i/2)^n$;

$a\tilde{n}$=present value of *1* per period for *n* periods; and

A=accrued interest, if any.

[12] If the par weighted average for trades on March 20 was 7.130, GSCC would adjust the weighted average down to 7.125. In this example, the actual coupon rate of the note is equal to the assumed coupon rate. In reality, the actual coupon may be near, but not equal to, GSCC's assumed coupon rate.

[13] In the example, C=7.125, i=.0719, r=183, s=183, n=3 (There are 4 full semi-annual periods, but *n* is reduced by *1* because the issue date is a coupon frequency date.), $v^n=1/(1+.0719/2)^3$ or .899463648, and $a\tilde{n}=(1-.899463648)/.03595$, or 2.796560556.

Resolution:

(1) P[1+.03595]=3.5625=9.962746981+89.9463648

(2) P[1.0395]=103.471661781

(3) P=103.471611781/1.03595

(4) P=99.880893654

(5) P=99.881.

[14] The required clearing fund deposit is based on the netting member's net settlement position. The total amount of the required clearing fund deposit equals: A + B, where, A=1.25(v), and $B=\{\Sigma[x(y)-x]\}+20$. For a detailed description of the calculation of the required clearing fund deposit, *see* Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[15] The forward mark allocation is the amount owed to GSCC based on the value of securities that GSCC anticipates that a netting member will be obligated to either receive from GSCC or deliver to GSCC on the scheduled settlement date for the position. *See* Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 for a detailed description of the calculation of the forward mark allocation.

GSCC will compute the required deposits based on the "system price" of the trade. The "system price" is a weighted average of the par values of trades compared by GSCC and closely approximates the closing interdealer price. *See* Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[16] GSCC's Rules require Government securities brokers and dealers to maintain a $50 million net worth and $10 million in excess net capital; interdealer brokers are required to maintain at least $4.2 million in net capital; and banks are required to maintain a minimum of $250 million in equity capital. GSCC Rule 15.

[17] The contraparty to the yield trade does not have access to deposits collected by GSCC. GSCC holds the forward mark allocation payments and required clearing fund deposits as collateral in the event a member fails to fulfill its deliver or receive obligations. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, and Sonia Burnett, Attorney, Commission (August 13, 1991). *See also*, GSCC Rule 4 § 6.

solicited by an Important Notice. GSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes GSCC's proposal to convert, compare, and net, prior to the Treasury auction, yield trades between participating members in Treasury note and bond issues is consistent with the Act and particularly with section 17A of the Act.[18] Specifically, the Commission believes that extending GSCC's netting system to trades executed on a yield basis promotes the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds in GSCC's custody or under GSCC's control consistent with sections 17A(b)(3)(A)[19] and 17A(b)(3)(F).[20]

GSCC implemented the yield-to-price conversion service in October 1992 with 80% of the netting members participating in the service. During the last three months, GSCC members have used this service to process trades in more than twelve issues auctioned by the U.S. Treasury, and GSCC has compared, cleared, and settled, in the aggregate, more than $827.5 billion in trades under this service without incident.[21] Based on this favorable experience, the Commission is satisfied that the proposal is consistent with GSCC's obligation to safeguard funds and securities and to promote prompt and accurate clearance and settlement.

In its prior orders addressing this proposal, the Commission identified as a potential concern the interplay between voluntary submission of compared trades for GSCC netting and the potential financial exposure to GSCC and its members resulting from the exclusion of those trades from GSCC's netting operation. The Commission encouraged GSCC to reconsider whether it was appropriate for netting members to withhold from the netting operation yield trades that were compared.

GSCC has not completed its evaluation of this concern, in part because of the limited, albeit favorable, experience with the yield to price service. Indeed, GSCC indicated that some members may need to make further operational changes to accommodate mandatory netting of trades compared through the yield-to-price conversion system. Nevertheless, GSCC has represented that it will address this concern in a proposed rule change to be filed with the Commission by December 31, 1994.[22]

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**.[23] GSCC has requested accelerated effectiveness of the proposal so that GSCC may continue to offer the service without interruption. The Commission believes there is good cause for approving the proposed rule change on an accelerated basis. First, the Commission has thrice solicited comment on this proposed service, without public response. Second, accelerated approval will provide for continuation of the service without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–14 and should be submitted by March 4, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that GSCC's proposed rule change is consistent with the Act and, in particular, with section 17A, and the Commission finds good cause for approving the proposal on an accelerated basis.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (File No. SR–GSCC–92–14) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3261 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31826; File No. SR–NYSE–92–32]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Electronic T+1 Overnight Comparison of Exchange Bond Transactions, the Comparison of Initial Trade Data in Listed Bonds by the Exchange Through Its Overnight Comparison System, and Security Position Movements Through the "Step-Out" Service in Listed Bonds

February 4, 1993.

On October 22, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change (File No. SR–NYSE–92–32) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to the overnight comparison of Exchange bond transactions, the submission of initial trade data in listed bonds to the Exchange for comparison, and security position movements in listed bonds between clearing members. On December 1, 1992, notice of the proposed rule change was published in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. As discussed below, the Commission is granting approval of the proposal.

I. Description

The proposed rule change consists of amendments to NYSE Rules 130, 133, 134.A, 135, 136, 137, and 142, and the rescission of NYSE Rule 134.B, to require NYSE members to submit data for transactions in listed bonds effected

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[18] 15 U.S.C. 78q-1 (1988).

[19] 15 U.S.C. 78q-1(b)(3)(A).

[20] 15 U.S.C. 78q-1(b)(3)(F). For a more detailed discussion, see Securities Exchange Act Release No. 29732, note 2 *supra*.

[21] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Sonia Burnett, Attorney, Commission (January 28, 1993); and telephone conversation between Jeffrey F. Ingber and Sonia Burnett (February 1, 1993).

[22] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Sonia Burnett, Attorney, Commission (December 14, 1992).

[23] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Sonia Burnett, Attorney, Commission (January 15, 1993).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31504 (November 23, 1992), 57 FR 56942.

on the Exchange for electronic overnight comparison on or after June 1, 1993 through the NYSE's Overnight Comparison System ("OCS").[3] An enhancement to the OCS also will permit members to reassign responsibility for clearing specific OCS trades through automated means.[4]

The proposal also enables NYSE members to resolve uncompared bond transactions through the OCS which is currently used to resolve uncompared trades in listed stocks[5] and options.[6] The Exchange will require the electronic resolution through its OCS for all uncompared transactions in listed bonds effected on the Exchange for "Regular Way," "Next Day" and "Seller's Option" settlement that are traded on an "issued," "when issued" and "when distributed" basis. Uncompared transactions that cannot be resolved on T+1 will be subject to mandatory "close out." Bonds traded in the Exchange's Automated Bond System ("ABS") will not be subject to these requirements.[7] The OCS for bonds will compare "Ex-Clearing House" transactions (*i.e.*, any transaction in which the buying and selling parties to the trade agree to physically settle the transaction between themselves) for "Cash," "Next-Day" and "Seller's Option" settlement.

In the OCS for bonds the Exchange will accept initial trade data submission in all listed bonds traded on the floor of the Exchange from its clearing member organizations and compare the data in the OCS.[8] The compared trades will then be transmitted to the National Securities Clearing Corporation ("NSCC") where they will be printed on clearing members' contract sheets. NSCC will then complete the clearance and settlement process. Any uncompared trade will remain in the Exchange's OCS for resolution or will be dropped from OCS if it remains uncompared at the end of T+1.

The Exchange intends to implement OCS for bonds using a phased approach, much as it did when implementing OCS for stocks and later the OCS for options. Assuming no unforeseen operational difficulties, the NYSE tentatively plans to eliminate paper Questioned Trade Forms and to correct uncompared trades in the OCS electronically on T+3 during the first quarter of 1993. By the end of the first quarter of 1993, the NYSE estimates that the time-frame for initial submission will be reduced from T+1 to the evening of trade date. Thereafter, initial submission of trade data for comparison will be shifted from NSCC to the Exchange.[9] The last two steps will be to reduce the correction cycle to T+1, as it is in stocks, and to drop any remaining uncompared trades from OCS at the end of T+1.

Participants also will be able to avail themselves of the Exchange's Step Out Service ("SOS") to effect securities position movements in listed bonds amongst themselves that were acquired on the Exchange.[10] SOS enables the Exchange's clearing members, by pressing keys on a computer terminal, to issue instructions to a qualified clearing agency for the transfer of open contractual commitments between the members' clearing accounts. Hence, SOS will allow all or part of an open bond transaction to be transferred electronically from one clearing firm's account to another firm's account prior to settlement of the trade.

II. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange be designed to foster coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities and to protect investors and the public interest and to remove impediments to and perfect the mechanics of a national market system.[11] In enacting section 17A of the Act, Congress found that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors and mandated the establishment of a national system for the clearance and settlement of securities transactions.[12] The Commission believes that the NYSE's proposed rule change furthers these important goals.

Expanding the OCS to include bond transactions, the comparison of initial comparison data in bonds, and the expansion of the "Step Out" Service to bond transactions will automate the Exchange's trade resolution system. The proposal will shorten the comparison cycle from as long as T+5 to T+1, will reduce the risk exposure of investors and NYSE members and will contribute to the prompt and efficient clearance and settlement of securities transactions.

Like previous NYSE proposals regarding the trade comparison of equity securities and options, this proposal will reduce the risk of uncompared trades by shortening the comparison cycle.[13] The risk of uncompared trades came under intense scrutiny following the Market Break of October 1987. During the Market Break uncompared trades on the NYSE (as well as other markets) increased alarmingly and, for several reasons, became a major stress point in the clearance and settlement process. First, uncompared trades require special labor-intensive treatment ("exception processing") under working conditions already rendered chaotic by record trading volume. Second, the NYSE's rate of uncompared trades doubled as a percentage of total trades during the week of October 19, 1987. Third, the record market volatility (primarily downward) threatened to impose financial penalties on those firms that could not resolve trade comparison errors prior to settlement with their customers.[14]

The NYSE proposal is consistent with the Group of Thirty's recommendation that all trade comparisons be

[3] Trade comparison, or the matching of the two sides of a transaction, occurs after a trade has been executed. It is the process by which broker-dealers on either side of a trade confirm with each other the terms of a trade (*e.g.*, security, number of units, and price) and the existence of a contract. Comparison is the first of the three steps involved in processing a securities transaction (the other two are clearance and settlement). For more information about OCS, *see* Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 (SR–NYSE–88–36).

[4] Such transfers of open securities positions between NYSE clearing members are referred to as "step-outs." The Commission initially authorized "step-outs" for securities in Securities Exchange Act Release No. 29492 (August 1, 1991), 56 FR 36855 (SR–NYSE–91–09).

[5] See Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 (File No. SR–NYSE–88–36); Securities Exchange Act Release No. 28285 (August 6, 1990), 55 FR 31930 (File No. SR–NYSE–90–21).

[6] See Securities Exchange Act Release No. 30293 (February 4, 1992), 57 FR 4229 (File No. SR–NYSE–91–36).

[7] Transactions effected in the ABS are electronically "locked in" with respect to the identity of the buyer and seller for comparison purposes by the Exchange. On the evening of each trade date, these compared trades are transmitted to the appropriate Qualified Clearing Agency by the Exchange to be printed on clearing members' contract sheets. Thus, there are no uncompared trades in the ABS trading environment.

[8] NSCC filed a proposed rule change with the Commission on January 6, 1993 (File No. SR–NSCC–93–02), which, among other things, adds language to Procedure II(D)(2) allowing uncompared trades to be resolved through the facilities of another self-regulatory organization.

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 29492 (August 1, 1991), 56 FR 36855 (File No. SR–NYSE–91–09).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78q–1(a)(1)(A).

[13] See *supra* notes 5, 6.

[14] See Division of Market Regulation, Securities and Exchange Commission, The October 1987 Market Break, Ch 10 at 5–13 (hereinafter Division Report).

accomplished by T+1, a necessary step in order to achieve the Group of Thirty's goal of T+3 settlement.[15] In addition, the Bachmann Task Force Report equates time with risk and advocates reducing comparison to T+1 in order to facilitate a shorter settlement cycle.[16]

The NYSE proposal (which will shorten the comparison cycle for NYSE traded bonds to T+1), while it does not constitute the final objective of same day comparison, is consistent with the Commission's efforts to shorten the comparison cycle.[17] Accordingly, the Commission believes that the proposal is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act. The Commission further believes that the proposal will help protect investors and also will help protect brokers and other persons facilitating transactions by and acting on behalf of investors.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and in particular with sections 6 and 17A of the Act and the rules thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–92–32) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3260 Filed 2–10–93; 8:45 am]

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[15] See implementing the Group of Thirty Recommendations in the United States, U.S. Working Committee, Group of Thirty Clearance & Settlement Project (November 1990) at III–19 to III–25.

[16] Specifically, the Bachmann Task Force Report recommends that comparison of institutional trades be reduced to T+1. Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, submitted to the Chairman of the U.S. Securities and Exchange Commission, May 1992. Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812 (June 22, 1992). Commenting on the Bachmann report, the Securities Industry Association advocated T+1 comparison of bond transactions. Letter from Thomas A. James, Chairman and Edward I. O'Brien, President, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated September 15, 1992.

[17] See Division Report, Ch. 10 at 12. *See* also the Interim Report of the Working Group on Financial Markets (May 1988), Appendix D at 6.

[18] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–31825; File No. SR–OCC–93–03]

February 4, 1993.

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Inclusion of the Russell 2000 Index in the Cross-Margining Program With the Chicago Mercantile Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–93–03) as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to add the Russell 2000 Index ("Russell") as an Eligible Contract under the cross-margining program between OCC and the Chicago Mercantile Exchange ("CME").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow OCC to add a new index to the List of Eligible Contracts[2] under the OCC/CME cross-margining program.[3] The additional Eligible Contracts will consist of put and call options on the Russell that are traded on the Chicago Board Options Exchange ("CBOE") and are cleared by OCC and futures contracts on the Russell and options on those futures contracts that have been approved for trading on the CME and will be cleared by the CME's Clearing House Division.

Options on the Russell, futures on the Russell, and options on the futures on the Russell will be in the same class group because the underlying is the same index. Accordingly, OCC and the CME have agreed to allow these contracts to be cross-margined with each other. OCC has represented, however, that the Russell class group will be in a product group by itself and, therefore, will not be included in the broad-based product group.[4]

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it expands the List of Eligible Contracts for OCC/CME cross-margining thereby helping to make the national system for the clearance and settlement of securities transactions more efficient and cost-effective.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited comments with respect to the proposed rule change, and none have been received.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Contracts eligible for cross-margin treatment are set forth in the List of Eligible Contracts which is attached as Exhibit A to the Amended and Restated Cross-Margining Agreement between OCC and the CME. Currently, the List of Eligible Contracts includes put and call options cleared by OCC on: S&P 100 Index; S&P 500 Index; Major Market Index; New York Stock Exchange Composite Index; Financial News Composite Index; Institutional Index; MidCap 400 Index; and Financial Times 100 Index. Eligible Contracts traded and cleared at the CME are: S&P 500 Index futures; put and call options on S&P 500 Index futures; MidCap 400 Index futures; put and call options on MidCap 400 Index futures; Financial Times 100 Index futures; and put and call options on Financial Times 100 Index futures.

[3] For a description of the OCC/CME cross-margin program, refer to Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 [File No. SR–OCC–89–1] (order approving OCC/CME proprietary cross-margining program) and 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01] (order approving OCC/CME non-proprietary, market professional cross-margining program).

[4] Both OCC and the CME will be reviewing their existing contracts to determine whether any of them can be placed in the same product group with the Russell. Should OCC decide to include the Russell class group in a broader product group or decide to include any existing contract in the Russell product group, OCC, prior to inclusion, will submit a Section 19(b) proposed rule change to the Commission for approval.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Such accelerated approval would permit OCC to coordinate its operations with the exchanges involved in this proposal.

The Commission believes OCC's proposed rule change to permit cross-margining of the above-named products is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, with the requirements of Sections 17A(b)(3)(A) and (F).[5] Those sections require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of clearing agencies. Additionally, Section 17A(a)(1) of the Act[6] specifically encourages the use of efficient, effective, and safe procedures from securities clearance and settlement. The Commission in recent years has dealt in a comprehensive manner with numerous proposals involving OCC's cross-margining programs.[7] For the reasons discussed in those orders as well as the reasons discussed above, the Commission believes that this proposal warrants approval in that it helps to further the perfection of the national system for the clearance and settlement of securities transactions.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will allow OCC and the CME to coordinate the cross-margining of options on the Russell, which are currently being traded on the CBOE, with the start of trading of futures on the Russell and options on the futures on the Russell at the CME. This should, consistent with section 17A, help to make the national system for clearance and settlement safer and more efficient.

[5] 15 U.S.C. §§ 78q–1(b)(3)(A) and (F) (1988).

[6] 15 U.S.C. § 78q–1(a)(1) (1988).

[7] *E.g.*, Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01] (order approving OCC/CME non-proprietary, market professional cross-margining program) and 30041 (December 5, 1991), 56 FR 64824 [File No. SR–OCC–90–04] (order approving OCC/ICC non-proprietary, market professional cross-margining program).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 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, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–93–03 and should be submitted by March 2, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–93–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3267 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31824; File No. SR–PSE–92–40]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing of and Order Granting Accelerated Approval on a Permanent Basis to the PSE's Ten-Up Pilot Program

February 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), on October 12, 1992, filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 15 U.S.C. § 78s(b)(2).

[9] 17 CFR § 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR § 240.19b–4 (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE hereby requests permanent approval of its Trading Crowd Firm Disseminated Market Quote ("Ten-Up Rule") pilot program.[3] The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1990, the Commission approved the Exchange's ten-up Rule on a one-year pilot basis.[4] The Exchange subsequently obtained Commission approval to extend the ten-up pilot program through November 13, 1992.[5] The PSE is now requesting permanent approval of the Ten-Up pilot program based on its report of the Rule which concludes the pilot program has: (1) Resulted in an improvement in the quality of the Exchange's options markets and market maker performance, and (2) quicker executions of public customer orders. In addition, the Exchange's report also cited the viability and effectiveness of the Ten-Up Rule pilot program as a basis for permanent approval.

In the Ten-Up Approval Order, the Commission approved PSE Rule 6.86,

[3] The Exchange's ten-up Rule requires PSE trading crowds to provide a depth of ten contracts for all non-broker/dealer customer orders, at the disseminated market quote at the time such orders are announced or displayed at a trading post. *See* Securities Exchange Act Release No. 28021 (May 16, 1990), 55 FR 21131 ("Ten-Up Approval Order").

[4] *Id.*

[5] *See* Securities Exchange Act Release Nos. 29325 (June 17, 1991), 56 FR 29300 (First Extension); 29909 (November 8, 1991), 56 FR 57914 (Second Extension); 30418 (February 26, 1992), 57 FR 7832 (Third Extension); 30841 (June 19, 1992), 57 FR 29111 (Fourth Extension); and 31172 (September 10, 1992), 57 FR 43044 (Fifth Extension).

entitled "Guaranteed Markets, Trading Crowd Firm Disseminated Market Quotes." The Exchange has subsequently filed proposals that would modify the Ten-Up Rule in minor respects.[6] The PSE, however, expects that such modifications will not have any significant impact on the overall viability or effectiveness of the Rule.

The PSE believes the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it facilitates transactions in securities and promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of sections 6, 11(b), and 11A thereunder, in that it will result in improved quality of PSE options markets and better market maker performance. The Ten-Up Rule provides public customers with the assurance of order execution to a minimum depth of ten contracts at the best disseminated bid or offer, resulting in better executions of small customer orders by ensuring greater depth to the PSE's options markets.[7]

The Commission in its prior orders extending the Ten-Up Rule has insisted that the Exchange before seeking permanent approval study the operation of the Ten-Up Rule and its effect, if any, on the PSE's options markets.[8] Specifically, the Commission directed the Exchange to study the effect of the Ten-Up Rule on the speed of execution of trades, its impact on average bid/ask spreads and any increase or decrease in market depth. The Commission also expected the Exchange to provide a report to the Commission on its findings on these matters, along with any violations of the Ten-Up Rule and any complaints about its operation, prior to filing for permanent approval.[9]

The Commission notes, that the Exchange submitted a report on the operation and effectiveness of the Ten-Up Rule in connection with its seeking permanent approval. Specifically, the Exchange conducted a floor-wide survey of options floor brokers, market makers and member firms to evaluate the effectiveness of the pilot program. Based on the responses to this survey, the Exchange found that the Ten-Up Rule has resulted in faster executions of public customer orders and an improvement in the quality of the Exchange's options markets and market maker performance. In addition, the report noted that the Ten-Up Rule places greater obligations on market makers since they must either keep their markets updated or run the risk of having to fill a customer order based on a stale quote that may or may not be competitive given present market conditions. Overall, the report concluded that the PSE's markets have improved due to the Rule and that substantial public benefits have resulted.

The Commission also notes that since the first operation of the Rule in May 1990, the PSE has prosecuted several disciplinary cases. The Exchange's Options Floor Trading Committee ("OFTC") adjudicated all of these cases, and as a result, has issued, among other things, fines, informal letters of caution and letters of information.[10] The Commission believes that the PSE's Ten-Up Rule works reasonably well and is not subject to significant difficulties, as indicated by the report submitted by the PSE.

For purposes of the PSE's proposal to permanently approve its Ten-Up Rule, the Commission reasserts its initial position regarding the benefits of a Ten-Up Rule on the PSE.[11] Specifically, the permanent approval of the PSE Ten-Up Rule is consistent with sections 6, 11(b) and 11A of the Act in that the Rule results in improved market quality and better market maker performance than would otherwise occur. The Rule further results in better executions of small customer orders by ensuring greater depth of PSE options markets.

The Commission further believes that the Ten-Up Rule encourages market makers to become more competitive in making markets, thereby, facilitating transactions in securities, contributing to a more free and open market, and improving the quality of the PSE's options markets. The Commission also notes that the PSE's Ten-Up Rule is designed to attract greater customer order flow to the exchange, which enhances market depth and liquidity resulting in tighter options pricing spreads.

Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because of the importance of continuing uninterrupted the operation of the Ten-Up Rule. The Commission believes the PSE proposal will continue to benefit public customers by extending the Ten-Up requirement to all options series (except LEAPS) thereby assuring more customer orders will receive executions to a minimum depth of ten contracts at

[6] The PSE in File No. SR–PSE–92–02 submitted with the Commission a proposed rule change to incorporate various Ten-Up policies, such as the identification and types or orders subject to the Ten-Up Rule. On November 13, 1992, the Exchange withdrew this filing from Commission consideration. *See* letter from Michael D. Pierson, Senior Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated November 13, 1992. The PSE has now filed a revised proposal relating to the identification of orders that are eligible to receive the Ten-Up guarantee. *See* File No. SR–PSE–93–01. In addition, the PSE also filed a Minor Rule Plan Violation proposal with the Commission which would include violation of the Ten-Up Rule. *See* Securities Exchange Act Release No. 31226 (September 23, 1992), 57 FR 45105. These Exchange proposals are pending with the Commission.

[7] *See supra* note 3.

[8] *See supra* note 5.

[9] Specifically, the PSE was instructed by the Commission to submit by October 1, 1992, a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary action against any member due to the operation of the pilot; (3) the extent to which the pilot has been used on the PSE; and (4) the impact of the pilot on bid/ask spreads, depth and liquidity of PSE options markets.

[10] There are two types of Ten-Up Rule cases that the OFTC has considered for disciplinary action. The first involves a situation where a market maker in a trading crowd refuses to buy or sell option contracts necessary to accommodate a public customer order (*i.e.*, refusing to honor a Ten-Up market). Only three disciplinary cases have been brought by the Exchange for such a violation. The second category of Ten-Up cases involves orders for broker-dealers that floor brokers misrepresent in the trading crowds as public customer orders, which are then entitled to a "fill" of at least ten contracts. On July 26, 1991, the OFTC issued a Regulatory Information Bulletin clarifying who is entitled to receive a minimum of ten contracts under the Rule. The Bulletin specified that registered broker-dealers, market makers, specialists, floor brokers and any other person or entity required to file a Form BD with the SEC, are not entitled to a minimum of ten contracts under the Ten-Up Rule.

[11] *See* Ten-Up Approval Order, *supra* note 1.

the best quoted bid or offer.[12] Moreover, the Ten-Up Rule, by encouraging options market makers to become more competitive, should facilitate options transactions and thereby contribute to a free, open and liquid market. The Commission has approved on a permanent basis the benefit of Ten-Up provisions by other options exchanges.[13] Therefore, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–40 and should be submitted by March 2, 1993.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–PSE–92–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3264 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[12] Pursuant to PSE Rule 6.86(e), the Exchange on August 24, 1992 expanded the scope of the Ten-Up Rule to cover *all series* on the Options floor (except for LEAPS). Rule 6.86(e) states:

"[t]he enforcement of this Rule, and the determination of the expiration months and strike prices subject to the provisions of this Rule shall be within the jurisdiction of the Options Floor Trading Committee. Two Options Floor Officials may grant exemptions to the provisions of this Rule for either a class or series within a class of options contracts if, in their determination, the individual situation warrants such action, or upon their determination that an error occurred in the dissemination of a market quote."

As first adopted, the Ten-Up Rule was applicable to just-in-the-money, at-the-money and just-out-of-the-money series for the *first* near-term expiration month. On August 20, 1990, the Rule was expanded to cover the same series in the first *two* near-term expiration months, and was further expanded on January 20, 1992 to cover *all series* in the first *three* near-term expiration months.

[13] *See e.g.,* Securities Exchange Act Release Nos. 28897 (February 19, 1991), 56 FR 7736 (New York Stock Exchange); 27235 (September 11, 1989), 54 FR 38580 (American Stock Exchange); 26924 (June 13, 1989), 54 FR 26284 (Chicago Board Options Exchange) and 24580 (June 11, 1987), 52 FR 23120 (Philadelphia Stock Exchange).

[14] 15 U.S.C. § 78s(b)(2) (1982).

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Eight Over-the-Counter Issues

February 3, 1993.

On January 13, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.,* securities not registered under section 12(b) of the Act.

File No.	Issuer
7–10064	Adobe Systems, Inc., Common Stock, No Par Value.
7–10065	Adolph Coors Company, Class B Common Stock, No Par Value.
7–10066	Applied Bioscience Int'l, Common Stock, $0.01 Par Value.
7–10067	Novell, Inc., Common Stock, $0.05 Par Value.
7–10068	Oracle Systems, Corp., Common Stock, $0.01 Par Value.
7–10069	Seagate Technology, Inc., Common Stock, $0.01 Par Value.
7–10070	Shared Medical Systems Corp., Common Stock, $0.01 Par Value.
7–10071	Sun MicroSystems, Inc., Common Stock, $0.00067 Par Value.

The above-referenced issues are being applied for as an expansion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Comments

Interested persons are invited to submit, on or before February 24, 1993 written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3265 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in One Over-the-Counter Issue

February 3, 1993.

On January 21, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.,* a security, not registered under section 12(b) of the Act.

File No.	Issuer
7–10080	Eagle Hardware & Garden Inc. Common Stock, No Par Value.

The above-referenced issue is being applied for as an expansion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Comments

Interested persons are invited to submit, on or before February 24, 1993 written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on

the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 93–3266 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19253; File No. 812–8224]

Canada Life Insurance Company of America, et al.

February 4, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Canada Life Insurance Company of America ("Canada Life"), Canada Life Insurance Company of America Variable Annuity Account 2 (the "Variable Account"), and Canada Life of America Financial Services, Inc. ("CLAFS"). (Canada Life, the Variable Account, and CLAFS are referred to herein collectively as the "Applicants.")

RELEVANT ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account established to support certain variable annuity contracts (the "Policies").

FILING DATE: The application was filed on December 18, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 1, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o David A. Hopkins, Esq., Canada Life Insurance Company of America, 6201 Powers Ferry Road, NW., Atlanta, Georgia 30339.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch.

Applicants' Representations

1. Canada Life, a stock life insurance company incorporated under the laws of the State of Michigan on April 12, 1988, is principally engaged in the sale and reinsurance of annuity policies. Canada Life is a wholly owned subsidiary of The Canada Life Assurance Company, a Canadian life insurance company.

2. The Variable Account was established by Canada Life as a separate account under the laws of the State of Michigan on October 30, 1992, to support the Policies. The Variable Account is a unit investment trust registered under the 1940 Act, and consists of six subaccounts (the "Subaccounts"): Capital Sub-Account; Cash Management Sub-Account; Common Stock Sub-Account; Fixed Income Sub-Account; Income Sub-Account; and International Sub-Account.

3. The Variable Account will invest in shares of one or more of the investment portfolios of Seligman Mutual Benefit Portfolios, Inc. (the "Fund"), which is registered as a diversified, open-end management investment company under the 1940 Act (File Nos. 33–15253; 811–5221). The Fund has six portfolios, or series: Capital Portfolio; Cash Management Portfolio; Common Stock Portfolio; Fixed Income Portfolio; Income Portfolio; and International Portfolio. Each Subaccount will invest solely in a specific corresponding portfolio of the Fund.

4. CLAFS will serve as the principal underwriter of the Policies. CLAFS is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

5. The Policies are individual flexible premium variable deferred annuity contracts. The Policies may be purchased on a non-tax qualified basis or they may be purchased and used in connection with qualified retirement plans or individual retirement account ("IRAs") that qualify for favorable federal income tax treatment. Currently, the Policies may be purchased with an initial premium payment of at least $5,000; under certain circumstances, the initial premium payment may be reduced to $2,000 or less if a Policy is being purchased and used in connection with an IRA. Under all circumstances, subsequent Premium Payments must be at least $1,000. A Policy owner may allocate net premium payments to one or more Subaccounts or to Canada Life's general account.

6. A Policy owner may fully or partially withdraw the cash surrender value of a Policy prior to the date when annuity payments commence (the "Annuity Date"). The amount payable upon full withdrawal is the cash surrender value, which is the Policy Value less any applicable contingent deferred sales charge ("CDSC") and the annual administration fee (described below).

7. A Policy owner also may transfer the accumulated value under the Policy (the "Policy Value") among the Subaccounts prior to the Annuity Date. Under Canada Life's current policy, which it reserves the right to change, Canada Life will impose no charge for the first fifteen transfers in each Policy year, and will impose a $25 charge for the sixteenth and each subsequent transfer request made by a Policy owner during a single Policy year. Canada Life guarantees that any future transfer policy will provide at least four free transfers under the Policies during each Policy year.

8. A death benefit is payable to the Policy beneficiary in the event that the Company receives due proof of death of the last surviving annuitant before the Annuity Date. The death benefit will be the greatest of: (1) Any premium payments, less (a) any partial withdrawals (including applicable CDSCs) and (b) any taxes incurred; (2) the Policy Value on the date Canada Life receives such due proof of death; or (3) if Canada Life receives due proof of death after the seventh Policy year, the Policy Value at the end of the seventh Policy year or multiple thereof (*i.e.*, 7 years, 14 years, 21 years, *etc.*, referred to herein as the "seven Policy year period") preceding the date Canada Life receives due proof of death, adjusted for (a) any partial withdrawals made (including applicable CDSCs), (b) any taxes incurred, and (c) any premium payments paid, in the period between Canada Life's receipt of due proof of death and the conclusion of the most recent seven Policy year period.

9. Canada Life will deduct an annual administration fee of $36. This fee will be deducted from the Policy Value on each Policy anniversary prior to the

Annuity Date (and, upon a full withdrawal, on any date other than a Policy anniversary) to compensate Canada Life for administrative services provided to Policy owners during that Policy year. The fee will be deducted in reliance on Rule 26a–1 under the 1940 Act, and represents reimbursement only for administration costs expected to be incurred over the life of the Policies. The annual administration fee is guaranteed not to increase for the duration of the Policy, and Canada Life neither expects nor intends to make a profit from this fee.

10. Canada Life also will deduct a daily administration fee each Valuation Period (*i.e.*, the period beginning at the close of business on the day on which the Variable Account assets are valued—the "Valuation Day," and ends at the close of business on the succeeding Valuation Day) equal to an effective annual rate of 0.35% of the value of the net assets in the Variable Account. The fee will be deducted in reliance on Rule 26a–1 under the 1940 Act, and represents reimbursement only for administrative costs expected to be incurred over the life of the Policies. This daily administration fee is guaranteed not to increase for the duration of the Policy, and Canada Life neither expects nor intends to make a profit from this fee.

11. No deduction of a sales charge is made when premiums are paid. However, within the first seven Policy years, a CDSC is imposed on any full or partial withdrawal of the Policy value. For purposes of determining whether the CDSC will be imposed and the amount of the charge, premium payments will be deemed to be withdrawn in the order in which they were received by Canada Life. The amount of the CDSC expressed as a percentage of the premium payment amount withdrawn is as follows:

Years since premium was paid	Surrender charge (percent)
Fewer than 2	6
At least 2, fewer than 4	5
At least 4, fewer than 5	4
At least 5, fewer than 6	3
At least 6, fewer than 7	2
At least 7	0

12. In addition, at the time of the first partial withdrawal during a Policy year, ten percent of premium payments that would otherwise be subject to a CDSC upon withdrawal may be withdrawn without imposition of any CDSC, provided that the systematic withdrawal privilege available under the Policy has not been elected. For purposes of determining the premium payments to which the ten percent free withdrawal applies, premium payments will be deemed to be withdrawn in the order in which they were received by Canada Life.

13. Canada Life does not anticipate that the CDSC will generate sufficient funds to pay the costs of distributing the Policies. If this charge is insufficient to cover the distribution expenses, the deficiency will be met from Canada Life's general account funds, including amounts derived from the charge for mortality and expense risks.

14. If Canada Life's taxing jurisdiction assesses premium taxes when premiums are paid, Canada Life will deduct any applicable tax from gross premium payments. Otherwise, Canada Life will deduct any applicable aggregate premium taxes paid on behalf of a particular Policy from the Policy Value on the Annuity Date (or upon full withdrawal). Although no charges for federal, state, or local taxes other than premium taxes currently are assessed, Canada Life may deduct such charges from the Variable Account in the future.

15. Canada Life will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Policies. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, Applicants anticipate that approximately 0.75% will be attributable to mortality risks, and approximately 0.50% will be attributable to expense risks. Canada Life guarantees that this charge never will increase.

16. The mortality risk borne by Canada Life arises from: (1) its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Policy) regardless of how long all annuitants or any individual annuitant may live; and (2) its guarantee to pay the death benefit provided under the Policy if Canada Life receives due proof of death of the last surviving annuitant before the Annuity Date. The expense risk assumed by Canada Life is the risk that Canada Life's actual administrative costs will exceed the amounts recovered through the daily and annual administration fees.

17. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Canada Life. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Canada Life. Canada Life currently anticipates making a profit from this charge.

Applicants' Legal Analysis and Conclusions

18. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit deduction from the assets of the Variable Account of a mortality and expense risk charge under the Policies.

19. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefore from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

20. Applicants submit that Canada Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the Policies made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Canada Life for the risk that: annuitants under the Policies will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Policies; the Policy Value will be less than the death benefit; and administrative expenses will be greater than amounts derived from the administration fees.

21. Canada Life further represents that the charge of 1.25% for mortality and expense risks assumed by Canada Life is within the range of industry practice with respect to comparable annuity products. This representation is based upon Canada Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Canada Life will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

22. Applicants acknowledge that the surrender charge may be insufficient to

cover all costs relating to the distribution of the Policies. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the CDSC. Canada Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Policy owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Canada Life at its administrative offices and will be made available to the Commission.

23. Canada Life also represents that the Variable Account will invest only in management investment companies which undertake, in the event such companies adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) to deduct a mortality and expense risk charge under the Policies meet the standards in section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3262 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19248; 811–899]

Bull & Bear Capital Growth Fund, Inc.; Notice of Application

February 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Bull & Bear Capital Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 31, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11 Hanover Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, of C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Maryland. On December 27, 1965, applicant registered 3,000,000 shares of common stock under the Securities Act of 1933 (the "Securities Act"). Approximately concurrent with the filing of its registration statement under the Securities Act, applicant registered under the Act as an investment company. Applicant's Securities Act registration statement was declared effective on January 10, 1966.

2. On March 12, 1992, applicant's board of directors unanimously approved an Agreement and Plan of Reorganization (the "Plan") between applicant and Bull & Bear Special Equities Fund (the "Special Equities Fund").[1] On or about May 14, 1992, proxy materials relating to the Plan were distributed to applicant's shareholder, and were filed with the SEC. On June 18, 1992, holders of a majority of the outstanding shares of applicant approved the Plan.

3. On June 19, 1992 (the "Closing Date"), applicant transferred all of its assets to Special Equities Fund. Special Equities Fund assumed all of applicant's liabilities. In exchange for applicant's shares, Special Equities Fund issued to applicant a number of shares of Special Equities Fund determined by dividing the aggregate net asset value of applicant's shares by the net asset value of a share of Special Equities Fund, as of the Closing Date. Applicant then distributed *pro rata* to its shareholders the shares of Special Equities Fund it received.

4. On the Closing Date, applicant had 5,237,715.859 shares outstanding with a net asset value per share of $6.62, and an aggregate net asset value of $34,664,470.

5. The expenses incurred in connection with the Plan totaled approximately $72,435. These expenses consisted primarily of legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses. Each fund was responsible for its own expenses, and common expenses were allocated in proportion to a fund's net assets.

6. At the time of filing of the application, applicant had no assets. Applicant has no shareholders and is not a party to any litigation or administrative proceedings. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On October 22, 1992, applicant filed Articles of Dissolution with the Maryland State Department of Assessments and Taxation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3202 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] Applicant and Special Equities Fund have a common investment adviser. Rule 17a–8 provides an exemption from the affiliated transaction prohibitions of section 17(a) for a merger of registered investment companies, which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser. As described in the Proxy Statement/Prospectus relating to the Plan, to avail itself of the exemption, applicant's board of directors determined that the sale of applicant's assets to Special Equities Fund was in the best interest of applicant and its shareholders, and that the interests of the existing shareholders of applicant would not be diluted as a result of the reorganization.

[Rel. No. IC–19249; 811–1114]

Bull & Bear Equity-Income Fund, Inc.; Notice of Application

February 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Bull & Bear Equity-Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 31, 1992.

HEARING ON NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11 Hanover Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Delaware. On October 26, 1961, applicant registered 2,000,000 shares of common stock under the Securities Act of 1933 (the "Securities Act"). Approximately concurrent with the filing of its registration statement under the Securities Act, applicant registered under the Act as an investment company. Applicant's Securities Act registration statement was declared effective on June 20, 1962.

2. On December 12, 1991, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Plan") between applicant and Bull & Bear U.S. and Overseas Fund Ltd. (the "Overseas Fund").[1] On or about January 21, 1992, proxy materials relating to the Plan were distributed to applicant's shareholder, and were filed with the SEC. On February 25, 1992, holders of a majority of the outstanding shares of applicant approved the Plan.

3. On February 26, 1992 (the "Closing Date"), applicant transferred all of its assets to Overseas Fund. Overseas Fund assumed all of applicant's liabilities. In exchange for applicant's shares, Overseas Fund issued to applicant a number of shares of Overseas Fund determined by dividing the aggregate net asset value of applicant's shares by the net asset value of a share of Overseas Fund, as of the Closing Date. Applicant then distributed *pro rata* to its shareholders the shares of Overseas Fund it received.

4. On the Closing Date, applicant had 817,578.476 shares outstanding with a net asset value per share of $11.93, and an aggregate net asset value of $9,751,816.10.

5. The expenses incurred in connection with the Plan totaled approximately $91,676. These expenses consisted primarily of legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses. Each fund was responsible for its own expenses, and common expenses were allocated in proportion to a fund's net assets.

6. At the time of filing of the application, applicant had no assets. Applicant has no shareholders and is not a party to any litigation or administrative proceedings. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On June 1, 1992, applicant filed a certification of dissolution with the Secretary of State of the State of Delaware.

[1] Applicant and Overseas Fund have investment advisers that are under "common control" within the meaning of section 2(a)(9) of the Act. In addition, Overseas Fund is an "affiliated persons" of its investment adviser within the meaning of section 2(a)(3) of the Act because such adviser beneficially owns 5% or more of the shares of Overseas Fund. To permit the reorganization, applicant and Overseas Fund received an exemptive order from the SEC pursuant to sections 17(b) and 17(d) of the Act and rule 17d–1 thereunder. Investment Company Act Release Nos. 18491 (Jan. 17, 1992) (notice), and 18557 (Feb. 19, 1992) (order).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3201 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19257; 811–4414]

Gintel Capital Appreciation Fund; Notice of Application

February 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Gintel Capital Appreciation Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on November 13, 1992, and amended on January 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 6 Greenwich Office Park, Greenwich, Connecticut 06831.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283; or C. David Messman, Branch Chief, at (202) 272–3018 (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.

Applicant's Representations

1. Applicant is a business trust under the laws of the Commonwealth of Massachusetts and is registered as an open-end investment company under the Act. Applicant's investment adviser is Gintel Equity Management, Inc., and its principal underwriter is Gintel & Co., On September 24, 1985, applicant registered under the Act and filed a registration statement to register its shares under the Securities Act of 1993. The registration statement became effective on November 23, 1985, and the initial public offering of the shares commenced on that date.

2. On June 10, 1992, applicant's board of trustees unanimously adopted an Agreement for Transfer of Assets and Liabilities. Applicant's shareholders approved the Agreement at a shareholders meeting held on September 19, 1992. Under the Agreement, on September 25, 1992, applicant transferred all of its assets and liabilities to the Gintel Fund, a registered investment company. In exchange, applicant's shareholders received shares of the Gintel Fund having a net asset value equal to the net asset value of their shares of applicant.

3. The total expenses incurred in connection with the transfer of assets and liabilities, consisting of legal fees, accounting fees and printing and mailing costs for the proxy solicitation, were $70,975. These expenses were paid by applicant and the Gintel Fund based on the relative net assets of each fund. Accordingly, applicant paid $22,648, and the Gintel Fund paid $48,327.

4. Since applicant and the Gintel Fund are each an "affiliated person" of the other, as that term is defined in the Act, applicant relied on the rule 17a–8 exemption to comply with section 17(a) of the Act. To avail itself of this exemption, applicant's board determined that the merger was in the best interests of applicant and that the interests of the existing shareholders would not be diluted as a result of the merger.

5. Applicant has no shareholders and no assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. Applicant intends to file a Certificate of Dissolution with the Commonwealth of Massachusetts. Accordingly, applicant seeks an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3257 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19258; 812–7947]

North American Security Life Insurance Company, et al.

February 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a distribution fee and a mortality and expense risk charge from the assets of the Variable Account with respect to certain variable annuity contracts.

FILING DATE: The application was filed on June 23, 1992 and amended on December 14, 1992.

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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on March 2, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicants: John D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Staff Accountant or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life is a stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established to offer certain variable annuity contracts, including the variable contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial is the principal underwriter of the Contracts. It is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and a member of the National Association of Securities Dealers, Inc. NASL Financial also serves as investment adviser to the Trust and is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts.

5. As reimbursement for providing administrative services under the Contracts, Security Life reserves the right to charge an annual administration fee if the contract value of a Contract drops below $10,000 as the result of a partial withdrawal. In such event, Security Life may, on the last day of each contract year, deduct from the contract value of such Contract an annual administration fee of $30. This annual administration fee may also be deducted under such a Contract if the Contract is surrendered on any date other than a contract anniversary. In addition, Security Life will deduct from the sub-accounts each valuation period an administration charge equal to .25% of the sub-account assets on an annualized basis. These fees are intended to compensate Security Life for the cost of providing administrative services attributable to the Contracts and the operations of the Variable

Account and the Company in connection with the Contracts. Applicants represent that the fees are based upon Security Life's current estimates of the administrative costs for such services over the lifetime of the Contracts, are guaranteed never to be increased, and are not designed or expected to generate a profit. Applicants rely on Rule 26a–1 under the Act to assess such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, Security Life will deduct from the sub-accounts each valuation period a distribution fee equal to .15% of the sub-account assets on an annualized basis, and a 3% withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date of the Contract. Generally, the 3% withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than three complete contract years. Withdrawals are allocated first to earnings and then to purchase payments on a first-in-first-out basis. There is no withdrawal charge with respect to withdrawals of investment earnings and certain other free withdrawal amounts. Under no circumstances will the total of all withdrawal charges exceed 3% of total purchase payments. Applicants represent that the distribution fee and the withdrawal charge are intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants rely on Rule 6c–8 under the Act to impose the withdrawal charge.

7. To compensate it for assuming mortality and expense risks under the Contracts, Security Life deducts from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. The rate of the mortality and expense risk charge cannot be increased.

8. The mortality risk assumed by Security Life under the Contracts is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the annuitant dies before the maturity date, it will pay a minimum death benefit. If the last surviving annuitant dies on or before the first of the month following his or her 85th birthday and had an attained age of less than 81 years on the contract date, the minimum death benefit will be equal to the greater of: (a) the contract value on the date due proof of death is received at the Company's Annuity Service Office, or (b) the excess of (i) the sum of each purchase payment accumulated daily at a rate equivalent to 5% per year starting on the date each purchase payment is allocated to the contract, subject to a maximum accumulation of two times each purchase payment, over (ii) the sum of each withdrawal, or annuitized amount, including any applicable withdrawal charges, accumulated daily at a rate equivalent to 5% per year starting as of the date of each such withdrawal or annuitization, with a maximum accumulation of two times each such withdrawal or annuitized amount. If the annuitant dies after the first of the month following his or her 85th birthday or had attained age 81 or greater on the contract date, the minimum death benefit will be the amount payable on the total withdrawal on the date due proof of death is received at the Company's Annuity Service Office.

9. The expense risk assumed by Security Life is the risk that the administration fees may be insufficient to cover actual expenses. The rate of the mortality and expense risk charge cannot be increased. If the charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis and Conditions

1. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deductions of the mortality and expense risk charge and a distribution expense charge from the assets of the Variable Account under the Contracts.

2. Applicants state that the proposed distribution fee is an appropriate method to help defray Security Life's costs associated with the sale of the Contracts. Applicants represent that Security Life will monitor the performance of the Variable Account to ensure that with respect to any contract owner the cumulative sum of the distribution fee and the withdrawal charge will not exceed 9% of the total premiums paid. Applicants state that assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Variable Account. Applicants represent that if the performance of the Variable Account should be so favorable so that it is possible that the 9% limit may be reached under any outstanding Contract, Security Life will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.

3. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that the distribution fee and the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution fee and the withdrawal charge. Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission. Moreover, Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

Conclusion

1. Applicants assert that for the reasons and upon the facts set forth in

the application, the exemptions requested are necessary and 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3259 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19254; 812–8210]

The Travelers Growth and Income Stock Account for Variable Annuities, et al.; Notice of Application, February 4, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Travelers Growth and Income Stock Account for Variable Annuities, The Travelers Quality Bond Account for Variable Annuities, The Travelers Fund B for Variable Contracts, The Travelers Fund B–1 for Variable Contracts, The Travelers Money Market Account for Variable Annuities, The Travelers Timed Growth and Income Stock Account for Variable Annuities, The Travelers Timed Money Market Account for Variable Annuities, The Travelers Timed Aggressive Stock Account for Variable Annuities, The Travelers Timed Bond Account for Variable Annuities, Aggressive Stock Trust, Cash Income Trust, High Yield Bond Trust, Managed Assets Trust, and The Travelers Series Trust (the "Funds"), and The Travelers Investment Management Company and Travelers Asset Management International Corporation (the "Advisers").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Applicants seek a conditional order that would permit: (a) the implementation of investment advisory agreements, without shareholder approval, during a period of 150 days following the closing of a transaction between The Travelers Corporation ("Travelers") and Primerica Corporation ("Primerica") which caused the termination of applicants' existing investment advisory contracts by assignment; and (b) to permit the Advisers to receive from the Funds any and all fees earned under the new investment advisory agreements upon approval and ratification of such agreements by the Funds' shareholders.

FILING DATE: The application was filed on December 10, 1992 and amended on January 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are registered open-end management investment companies. They serve as the funding vehicles for variable annuity and variable life insurance contracts issued by The Travelers Insurance Company ("Travelers Insurance"). The Advisers are registered as investment advisers under the Investment Advisers Act of 1940 and provide investment advisory services to the Funds. The Advisers are wholly-owned subsidiaries of Travelers.

2. On September 20, 1992, Travelers and Primerica entered into a stock purchase agreement and certain other agreements among themselves and certain of their subsidiaries. On December 30, 1992, Primerica purchased for cash and other consideration approximately 38 million shares of Travelers common stock (the "Transaction"). As a result of the Transaction, Primerica and its subsidiaries acquired approximately 26.4% of the Travelers Common Stock then outstanding.

3. Upon closing of the Transaction, Primerica and its subsidiaries owned approximately 25.4% of the voting securities of Travelers, which in turn owned 100% of the outstanding voting securities of the Advisers. Consequently, the Transaction may be deemed to have caused the assignment of the investment advisory agreements of the Funds, thus terminating such agreements.

4. Applicants seek an exemption from section 15(a) to permit: (a) the implementation of new investment advisory agreements, without shareholder approval, during a period of 150 days following the closing of the Transaction (the "Interim Period"); and (b) to permit the Advisers to receive from the Funds any and all fees earned under the new investment advisory agreements if such agreements are approved and ratified by the Funds' shareholders.

5. The Funds will seek approval of the new investment advisory agreements at meetings scheduled for April 23, 1993. Such meetings coincide with the annual meetings held by certain of the Funds, and will consequently reduce the expense and disruption of soliciting proxies and holding a special meeting to approve the new advisory agreements. With respect to those Funds which do not hold annual meetings, it will be less disruptive and more cost effective to hold the special meetings on the same date as the annual meetings because the personnel involved in such meetings can take all necessary actions in preparing for and conducting them, including the preparation of proxy solicitation material, in a coordinated manner at one time.

6. In-person meetings of the respective boards of directors and boards of trustees of the Funds (the "Directors/Trustees") were held on October 30, 1992 and December 16, 1992, at which the Transaction and its implications for the Funds were discussed. At the meeting on December 16, 1992, the Directors/Trustees made a full evaluation of the new investment advisory agreements in accordance with section 15(c) with the advice and assistance of counsel. After having received from the Advisers such information as they requested as reasonably necessary to evaluate whether the terms of the new investment advisory agreements are in the best interests of the Funds and their shareholders, the Directors/Trustees, including the independent Directors/Trustees, unanimously voted to approve

the new investment advisory agreements.

7. The new investment advisory agreements have the same terms and conditions as the current advisory agreements. In addition, the Advisers assured the Directors/Trustees that the Funds will receive the same investment advisory services, provided in the same manner by essentially the same personnel, as they received under the prior investment advisory agreements.

8. The Directors/Trustees also considered that payment of the advisory fees earned during the Interim Period would be fair considering that, among other things, the nonpayment of such fees would be an unduly harsh result to the Advisers because the services provided to the Funds and the fees to be paid under the new investment advisory agreements are unchanged from the fees paid under the current agreement. Fees earned during the Interim Period will be placed in an escrow account and released only upon the approval of the new investment advisory agreements by the Funds' shareholders.

9. For a period of three years after the Transaction, at least 75% of the Directors/Trustees will not be interested persons of the Advisers. In addition, the Transaction will not impose an unfair burden on the Funds.

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except pursuant to a written contract which has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment.

2. Under section 2(a)(4), an assignment includes any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's voting securities. Under section 2(a)(9), a beneficial owner of more than 25% of the voting securities of a company is presumed to control such company. Because Primerica acquired approximately 25.4% of the voting securities of the Advisers' parent, the Funds' investment advisory agreements may be deemed to have been assigned, and consequently terminated pursuant to their terms.

3. Rule 15a–4 provides, among other things, that if an investment adviser's investment advisory contract is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because Travelers received a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a–4.

4. Applicants believe that it is reasonable that the Interim Period extend for up to 150 days from the closing of the Transaction. The Transaction closed 110 days prior to the scheduled date of the meetings of the shareholders of the Funds. The additional number of days will allow for reasonable adjournments of the meetings if necessary to obtain sufficient shareholder response to the solicitations to obtain the required approval as set forth in section 2(a)(42). In any event, shareholder approval of the new investment advisory agreements must be obtained within 150 days of the closing of the Transaction.

5. Applicants believe that the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes and policies fairly intended by the Act. The requested relief will allow the Funds to continue to operate on an orderly basis until the shareholders have the opportunity to consider new investment advisory agreements.

Applicants' Conditions

Applicants agree as conditions to the requested exemptive relief that:

1. The new investment advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the current investment advisory agreements.

2. Fees earned by the Advisers and paid by the Funds during the Interim Period in accordance with the terms of the new investment advisory agreements will be maintained in an interest-bearing escrow account, and amounts in the account (including interest) will be paid to the Advisers only upon approval of the new investment advisory agreements by the shareholders of the Funds. If the fees are not paid to the Advisers, the fees will revert to the Funds.

3. The Funds will hold meetings of shareholders to vote on approval of the new investment advisory agreements on April 23, 1992, which meetings may be adjourned for a reasonable period for legitimate business purposes, upon the recommendation of the Directors/Trustees.

4. Travelers Insurance will pay the entire costs of preparing and filing this application and the costs of holding all meetings of the Funds' shareholders at which approval of the new investment advisory agreements will be sought, including the cost of proxy solicitations.

5. The Advisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Directors/Trustees of the Funds, including a majority of the independent Directors/Trustees, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the new investment advisory agreements, the Advisers will apprise and consult with the Directors/Trustees of the Funds in order to assure that they, including a majority of the independent Directors/Trustees, are satisfied that the services provided will not be diminished in scope or quantity.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3263 Filed 2–10–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 91.21–]

Proposed Advisory Circular (AC) on Use of Portable Electronic Devices Aboard Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed AC on Use of Portable Electronic Devices Aboard Aircraft.

SUMMARY: The proposed AC is intended to provide aircraft operators with information and guidance to assist them in determining whether the operation of any portable electronic device will cause interference to communication and navigation systems aboard aircraft in which it is to be operated.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 91.21–.

DATES: Comments must be received on or before March 15, 1993.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Aircraft Maintenance Division

(Attention: AFS–350), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Milton Hill, AFS–350, at the above address; telephone: (202) 267–3810 (8:30 a.m. to 5 p.m. EST).

Issued in Washington, DC, on February 2, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–3280 Filed 2–10–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 5, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0203.
Form Number: ATF REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: Data is necessary to account and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Businesses or other for-profit, Small businesses or other organizations.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 3,458 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–3205 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

February 5, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0016
Form Number: IRS Form 706–A
Type of Review: Extension
Title: United States Additional Estate Tax Return
Description: Form 706–A is used by individuals to compute and pay the additional estate taxes under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 180
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	3 hours, 17 minutes.
Learning about the law or the form.	2 hours, 13 minutes.
Preparing the form	1 hour, 46 minutes.
Copying, assembling, and sending the form to the IRS.	1 hour, 3 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 1,499 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–3276 Filed 2–10–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 3, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Electronic Federal Tax Deposit Survey.
Description: This survey will collect information on attitudes towards Electronic Federal Tax Deposit (EFTD) system. This information will be used to select appropriate EFTD technologies and design marketing programs to encourage voluntary participation.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2,400.
Estimated Burden Hours Per Response:

Phone Survey	15 minutes.
Mail Survey	20 minutes.

Frequency of Response: Other (two times).
Estimated Total Reporting Burden: 1,400 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–3277 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–35–M

Departmental Offices; Delegation of Lease Acquisition Authority To Acquire Special Purpose Space

[Directive Number: 12–22]

February 4, 1993.

1. Delegation

a. This directive delegates authority to the Director, U.S. Secret Service, to perform all functions in connection with the leasing of space in amounts of 2,500 square feet, or less, as necessary to meet the statutory protective responsibilities of the U.S. Secret Service. This delegation shall extend to leasing space under the authority of 40 U.S.C. 490(h)(1), for firm terms not to exceed four years.

b. This authority shall be exercised in accordance with applicable limitations and requirements of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, the Treasury Acquisition/Procurement Regulation (TAPR), and other applicable statutes and regulations.

2. Redelegation

The Director, U.S. Secret Service, may redelegate this authority to an appropriate U.S. Secret Service contracting officer appointed under Subpart 1001.6 of the TAPR.

3. Cancellation

Treasury Directive 12–22, "Authority to Lease Space—United States Secret Service," dated January 29, 1987, is superseded.

4. Authorities

a. Delegation of authority from the Administrator of General Services to the Secretary of the Treasury, dated December 26, 1974, to lease space, within given limits, for the U.S. Secret Service, with the right to redelegate this authority to any official of the Department of the Treasury. (40 FR 842, January 3, 1975).

b. Treasury Order (TO) 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

c. TO 101–30, "Designation of "Head of Agency" for Procurement Matters," dated March 7, 1984.

5. Office of Primary Interest

Office of Management Support Systems, Management Programs Directorate, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary (Management).

William S. Jasien,

Acting Assistant Secretary (Management).

[FR Doc. 93–3278 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–35–M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 767 Ref: ATF O 1100.113C]

Delegation Order—Delegation of Certain Authorities of the Director in 27 CFR Parts 47, 178, and 179

1. *Purpose.* This order delegates certain authorities now vested in the Director by regulations in 27 CFR parts 47, 178, and 179 to the Associate Director (Compliance Operations). The order also permits the redelegation of certain authorities to lower organizational levels.

2. *Cancellation.* ATF O 1100.113B, Delegation Order—Delegation of Certain Authorities of the Director in 27 CFR parts 47, 178, 179, dated 3/27/87, is canceled.

3. *Background.* a. Under current regulations, the Director has authority to take final action on certain matters relating to:

(1) Commerce in Firearms and Ammunition, 27 CFR part 178.

(2) Machineguns, Destructive Devices, and Certain Other Firearms, 27 CFR part 179.

(3) Importation of Arms, Ammunition, and Implements of War, 27 CFR part 47.

b. Certain of these authorities were delegated by the Director to the Associate Director (Compliance Operations). Regulatory provisions promulgated under the amendments to the Federal firearms laws delegate additional authorities to the Director. These amendments necessitate that these authorities now be redelegated to the Associate Director (Compliance Operations).

c. In order to properly fulfill ATF responsibilities with respect to these delegated authorities, the Associate Director (Compliance Operations) will coordinate actions that may have an impact on law enforcement activities with the Associate Director (Law Enforcement). Authorities redelegated by the Associate Director (Compliance Operations) to lower organizational levels will be coordinated with the appropriate law enforcement office.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01, dated June 6, 1972, and by 26 CFR 301.7701–9, the authority to take final action on the following matters relating to 27 CFR parts 178, 179, and 47 is hereby delegated to the Associate Director (Compliance Operations).

a. *27 CFR Part 178.* (1) To prescribe all forms required by 27 CFR part 178, under 27 CFR 178.21.

(2) To approve written applications for alternate methods or procedures, under 27 CFR 178.22(a).

(3) To withdraw authority for any alternate method or procedure, under 27 CFR 178.22(a).

(4) To approve written applications for emergency variations, under 27 CFR 178.22(b).

(5) To withdraw authority for any emergency variations, under 27 CFR 178.22(b).

(6) To compile for publication in the Federal Register, annually revise, and furnish to Federal firearms licensees a list of State laws and published ordinances which are relevant to the enforcement of part 178, under 27 CFR 178.24.

(7) To determine whether a particular firearm is a curio or relic, under 27 CFR 178.26.

(8) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 178.27.

(9) To approve the transportation in interstate or foreign commerce of any destructive device, machinegun, short-barreled shotgun, or short-barreled rifle, under 27 CFR 178.28.

(10) To authorize alternate means of identification of a firearm or a destructive device by a licensed importer or licensed manufacturer, under 27 CFR 178.92.

(11) To approve applications for sale or delivery of destructive device or weapon, under 27 CFR 178.98.

(12) To furnish each licensed dealer information defining which projectiles are considered armor piercing, under 27 CFR 178.99(e).

(13) To approve applications to import firearms, firearms barrels, and ammunition, under subpart G of 27 CFR part 178, under 27 CFR 178.112, 178.113, 178.113a, 178.114, 178.116, and 178.118.

(14) To determine if certain shipments of firearms or ammunition to members of the Armed Forces would violate the Gun Control Act or other Federal law, or whether certain firearms or ammunition are considered to be generally recognized as particularly suitable for sporting purposes, under 27 CFR 178.141(c).

(15) To designate research organizations exempt from the provisions of 178.98, with respect to the

sale or delivery of destructive devices, machineguns, short-barreled shotguns, or short-barreled rifles to such research organizations, under 27 CFR 178.145.

(16) To exempt certain armor piercing ammunition from the requirements of this part, and to require that a sample of the ammunition be submitted for examination and evaluation, under 27 CFR 178.148.

(17) To authorize the manufacture, importation, sale, or delivery of armor piercing ammunition for the purpose of testing or experimentation, under 27 CFR 178.149.

b. *27 CFR Part 179,* (1) To prescribe all forms required by 27 CFR part 179, under 27 CFR 179.21.

(2) To determine whether a device is excluded from the definition of a destructive device, under 27 CFR 179.24.

(3) To determine whether a firearm or device, which, although originally designed as a weapon, is by reason of the date of its manufacture, value design, and other characteristics, primarily a collector's item and is not likely to be used as a weapon, under 27 CFR 179.25.

(4) To approve alternate methods or procedures, under 27 CFR 179.26(a).

(5) To withdraw approval of alternate methods or procedures, under 27 CFR 179.26(a).

(6) To approve emergency variations, under 27 CFR 179.26(b).

(7) To withdraw approval of emergency variations, under 27 CFR 179.26(b).

(8) To relieve qualified persons of the requirement to pay special (occupational) tax, under 27 CFR 33(a).

(9) To relieve qualified manufacturers from compliance with any provision of 27 CFR part 179, under 27 CFR 179.33(a).

(10) To maintain supply of stamps bearing the words "National Firearms Act," representing payment of tax on the making of a firearm, under 27 CFR 179.61.

(11) To affix National Firearms Act stamp to original application authorizing the making of a firearm, under 27 CFR 179.62.

(12) To approve applications to make a firearm, under 27 CFR 179.64.

(13) To approve applications to make a firearm for the United States, under 27 CFR 179.69.

(14) To approve applications to make a firearm by or on behalf of certain Government entities, under 27 CFR 179.70.

(15) To approve applications to transfer firearms and to affix NFA stamps, under 27 CFR 179.86.

(16) To approve applications to transfer firearms to special (occupational) taxpayers, under 27 CFR 179.88(b).

(17) To approve applications to transfer firearms to certain government entities, under 27 CFR 179.90(b).

(18) To approve applications to transfer unserviceable firearms as a curio or ornament, under 27 CFR 179.91.

(19) To maintain a central registry (the National Firearms Registration and Transfer Record) of all firearms in the United States which are not in the possession or under the control of the United States, under 27 CFR 179.101.

(20) To authorize other means of identification of firearms and destructive devices, under 27 CFR 179.102.

(21) To receive notice and effectuate registration of firearms manufactured, under 27 CFR 179.103.

(22) To approve registration of firearms acquired by certain government entities, under 27 CFR 179.104.

(23) To approve importations of firearms, under 27 CFR 179.111(a).

(24) To receive notice and effectuate registration of imported firearms, under 27 CFR 179.112(a).

(25) To approve importations of firearms by an importer or dealer qualified under 27 CFR part 179, for use as a sample in connection with sales of such firearms to Federal, State, or local government entities, under 27 CFR 179.112(d).

(26) To approve applications for the conditional importation of firearms and impose conditions upon such importation of firearms, under 27 CFR 179.113.

(27) To approve applications and execute permits for the exportation of firearms, under 27 CFR 179.115.

(28) To vary the requirements relating to permits and supporting documents for firearms exported to persons in the insular possessions of the United States, under 27 CFR 179.121.

(29) To issue duplicate documents evidencing possession of a firearm, under 27 CFR 179.142.

(30) To maintain supply of stamps bearing the words "National Firearms Act" representing payment of the transfer tax or tax on making a firearm, under 27 CFR 179.161.

(31) To affix the appropriate "National Firearms Act" stamp evidencing payment of the transfer tax or tax on making firearm, under 27 CFR 179.161.

c. *27 CFR Part 47.* (1) To approve applications for registration of persons to import articles enumerated on the U.S. Munitions Import List, under 27 CFR 47.32(a).

(2) To approve the refund of registration fee, under 27 CFR 47.32(c).

(3) To prescribe a longer or shorter period of records retention, under 27 CFR 47.34(b).

(4) To prescribe all forms required by 27 CFR part 47, under 27 CFR 47.35(a).

(5) To approve permit applications to import firearms, ammunition, and implements of war, under 27 CFR 47.42.

(6) To amend, alter, or certify permits to import firearms, ammunition, and implements of war, under 27 CFR 47.43(c).

(7) To deny, revoke, suspend, or revise permits to import firearms, ammunition, and implements of war, under 27 CFR 47.44 (a) and (b).

(8) To certify to the legality of importation of articles on the U.S. Munitions Import List, under 27 CFR 47.51.

5. *Redelegation.* a. The authorities in paragraphs 4a(7), 4a(8), 4a(10), 4a(12), 4a(14), 4a(16), 4b(2), 4b(3), and 4b(20), may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of division chief.

b. The authorities in paragraph 4a(1), 4a(3), 4a(5), 4a(15), 4b(1), 4b(5), 4b(7), 4b(8), 4b(9), 4b(10), 4b(19), 4b(30), 4c(3), 4c(4), and 4c(7) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of branch chief.

c. The authorities in paragraphs 4a(9), 4a(11), 4a(13), 4b(11), 4b(12), 4b(13), 4b(14), 4b(15), 4b(16), 4b(17), 4b(18), 4b(21), 4b(22), 4b(23), 4b(24), 4b(25), 4b(26), 4b(27), 4b(28), 4b(29), 4b(31), 4c(1), 4c(2), 4c(5), 4c(6), 4c(8) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of application examiner.

d. The authorities in paragraph 4a(2), 4a(4), 4a(6), 4b(4), and 4b(6) may be redelegated to Compliance Operations personnel in Bureau Headquarters, but not lower than the position of specialist.

e. The authorities in paragraph 4a(2), 4a(4), 4b(4), and 4b(6) may be redelegated to the regional director (compliance) to approve, without submission to Bureau Headquarters, requests which are identical to those previously approved by Bureau Headquarters. Regional directors (compliance) may redelegate these authorities to a position not lower than chief, technical services, or area supervisor. The authorities in paragraphs 4a(3), 4a(5), 4b(5), and 4b(7) may be redelegated to the regional director (compliance) who may redelegate the authorities to a position not lower than chief, technical services, regarding alternate methods, procedures or emergency variations approved by regional offices only.

6. *For Information Contact.* Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

7. *Effective Date.* This delegation order becomes effective on February 11, 1993.

Stephen E. Higgins,

Director.

[FR Doc. 93–3234 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–31–M

Fiscal Service

[Dept. Circ. 570, 1992 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds Century Surety Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of United States Code. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1992 Revision, on page 29365 to reflect this addition:

Century Surety Company. Business Address: P.O. Box 2689, Columbus, Ohio 43216–2689. Underwriting Limitation [b]: $504,000. Surety Licenses [c] AZ, IN, OH, WI, WV. Incorporated IN: Ohio. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained form the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6765.

Dated: January 28, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–3235 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds, Star Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29392 to reflect this addition:

Star Insurance Company, Business Address: 26600 Telegraph Road, Southfield, Michigan 48034. Underwriting Limitation [b]: $1,084,000. Surety Licenses [c]: AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, UT, VT, VA, WV, WI, WY. Incorporated in: Michigan.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: February 2, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–3236 Filed 2–10–93; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

A Seven-Week Summer Institute for English Teacher Trainers From Eastern Europe

ACTION: Notice—request for proposals.

SUMMARY: The U.S. Information Agency (USIA) solicits interest from U.S. not-for-profit institutions/organizations in conducting a seven-week Summer Institute for up to sixteen teacher trainers from Albania, Poland, Hungary, The Czech Republic, the Slovak Republic, Romania, Bulgaria, Slovenia, Estonia, Latvia, and Lithuania. The purpose of the Summer Institute will be to prepare the participants to coordinate EFL teacher training activities in their respective countries upon their return. The Institute will, therefore, encompass curriculum design and management training as well as training in methodology.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, March 26, 1993. Faxed documents will not be accepted, nor will documents postmarked on Friday, March 26, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The grant should begin on or about April 30, 1993.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: EFL Educators from Eastern Europe (E–C–02), Office of Grant Management, E/XE, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Richard A. Murphy, Office of Cultural Centers and Resources, English Language Programs Division, E/CE, room 304, U.S. Information Agency, 301 4th St., SW., Washington, DC 20547, telephone (202) 619–5869 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: 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.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. not-for-profit educational institutions/organizations to organize and conduct a seven-week Summer Institute for up to sixteen teacher trainers for a special Eastern European exchange program. The program is meant to provide training in EFL methodology, curriculum design, and program management for a specially selected group of teacher trainers from Albania, Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Bulgaria, Slovenia, Estonia, Latvia, and Lithuania. Upon completion of the program and returning to their home countries,

graduates of the Institute will work together with USIA EFL Fellow coordinators who are already working in each country as part of the Eastern European EFL Fellow Program.

For the past three years the EFL Fellow program has placed up to fifty teacher trainers and ESP teachers in Eastern European countries. The purpose of the program, which was initiated in 1991, was to promote English teaching in Eastern Europe as a response to the dramatic increase in the demand for English caused by political changes. An American coordinator was assigned to oversee the pedagogical side of the program and to supervise in-country administration within the larger country programs and within the Baltic region. As one means of ensuring that a training program remains in place, USIA is supporting this Summer Institute to train a cadre of EFL professionals for each country or region to assume the responsibilities of EFL coordination once the EFL Fellow program is no longer funded.

Guidelines

Program Description: The grantee organization is expected to design a program with two major components.

1. The first component should consist of an academic program covering the following topics: a review of EFL teaching methodology and classroom techniques; evaluation of existing EFL materials and development of new materials with specific reference to the needs of Eastern Europe; refinement of teacher training skills; teacher observation and evaluation; designing and conducting workshops for EFL teachers; designing, developing and managing in-service teacher training programs; planning and developing curricula. As an integral part of the evaluation and development of EFL materials, participants should have the opportunity to design some of their own EFL materials to use when they return home. In conjunction with the teacher observation and evaluation component of the program they should visit on-going EFL or foreign language classes in local institutions to observe teachers as well as to have the opportunity to micro-teach portions of the classes themselves and be evaluated. Throughout the academic program emphasis should be on hands-on, interactive work rather than formal lectures.

2. The second component of the program should consist of an introduction to American culture and institutions. Since most of the participants will have had very little contact with the United States, the following experiences should be included: A brief introduction to American education, university life and society; an opportunity to become involved with American cultural life through home visits and participation in community activities and/or festivities; a one week educational and cultural tour of Washington, DC and environs. The introductory briefing should be held at the program site before the start of the academic program. Home visits and other activities should be scheduled during the course of the program. The tour of greater Washington, DC should be conducted at the conclusion of the academic program prior to the participants' return home.

Selection of Participants

Participants in the Summer Institute will be selected by the current country coordinators for the Eastern European EFL Fellow Program and/or EFL Fellows in consultation with USIS posts, local Ministries of Education, and USIA. Each participant will be chosen with the view to having him or her eventually assume the duties of managing a country- or area-wide EFL program currently being carried out by the USIA country coordinators. Therefore, each participant should have had some experience in teacher training as well as extensive classroom experience as a teacher. Excellent English is also a prerequisite. Upon completion of the Institute, the participants will return to their countries and work for at least one full year with the coordinator and/or EFL Fellows in conducting the EFL Fellow Program.

Program Administration

The grantee institution will be responsible for all Institute programming and administrative logistics, management of the academic program and the cultural tour, local travel, and on-site institution arrangements. USIA will be responsible for all communications to and from the U.S. Information Service posts in Eastern Europe which submit nominations to the English Language Programs Division and will also assume responsibility for all international travel. USIA will provide the grantee institution with participants' curriculum vitae and itineraries and will be available to offer any advice or guidance the institution may find useful.

The participants will arrive directly at the campus site from their home countries. Actual arrival dates may be spread out over a few days, depending upon airline flight schedules from each country. It is expected that the grantee institution program staff will make arrangements to have participants met upon arrival at the nearest airport. Plans for receiving and housing participants will need to take the variation in arrival dates into account. Departure will be from Washington, DC. The program staff will have to plan for transportation to airports and differing lengths of stay before departure.

The host institution is responsible for arranging lodging, food, and maintenance for participants during their stay at the host institution and while in Washington.

Time Frame

The Summer Institute should be programmed to start on or about Saturday, June 26 and end on or about Saturday, August 14, 1993, for a total of 50 days. If the grantee institution needs to vary this timeline in any way then it must justify such variation in terms of improved program quality or cost effectiveness in its proposal. Subject to the availability of funds, the successful grantee applicant may be awarded renewal grants for up to three years, depending on program performance and evaluations conducted by USIA.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application package (see instruction above to obtain package). Experience with similar Summer Institutes would suggest that the cost to USIA for the summer program should not exceed $125,000.

Application Requirements (Refer to Application Package):

Proposals must be submitted by the deadline and provide a detailed plan in accordance with the objectives and needs outlined above. Applicants should draw on the full range of resources offered by their institutions but may involve outstanding professionals from other institutions or organizations as well. The overall quality and effectiveness of the program depends upon administrative and organizational competence to manage interactions between Eastern European educators and Americans.

The proposal package must include one original and fourteen copies. Each proposal must be presented as follows:

1. A completed and signed cover sheet for grant application which will be provided in the application package.

2. An abstract of the proposed Summer Institute not to exceed one single-spaced page.

3. A narrative not to exceed twenty double-spaced pages.

The detailed narrative should outline the structure and organization of Institute courses and must include a day-by-day agenda for classes and supplementary activities. Plans for lodging and meals should be discussed in this section. Also, describe plans to identify appropriate books and readings to be distributed to participants on arrival or to be sent to them upon their return home as follow-up to Institute themes. A plan for evaluation of the project should also be included.

4. A budget in the prescribed format outlining specific expenditures. Refer to the application packet for format.

5. Appendices must contain the following information:

a. Academic/professional resumes of program director(s), instructor, consultants, and program staff (not to exceed two double-space pages for each).

b. Evidence of the institution's activities in substantive academic programs training train EFL teacher-trainers.

c. Demonstrations of the institution's experiences with similar international exchange projects.

d. Optional items for appendices are reading lists and examples of evaluation instruments.

6. Completed forms in support of the proposal. See application packet for the following forms: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet; Assurance of Compliance; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Lobbying Certification and Disclosure of Lobbying Activities.

Qualifications Required of the Responding Organization

To carry out the above tasks the institution/organization must be a not-for-profit organization. It must have four years of international experience and possess a proven ability to carry out an academic program in teacher training and program management described above.

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 established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of program idea*: Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Program planning*: Detailed agenda and relevant work plan should demonstrate substantive rigor 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 program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program of project's goals. Proposal should present clear evidence of the ability to efficiently carry out the training program outlined here. The proposal should include evidence of strong academic, administrative and managerial capabilities and project management experience.

6. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposal should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

8. *Evaluation Plan:* Proposals should provide for a quarterly formative evaluation by the grantee institution and a summative evaluation at the conclusion of the project.

9. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Administrative costs exceeding 20% of USIA fund will not be accepted.

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 awarded commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 30, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements. The successful organization may be awarded renewal grants for up to three years, depending on program performance and evaluations conducted by USIA.

Dated: February 5, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–3180 Filed 2–10–93; 8:45 am]

BILLING CODE 8230–01–M

Public and Private Non-Profit Organizations In Support of International Educational and Cultural Activities; Academic Semester and Year Program—Secondary School Exchange Initiative With the Former Warsaw Pact Countries

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from non-profit U.S. educational, cultural, and other institutions to conduct academic semester and year exchanges of youth between the ages of 15 and 18½ years of age with the former Warsaw Pact Countries (FWPC), specifically Poland, Hungary, the Czech and Slovak Republics, Bulgaria, Romania and the former German Democratic Republic (now the five new states of eastern Germany). This program was authorized by the State-USIA authorization act of 1992–93 (PL 102–138) Section 225 entitled Eastern Europe Student Exchange Endowment

Fund. A total of $1,022,000 is available for this competition.

ANNOUNCEMENT NUMBER: This Announcement number is FY–93–14. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, April 16, 1993. Faxed documents will not be accepted, nor will documents postmarked on April 16 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadlines. Grant funding should be available after July 1, 1993, in support of projects that will require implementation beginning in the spring semester of 1994 and the academic year beginning in August of 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: FY–93–14, F.S.A.-Former Warsaw Pact Youth Exchange, Office of Grants Management, E/XE, 301 4th Street SW., Rm 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Robert Persiko, European Programs Division, E/PE, room 357, (202) 619–6299; FAX (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: 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.

Overview—Grant funding is intended to promote the exchange of young people, from 15 to 18½ years of age between the U.S. and Hungary, Poland, Bulgaria, Romania, the Czech and Slovak Republics, and the former German Democratic Republic (GDR). The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement.

Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Guidelines for Academic Program

Purpose: To enable organizations to recruit and select high school students from the above named countries and to place them in the U.S. to study and live for not less than one academic semester and not more than one academic year; to provide a reciprocal program for U.S. students to study and live in these countries; and to enable participants to develop a broad view of the society and culture of their host country.

It is desirable (but not required) for student placements to be grouped in "clusters" of 5–15 within a two-hour drive of each in order to facilitate supervision, ongoing orientation and cross-cultural coping skills, and enhancement programming. The organization should provide periodic (ideally on a monthly basis) get-togethers of the "cluster" for this programming. The organization should provide for arrival orientation and re-entry training prior to departure at the end of the program. A mid-year activity is also desirable.

Proposals must demonstrate the organization's ability to do the following in both the U.S. and the FWPC counterpart country:

—Recruit and select students using their own established criteria. All participants must be between the ages of 15 and 18 and ½ at the time the exchange begins. Participants should be chosen for their actual or potential leadership qualities. The proposal should describe in detail the selection process for both the U.S. and foreign participants.

—Arrange for placement in secondary schools. The proposal should describe the criteria and process for selecting schools for placement.

—Select and orient host families. Describe the criteria for selecting a host family. Host families must be identified in advance of participant arrival. Temporary family placements will not be allowed in this program. Describe the process for host family orientation.

—Make all travel, visa and logistical arrangements.

—Conduct orientation, schedule program enhancements, and re-entry and debriefing sessions. It is desirable for all inbound participants to have a program in Washington, DC. It is recommended that this not be scheduled at the beginning of the students' stay.

—Supervise students, solve problems and provide counseling as needed; develop a mechanism for the transfer of academic credit and/or the certification of school attendance.

—Evaluate the program's success.

Practices and procedures must meet the requirements of J-visa regulations for secondary school exchange visitor sponsors.

Both private not-for-profit organizations and public educational institutions (including secondary schools, school districts and state education agencies) are eligible.

Budget

The organization must submit a comprehensive line item budget. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

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 established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria: Technically eligible applications will be completely reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, rigor and adherence to the criteria and conditions described above.

2. *Reasonable, Feasible, and Flexible Objectives:* Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should provide contact with the community beyond the school and should contribute to the establishment of long-term institutional and individual linkages.

4. *Value to U.S.-Partner Country Relations:* Assessments by USIA's geographic area desk and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. *Cost Effectiveness:* The ratio of indirect to direct costs should be reasonable. Cost-sharing through other private sector support as well as

institutional direct funding contributions is strongly encouraged.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

7. *Institution's Track Record/Ability:* The Agency will consider the past performance of prior grantees and the demonstrated potential new applicants.

8. *Follow-on Activities:* Preference will be given to projects that are part of a long-range program of exchanges with the partner country.

9. *Evaluation Plan:* Proposals should provide a plan for evaluation by the grantee institution of the participants' academic performance and adaptation to the host environment, as well as the success of the project in meeting the stated objectives.

10. *Selection Process:* Proposals should provide detailed criteria and procedures for selection of student participants and host families.

11. *Organizational Standing:* An organization submitting a proposal should be in good standing with USIA and the Council on Standards for International Educational Travel.

12. *Geographic Diversity:* The Agency will seek to achieve maximum geographic diversity in selection and placement of students through its award of grants.

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. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 5, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–3181 Filed 2–10–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: February 4, 1993.

By direction of the Secretary:

B. Michael Berger,

Director, Records Management Service.

Revision

1. Veteran's Application for Compensation or Pension, VA Form 21–526
2. The form is used to gather the information needed to determine eligibility for disability benefits.
3. Individuals or households
4. 372,426 hours
5. 90 minutes
6. On occasion
7. 248,284 respondents

[FR Doc. 93–3310 Filed 2–10–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 4202, January 13, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Friday, January 22, 1993.

CHANGES IN THE MEETING: The following topic was added to the agenda during the closed meeting.

- FHLBank System Appointive Directors Confirmation

The above matter is exempt under one or more of sections 552b(c) (6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary of the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–3360 Filed 2–9–93; 10:25 am]

BILLING CODE 6725–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Trustees Meeting

United States Capitol Building, Room EF–100—March 2, 1993, 5:00–6:30 p.m.

1. Call to order and welcome, Chairman Staats
2. Approval of minutes of June 1, 1992 Trustees Meeting
3. Report on activities of the Foundation
   Overview: Chairman Staats
   Status of 1993 Truman Competition: Mr. Blair
   1993 Summer Institute: Dr. Wholey
   1993 Truman Scholars Leadership Week: Ms. Castañeda
4. Selection of Vice-Chairman
5. Recognition of Trustee Emeritus E. Tom Coleman
6. Introduction of new Trustees of the Foundation
7. Introduction of Former Truman Scholars and other guests
8. Old business
9. New business
10. Establishing date for next meeting
11. Adjournment

Elmer B. Staats,

Chairman.

[FR Doc. 93–3395 Filed 2–9–93; 12:54 pm]

BILLING CODE 9500–01–M

Corrections

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8465]

RIN 1545–AN83

Deduction of Amounts Owed to Related Foreign Persons

Correction

In rule document 92–31618 beginning on page 235 in the issue of Tuesday, January 5, 1993, make the following correction:

§ 1.163–12 [Corrected]

On page 237, in the 1st column, in § 1.163–12(b)(1), in the 14th line, "includible" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8458]

RIN 1545–AJ35

Real Estate Mortgage Investment Conduits

Correction

In rule document 92–30944 beginning on page 61293 in the issue of Thursday, December 24, 1992, make the following corrections:

§ 1.860A–1 [Corrected]

1. On page 61301, in the first column, in § 1.860A–1(b)(2)(ii), in the sixth line, insert a comma following "However".

2. On the same page, in the same column, in § 1.860A–1(b)(2)(iii), in the ninth line, "§ 1.860E–(a)(1)" should read "§ 1.860E–1(a)(1)".

§ 1.860E–1 [Corrected]

3. On page 61303, in the first column, in § 1.860E–1(a)(1), in the fifth line, "income—$90" should read "income – $90".

§ 1.860F–2 [Corrected]

4. On page 61306, in the first column, in § 1.860F–2(c), the second and third lines should read "860G(a)(10) and § 1.860G–1(d)) of all regular and residual interests in the REMIC".

§ 1.860F–4 [Corrected]

5. On page 61306, in the first column, in § 1.860–4(f), in the first line, "*person*" should read "*persons*"; in the third line, "§ 1.6041–(b)(2)" should read "§ 1.6041–1(b)(2).

§ 1.860G–1 [Corrected]

6. On page 61308, in the 1st column, in § 1.860G–1(b)(2), in the 14th line, "REMIC'S" should read "REMIC's".

7. On the same page, in the second column, in § 1.860G–1(b)(5), in the second line, "*Principal* " was misspelled.

§ 1.860G–2 [Corrected]

8. On page 61309, in the 2d column, in § 1.860G–2(a)(5), in the 22d line, "25(e)(10) without" should read "25(e)(10) (without".

9. On the same page, in the 3d column, in § 1.860G–2(a)(6), in the 10th line, "860G(a)(2) is" should read "860G(a)(2)) is".

10. On the same page, in the same column, in § 1.860G–2(a)(9), in the sixth line, "1286(e)(1) from" should read "1286(e)(1)) from".

11. On page 61310, in the 3d column, in § 1.806G–2(d)(1), in the 10th line, "relates" was misspelled.

12. On page 61311, in the third column, in § 1.806G–2(g)(1)(ii)(A), in the last line, "action;" should read "section;".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–42–92]

RIN 1545–AQ77

Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In proposed rule document 92–31188 beginning on page 43 in the issue of Monday, January 4, 1993, make the following corrections:

§ 1.401(k)–1 [Corrected]

1. On page 44, in the second column, § 1.401(k)–1(g)(11)(iii)(A) is correctly designated.

2. On the same page, in the same column, in the same section, in the 15th line, insert "collective" between "single" and "bargaining".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–189–84]

RIN 1545–AH46

Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property

Correction

In proposed rule document 92–30431 beginning on page 60750 in the issue of Tuesday, December 22, 1992, make the following correction:

§ 1.1275–5 [Corrected]

On page 60775, in the second column, in § 1.1275–5(c)(1), in the sixth line, "section 109(d)(1)" should read "section 1092(d)(1)."

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[PS–89–91]

RIN 1545–AQ23

Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer

Correction

In proposed rule document 93–814, beginning on page 4625 in the issue of Friday, January 15, 1993, make the following correction:

On page 4625, in the third column, in the fifth full paragraph, in the fifth line, "52.4682–2(f)(3)" should read "52.4682–5(f)(3)".

BILLING CODE 1505–01–D

federal register

Thursday
February 11, 1993

Part II

Environmental Protection Agency

40 CFR Parts 260 et al.
Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 273

[FRL-3982-3]

RIN 2050-AD19

Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking the first steps of an initiative designed to remove unneeded regulatory impediments to the safe and efficient management of hazardous wastes. These actions proposed are part of a long term effort to ensure that hazardous wastes are managed safely, without unnecessary regulation.

EPA is proposing a program under which certain widespread post-user items that are hazardous wastes (e.g., certain batteries and pesticides that are hazardous wastes) would be collected under greatly streamlined requirements, to facilitate separation of these materials from the municipal waste stream and to encourage proper treatment and/or recycling.

DATES: Comments on this proposed rule must be submitted on or before April 12, 1993.

ADDRESSES: Persons who wish to comment on this notice must provide an original and two copies of their comments, include the docket number (F-93-SCSP-FFFFF), and send them to EPA RCRA Docket (OS-305), U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA Docket is located at room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346. In the Washington, DC metropolitan area, call (703) 412-9810. For information regarding specific aspects of this notice, contact Charlotte Mooney, Office of Solid Waste (OS-332), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260-6926.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
A. Changing Awareness of Product Life Cycles
B. RCRA Subtitle C Hazardous Waste Program
C. RCRA Implementation Study
D. Hazardous Waste Recycling Forum Meetings
E. Overview of Special Collection System
F. Special Collection System Program Goals
1. Encouraging Resource Conservation
2. Improving Implementation of the Hazardous Waste Program
3. Separation From the Municipal Waste Stream
II. Detailed Discussion of Proposed Special Collection System Regulations
A. Overview of Proposed Regulations
B. Scope
1. Recycling versus Recycling or Disposal—Option 1: Recycling Only; Option 2: Recycling or Disposal; Option 3: Hybrid of Options 1 and 2
2. Types of Wastes Subject to Special Collection System Regulations
3. Conditionally Exempt Small Quantity Generator Waste
4. Excluded Household Hazardous Waste
C. Proposed Waste Management Requirements
1. Applicability of Part 273 Regulations
a. Subpart B—Batteries that are Hazardous Wastes
b. Subpart C—Suspended and/or Canceled Pesticides that are Recalled
2. Generator Requirements
a. Waste Generation
b. Condition of Wastes
c. Storage
d. Notification
e. Prohibitions
f. Waste Management
g. Exports
h. Other Generator Requirements Under Consideration
3. Transporter Requirements
4. Consolidation Point Requirements
a. Specific Requirements for Consolidation Points
b. Other Consolidation Point Requirements Under Consideration
5. Destination Facility Requirements
6. Exports
7. Land Disposal Restrictions
8. Release Response
9. Related Regulatory Changes
III. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorization
IV. Executive Order No. 12291—Regulatory Impacts
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act

I. Background

A. Changing Awareness of Product Life Cycles

In recent years, there has been a significant shift in public perceptions of waste management issues. Whereas in previous decades the most significant waste management problems were perceived to be associated with industrial and manufacturing processes, there is increasing awareness that many everyday activities may collectively cause significant environmental impacts. These impacts may be more diffuse and less easily traced to a single cause or source than impacts that are clearly the result of a single industrial source or group of industrial sources.

In some cases, public awareness is raised through direct economic impacts on individuals. One example is localized shortages of municipal landfill capacity, which translates directly into higher landfill disposal costs for citizens in those localities. As a result, municipalities are increasingly adopting waste management practices that minimize the quantity of waste that is landfilled. Some municipalities choose municipal waste combustion, which reduces the quantity of waste that must ultimately be landfilled; others rely in some measure on community recycling programs to divert materials from the disposal wastestream. Still others choose a combination of municipal waste combustion and recycling programs.

There is another reason for increasing public awareness, generally at the local government level, of the toxic constituents present in common items in the municipal wastestream. That reason is the large numbers of municipal landfills on the National Priorities List, targeted for cleanup under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund). The costs associated with CERCLA cleanups are a prime reason local officials are becoming increasingly concerned about toxic constituents present in the municipal wastestream.

Finally, articles in the print media and reports in the electronic media that describe the downstream impacts occurring after a consumer item's use have increased individual citizens' awareness of the link between their use of consumer goods and the presence of toxic constituents in the municipal wastestream. (It is useful to think about the product's "life cycle," i.e., the beginning of its life when it leaves the place of manufacturing, its distribution down through retailers (typically) to the

individual user, then its use phase, and finally the phase when it is present in the waste stream.)

This increased awareness of the possibility of toxic constituents leaching from municipal landfills into soil and groundwater aquifers has focussed attention on the toxic constituents present in everyday items that we dispose of in the municipal waste stream. There have been a wide variety of responses to this emerging issue, at a number of levels. Manufacturers, retailers, state legislatures, local governments, and individual citizens are all taking various actions to try to reduce the loading of toxic constituents in the nation's municipal waste stream.

One approach taken by manufacturers of certain items has been to try to reduce the amounts of toxic constituents present in the items themselves (a "source reduction" or "toxic use reduction" approach). In some cases, this approach is technically and economically feasible. However, while the items with lower toxic constituent content are moving into wide distribution and use, the older items with higher levels of toxic constituents are often still present in the waste stream.

Another approach, taken by municipalities, is to try to keep the wastes out of the regular municipal waste stream by putting on special collection programs, targeting hazardous wastes generated in households or small businesses. These municipalities generally try to recycle the collected material rather than dispose of it, to the extent possible. The remaining hazardous wastes are generally managed as if they were fully regulated hazardous wastes (i.e., sent to a special facility meeting the federal requirements for managing hazardous wastes).

There has also been an emerging trend on the part of state legislatures to enact state laws encouraging or requiring manufacturers and retailers of certain products to become involved during the "wastestream" phase of their products' life cycle. In some states, concerns over metals (such as lead and cadmium) in widely used goods (such as batteries) have resulted in state legislation placing the responsibility for disposal of these goods on the original manufacturers.

For those consumer products that are legally classified as "hazardous wastes" for the part of their life cycle when they are wastes, there is a federal law governing their management as hazardous wastes. This law, the Resource Conservation and Recovery Act (RCRA), regulates hazardous wastes when they are managed by the original producers of the waste ("generators,") and by those parties handling the wastes throughout the wastestream phase of the product's life cycle. The federal hazardous waste program that is authorized by RCRA's Subtitle C explicitly places the responsibility for initial management of hazardous wastes on the generator of those wastes, and places the responsibility for later management on those parties handling the waste at the later stages.

Thus, when state laws are enacted that shift the responsibility for managing hazardous wastes away from the individuals who generated the wastes, over toward manufacturers, wholesalers, or retailers, there are inherent conflicts between the federal RCRA hazardous waste program and those emerging state laws.[1] EPA has tentatively concluded that RCRA has an existing regulatory structure that may not be appropriate for some hazardous wastes. Today's proposal is an attempt to mesh the relatively recent trends in municipal solid waste (and pesticide waste) management practices with the statutory requirements imposed by RCRA subtitle C.

B. RCRA Subtitle C Hazardous Waste Program

Under Subtitle C of the Resource Conservation and Recovery Act, on May 19, 1980, EPA promulgated regulations setting forth the framework of the nation's hazardous waste management program (45 FR 33066). These regulations included requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDs). Since 1980, a number of changes and additions have been made to these rules, resulting in the current RCRA subtitle C hazardous waste management regulatory program. The structure of the RCRA hazardous waste program places very similar responsibilities on all hazardous waste generators, regardless of the size or type of the business or organization generating the waste. This point is discussed further below.

In 1980, when promulgating the original set of RCRA hazardous waste management requirements, EPA had not yet listed or identified any wastes as hazardous. With the first listings, and the first characteristics that identified wastes as hazardous, EPA set the scope of the regulations at wastes generated primarily in manufacturing settings (or, to a certain extent, in commercial or agricultural settings). EPA recognized that the hazardous wastes listed and identified in 1980 were generated by an enormous number of parties in extremely diverse settings.

As described in 45 FR 33102, May 19, 1980, EPA estimated the total number of generators at 760,000, with a small fraction—just over 5 percent—responsible for the overwhelming majority of the hazardous waste. Most of these very large generators were in the manufacturing sector; the rest of the generators, who generated only tiny amounts, by comparison, were scattered across a diverse set of different activities. In the interest of using resources efficiently, and to concentrate on regulating the small number of generators who created the greatest proportion of the hazardous wastestream, EPA used the approach of regulating generators based on the quantities that they generated per month. For most hazardous wastes, the standard was set at 1000 kilograms or more generated per month.

However, in the 1984 amendments to RCRA, Congress directed EPA to lower the standard to 100 kilograms per month. In 1986 EPA promulgated the revised regulations that lowered the generation rate limits for most hazardous wastes to 100 kilograms per month. The result was that numerous hazardous waste generators from commercial, construction, educational, retailing, special trades, agricultural, governmental, and medical settings became regulated to a much greater extent than they had been previously. EPA modified the hazardous waste regulations slightly to accommodate some of the different circumstances these smaller generators encountered,[2] but left the requirements substantially the same.

Although this approach can be viewed as an equitable way to establish responsibility for managing all hazardous wastes, regardless of the amounts generated, in practice it is extremely difficult to implement. EPA and state agencies have conducted (and continue to conduct) extensive outreach and educational programs to try to explain and implement the complex hazardous waste regulatory requirements to this vast regulated community. Until 1986, EPA could target its explanations of the regulatory requirements to specific industry trade associations, and could tailor its explanations to address a number of typical manufacturing situations.

[1] Note that similar conflicts exist with respect to state laws on municipal or county-run "collection programs" that accept hazardous wastes from businesses, or that accept hazardous waste pesticides from farmers.

[2] For example, the requirements for accumulating hazardous waste in tanks, and the requirement to file a biennial report.

However, after 1986, there was a tremendous increase in the variety of settings in which regulated hazardous waste generators were found. There are very significant administrative efforts involved in learning about the specific circumstances of a waste's generation and initial management, in the enormous variety of settings in which hazardous wastes are generated.

EPA has tentatively concluded that it may be inappropriate to attempt to impose the original, 1980 requirements on generators and others who manage certain widely-dispersed hazardous wastes. EPA's experience with implementing the water pollution control program has been that it can be easier to target and control "point sources" with permits and other administrative means, while "non-point" sources can be far more difficult to control with the traditional "command and control" approach to regulating pollutant releases.

One way of looking at the diverse population of hazardous waste generators who generate common waste items is to consider them to be analogous to "non-point" sources of water pollution—except that the "pollutants" they release are contained in the used consumer products. It may be a far more realistic approach to educate users about the "downstream" impacts of their use of a particular product. Users might choose not to use the product, or could (in some cases) alter their use of it in order to reduce or eliminate the waste's generation. However, in some cases consumers do not have those options; structuring the regulatory requirements for maximum understanding and compliance by users is likely to achieve a more desirable result than leaving the regulations as they currently exist. Modifications to the current regulatory requirements, combined with a thoughtful outreach strategy, are likely to be a more effective means of accomplishing this result.

Finally, EPA notes that one of the objectives of RCRA is stated as a national policy regarding the recovery of materials, in preference to land disposal of hazardous wastes (RCRA Section 1003)(a)):

> The objectives of this Act are to promote the protection of health, [sic] and the environment and to conserve valuable material and energy resources by * * * minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment * * *

Thus, to the extent that the approach suggested in today's proposal would support achieving the policy goals stated in RCRA, there is a sound basis for advancing the concept of special collection systems.

C. RCRA Implementation Study

In July 1990, EPA published the results of its RCRA Implementation Study (RIS) entitled "The Nation's Hazardous Waste Management Program at a Crossroads" (EPA Publication Number 20S–0001, available by calling the RCRA/Superfund Hotline listed above in the **FOR FURTHER INFORMATION** section of this Notice). The RIS evaluated the current RCRA program, gathering information from various EPA data bases, surveys, articles, and reports issued by Congress, the General Accounting Office, and the Office of Inspector General. During development of the RIS, input was solicited from environmental groups, industry, Congressional staff, and current and past State, EPA Regional and EPA Headquarters staff.

Much of the input received regarding the current hazardous waste program focused on the definition of solid waste and RCRA's impact on hazardous waste recycling. The modifications being proposed today are, in part, intended to address the concerns raised in the RIS and to respond to the input received from participants. The Agency expects to propose other, significant modifications to the current regulatory framework in the future.

D. Hazardous Waste Recycling Forum Meetings

As a follow-up to the RIS, the Agency held a series of three forum meetings to focus more specifically on the definition of solid waste, hazardous waste recycling, and changing the RCRA program so that it would better promote hazardous waste recycling while ensuring that human health and the environment are protected. The first meeting was held with representatives of the EPA Regional offices. The second meeting was held with representatives of many State regulatory agencies. The third meeting was held with representatives of various trade associations, industry groups, environmental groups, other Federal agencies, and Congressional staff.

The comments made at these meetings were also considered in developing this proposal. Although many of the comments focused on long-term changes necessary in the overall hazardous waste program, the discussions held at these forums also led to the concepts presented in today's proposal: a change that could be implemented in the short term and that would improve the overall regulation of environmentally protective hazardous waste recycling.

E. Overview of Special Collection System

The Agency is proposing a streamlined, reduced regulatory scheme for certain hazardous wastes currently subject to full subtitle C regulation, in an effort to facilitate their collection and proper management. Generators of the wastes addressed in today's proposal would be able to manage the wastes under these reduced requirements in lieu of the full subtitle C requirements.

The waste types that would be subject to this streamlined regulatory scheme are generated in a wide variety of settings, and are often post-consumer items (e.g., certain used batteries that exhibit a characteristic of hazardous waste). Another identifying characteristic of these waste types—disparity in applicability of RCRA subtitle C controls—is a result of the wide variety of types of sources that commonly generate the wastes, ranging from households to small businesses to major industrial operations. The portions of these waste streams generated by regulated hazardous waste generators are fully regulated as hazardous waste; whereas what are believed to be large portions of the same waste streams are generated by exempt households or conditionally exempt small quantity generators, and thus are not subject to RCRA subtitle C controls.

EPA believes that simplifying and streamlining the requirements associated with collection and handling of the regulated portions of these waste streams will encourage the development of more efficient and effective collection systems. Such collection systems will, in turn, facilitate collection of not only the regulated portion of the waste stream, but also the unregulated portion of the waste stream. The potential for recycling may be enhanced where it becomes economically efficient to do so.

Management standards for these "special collection system" wastes, which are included in today's proposal in new part 273, are proposed for two waste streams: hazardous waste batteries and certain recalled pesticides that are hazardous wastes.

For a number of reasons, these wastes are not readily amenable to full-scale cradle-to-grave regulation (i.e., the regulatory scheme set up under the original 1980 regulations). Today's proposal is designed to channel these wastes into proper recycling and management, without utilizing the full-scale regulatory scheme that, by comparison, may less successfully promote proper management.

Potentially, EPA could include other appropriate hazardous wastes in the final regulation.

The part 273 regulations, as proposed today, provide a conditional exemption from full subtitle C regulation for certain hazardous wastes that are currently fully regulated under subtitle C. The proposed conditions are designed to ensure that management of these wastes is conducted in a manner that is protective of human health and the environment, given the diffuse and diverse population of generators. There are new, special requirements that would apply to generators, transporters, and owners and operators of consolidation points, while owners and operators of treatment, storage, recycling and disposal facilities that receive these wastes would continue under the current requirements.

F. Special Collection System Program Goals

Hazardous wastes which may be affected by today's proposal (or may be included in the special collection system regulations in the future) are called "universal" wastes in today's notice. We have chosen this name merely as a descriptive term; it has no specific regulatory meaning. However, we believe it is an appropriate phrase to describe the nature of these wastes, which have a number of common characteristics:

- These wastes are frequently generated in a wide variety of settings other than the industrial settings usually associated with hazardous wastes;
- They are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program; and
- These wastes may be present in significant volumes in the municipal waste stream.

EPA is today proposing a set of special requirements for universal hazardous wastes, which are designed to accomplish three general goals. The first goal is to encourage resource conservation, while ensuring adequate protection of human health and the environment. The second broad goal is to improve implementation of the current subtitle C hazardous waste regulatory program. Third, by simplifying the requirements and encouraging collection of these hazardous wastes, EPA hopes to provide incentives for individuals and organizations to collect the unregulated portions of these universal waste streams (e.g., from households) and manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream and minimizing their input of hazardous constituents to municipal landfills, combustors, and composting projects. Each of these goals is discussed below.

1. Encouraging Resource Conservation

The regulations proposed today are designed to encourage recycling of universal hazardous wastes. One of RCRA's objectives is to "conserve valuable material and energy resources" (RCRA section 1003(a)). Conservation of materials, for example, metals present in some of the universal hazardous wastes, is important not only in RCRA but to the U.S. economy in general. Frequently, it is more efficient to recover materials from wastes, rather than to extract them from raw materials. Regulation of wastes, however, can affect materials recovery rates, since the economics of materials recovery is influenced by costs incurred through complying with regulatory requirements. Setting the regulatory requirements for recyclable hazardous wastes at a level that is still protective of health and the environment, but that would reduce compliance cost and facilitate collection is one of the goals of today's proposal.

The regulations proposed today are designed to encourage appropriate management of hazardous wastes. For example, by relaxing subtitle C collection and transport regulations for these universal wastes, recycling may become more economically feasible, since the collection step is the initial and necessary step in any recycling program. The collection mechanisms established under these standards will enable regulated parties to physically separate these universal wastes from other materials. The potential for recycling may be enhanced where the relaxing of subtitle C regulations reduces the costs associated with managing universal wastes. Thus, for certain wastes, recycling may become economically efficient. Materials recovered from the wastes can be used in place of virgin materials, where it is economically efficient to do so, thereby providing both environmental and economic benefits to society. While a major impetus for this rule is that many states or private firms are requiring or encouraging recycling of some of these wastes, EPA is proposing to facilitate the collection of these wastes for either recycling or treatment and disposal. The Agency is not proposing to mandate recycling nor making a determination on the relative risks of recycling versus treatment and disposal.

These special collection system regulations should eliminate existing impediments to programs that many state and local agencies are currently developing to separate certain wastes from the municipal waste stream. For example, some states have passed legislation requiring battery manufacturers to provide systems for collection of used batteries, which has highlighted concerns about barriers in the current federal regulatory structure to implementation of such arrangements. The part 273 regulations proposed today will eliminate or minimize subtitle C obstacles to implementing these state and local programs, and will serve to supplement collection efforts already underway at the state and local level. In addition, today's proposed regulations will make the development of collection and recycling infrastructures more economically feasible.

2. Improving Implementation of the Hazardous Waste Program

The second goal of today's proposal is to improve implementation of the hazardous waste program. EPA believes that the regulations proposed today will have significant impacts on waste management practices nationwide.

One way implementation will be improved is by establishing a greatly simplified set of requirements, that will be more easily understood by handlers of these universal hazardous wastes. For example, from an administrative and resource standpoint, it is difficult and impractical for EPA and state regulatory authorities to explain and apply the complex RCRA hazardous waste regulations to the wide variety of people who generate universal hazardous wastes. It is also time consuming and costly for industry and commercial entities to determine what the regulatory requirements are for very small quantities of these universal hazardous wastes. Thus, EPA believes there is a need for hazardous waste management requirements targeted specifically toward this vast regulated community. The requirements must be protective of human health and the environment. The regulations must also be clear and easily understood, so that regulated parties from diverse situations can comply, without expending unreasonable amounts of time and effort to understand the applicable requirements. Today's proposal seeks to respond to these needs.

In some cases, for example, the current regulatory scheme imposes different requirements on hazardous wastes being sent for recycling than on those being sent for disposal.

Enforcement of these regulations is complicated by the fact that a waste handler may claim intent to conduct an activity (for example, recycling) that is exempt from regulation, but it may be difficult for the implementing agency to verify whether the individual's stated intent is the same as the actual management technique ultimately selected. The standards proposed today would regulate universal hazardous wastes uniformly, regardless of whether they are destined for recycling or disposal. For example, a battery that is a hazardous waste would be conditionally exempt from the subtitle C regulations and subject to the special collection system regulations regardless of whether it is being collected for recycling or disposal. In addition, this simplified system will allow EPA and state agencies to focus their resources on ensuring compliance, rather than on explaining the rules.

Finally, the regulations proposed today will greatly simplify the procedures a generator must use to determine his or her monthly hazardous waste generation rate (i.e., to determine whether the generator is a conditionally exempt small quantity generator, a generator of 100–1000 kilograms per month, or a large quantity hazardous waste generator). For example, for a waste such as a hazardous waste battery, the generator must currently count the battery toward the monthly quantity determination in some cases, and not in others. The variables that the generator must now consider are: (1) Whether the battery is being recycled or disposed; (2) if recycled, whether it is being regenerated or reprocessed; (3) if reprocessed, whether it is a lead-acid battery or other type of hazardous waste battery. The regulations proposed today would greatly simplify the generator's monthly quantity determination, since the generator would not be required to count those hazardous wastes managed under the part 273 requirements (regardless of the variables described above) toward the monthly quantity determination.

3. Separation From the Municipal Waste Stream

For various reasons, the Agency believes that many of these universal hazardous wastes are currently being managed in the municipal waste stream. For example, there is a "look alike" problem that limits the ability of municipalities to control the wastes that enter the municipal waste stream. Under the current federal regulatory scheme, the regulation of universal hazardous wastes such as used batteries differs based on the waste's generation source. Wastes generated by consumers in their homes are not regulated under RCRA subtitle C when discarded, because they are excluded from the definition of hazardous waste under 40 CFR 261.4(b)(1) (known as the "household waste exclusion"). Conversely, the same universal hazardous wastes are subject to RCRA subtitle C regulation when generated by commercial establishments, industries and other non-exempt generators. For example, a used car battery generated at an automobile maintenance shop may be a hazardous waste; if so, it must be managed in accordance with all applicable RCRA requirements. An automobile battery has the same appearance regardless of who generates it. This "look alike" problem causes difficulties for owners and operators of municipal solid waste landfills and combustors who are accepting waste shipments. Because regulation of hazardous wastes is not material-specific, automobile batteries generated by large industrial users (that should be managed at hazardous waste facilities) may be entering municipal solid waste landfills or combustors because they cannot be physically distinguished from batteries generated by households. Further, some generators (known as conditionally exempt small quantity generators) who produce only small amounts of these wastes per month are legally allowed to send such wastes to facilities that are not subject to full Subtitle C requirements. See 40 CFR 261.5.

EPA requests comment on whether there are other reasons why universal hazardous wastes are managed as municipal wastes. Commenters should provide specific examples of instances where they believe hazardous wastes are being managed in the municipal waste stream.

II. Detailed Discussion of Proposed Special Collection System Regulations

Today's proposal introduces a program which, if promulgated, would significantly reduce the regulatory burden for certain wastes currently subject to full subtitle C requirements. Environmental benefits could arise from implementation of the proposed collection system. These include removal of large quantities of hazardous wastes from the municipal waste stream (and thus from municipal landfills, combustors, and composting projects), and development of an environmentally protective infrastructure for collection of these wastes, such a system being a first and necessary step to encourage increased collection. These benefits will flow, in part, from the increased voluntary compliance likely to result from significant simplification of the current regulatory program.

Today's proposal includes two specific types of wastes within the special collection system: Hazardous waste batteries and cancelled or suspended and recalled pesticides that are hazardous wastes. The proposal also includes criteria to be used to consider extending the program to additional hazardous wastes in the future, and provides a mechanism to allow interested parties to petition EPA to include other wastes in such a scheme.

The current RCRA subtitle C hazardous waste regulatory structure was developed based on the assumption that most hazardous wastes are generated in an industrial setting. These regulations require generators to notify EPA of their activities, to use manifests when sending shipments off-site to treatment, storage or disposal facilities, and to notify those facilities that their hazardous wastes are restricted from land disposal.

Recent changes in the RCRA regulations have caused dramatic shifts in waste management practices over the past several years. For example, promulgation of the Toxicity Characteristic (see 40 CFR 261.24) has greatly increased the regulated community's awareness of the scope of hazardous waste requirements. In addition, the land disposal restrictions have caused shifts in hazardous waste treatment, recycling and disposal patterns.

Some of the same forces causing changes in waste management practices are also causing EPA to reevaluate some aspects of the existing hazardous waste regulatory program. For example, with implementation of the Toxicity Characteristic it has become clear that many wastes generated in non-industrial settings may be classified as hazardous. In addition, the complexity of the regulations concerning the definition of solid waste, hazardous waste recycling, and land disposal restrictions poses a considerable challenge to EPA and authorized state hazardous waste programs: to effectively communicate the regulatory requirements to the diverse parties who generate hazardous wastes. The application of the current hazardous waste regulatory scheme to commercial, agricultural, and community activity waste [3] generators may not be the most

[3] These general descriptors are taken from the definition of solid waste in RCRA § 1004(27). EPA interprets the term "community activities" in the statutory definition to include educational institutions, federal, state and local government operations, etc.

appropriate way to protect human health and the environment. For hazardous wastes generated by such generators, EPA believes that a different and less burdensome regulatory scheme, that continues to ensure protection of human health and the environment, is appropriate. Today's proposal sets forth elements of such a regulatory scheme.

In today's notice, EPA will use the term "universal hazardous wastes" to refer to the broad category of wastes that may be candidates for proposed part 273 regulations. EPA will use the term "special collection system hazardous wastes" to refer to those wastes that are determined to be eligible for part 273 regulation.

A. Overview of Proposed Regulations

The requirements proposed today would offer a conditional exemption from the current subtitle C hazardous waste requirements for specific universal wastes. Compliance with the reduced set of part 273 requirements would be an option that waste handlers may voluntarily choose. However, operating under the part 273 requirements would not be compulsory. If universal waste handlers wish, they may instead continue to manage their hazardous wastes under the full subtitle C regulations set forth in 40 CFR parts 262 through 270.[4] If they do elect to follow the reduced part 273 requirements, they would be subject to a number of conditions proposed today that are designed to provide adequate protection of human health and the environment.

EPA notes that parties claiming that they meet the terms of the special collection system conditional exemption bear the burden of proving that they are eligible for that exemption. See 40 CFR 261.2(f). Since the requirements currently in effect for many of these special collection system wastes are more strict than the requirements proposed today, parties claiming the benefits of an exception to the current regulatory scheme have the burden of proof to show that they meet the terms of the exception. Since parties claiming the exception have the knowledge of the facts supporting their claims, it is appropriate for them to bear the burden of proof of showing that they meet the terms of the exception. For example, the proposal would require a generator to send his or her waste to one of several specified kinds of facilities. The proposal does not include provisions requiring generators to use a manifest, which normally would accompany a hazardous waste shipment. Instead, the generator could simply keep a record of where the shipment was sent. For further discussion of this point, see 50 FR 642, January 4, 1985.

In today's proposal, generators, transporters, and owners or operators of "consolidation points" (places where smaller quantities of the hazardous waste are collected and held temporarily before being moved on to another consolidation point or to a permitted or interim status hazardous waste facility) are subject to a number of similar conditions. Facilities which ultimately recycle, treat, or dispose of the waste remain subject to the full hazardous waste regulatory program (i.e., the current subtitle C requirements).

Today's proposal includes a number of provisions that would apply to generators, transporters, and consolidation points. First, some packaging and physical condition requirements would be imposed on handlers to ensure that these wastes are not released to the environment as they pass through the special collection system. Second, there would be limitations placed on the types of locations to which these wastes may be forwarded by each participant in the collection system, and some shipments would be accompanied by a hazardous waste manifest. Third, storage time limits and treatment/dilution and disposal prohibitions would be imposed to ensure that substantive requirements associated with the land disposal restrictions program are met. Fourth, persons who export these wastes would comply with requirements for notification and consent from the receiving country. Fifth, when generators and consolidation points store certain quantities of special collection system hazardous wastes at one time, they would notify EPA of their activities (required by existing regulations as well), to ensure that regulatory agencies are able to provide proper oversight of their activities. Sixth, persons who manage hazardous wastes under the reduced scheme proposed today would be required to take immediate response action if releases of hazardous waste to the environment occur.

Destination facilities (generally, the permitted or interim status hazardous waste facility receiving the consolidated shipment) are required to comply with the full subtitle C regulations applicable to their operations.

B. Scope

Before discussing the proposed regulatory requirements in more detail, it is important to describe three broad issues that will be relevant to those wishing to comment on today's proposal. The direction that EPA chooses to take on these "scope" issues will affect both the implementation of any final part 273 regulations, and the changes in waste management practices that are likely to result should these regulations be finalized. EPA believes it is important for commenters to understand the broad implications of the regulations proposed today. For example, the program proposed today may be expanded in the future to cover a number of other wastes; thus, we are setting up general rules to define the program's scope. Readers of today's notice should consider and comment on whether the general direction being proposed for the program's scope is appropriate, and also on whether there are other wastes that deserve consideration for inclusion in part 273. A final point that commenters should understand is the impact of today's requirements on management of household wastes; these impacts are described briefly in section II.B.4. below.

There are three basic "scope" questions that EPA has identified in developing today's proposal. These questions are:

(1) Whether to limit the part 273 regulations' coverage, based on potential resource recovery or energy recovery from the hazardous waste (i.e., will it be recycled or merely disposed);

(2) Which hazardous wastes to include in the part 273 regulations, and the criteria EPA will use to select them; and

(3) Whether to include hazardous wastes generated by conditionally exempt small quantity generators (CESQGs) in the proposed part 273 special collection system rules.

Each of these questions is discussed below, along with the approach EPA has selected for proposal, and EPA's reasons for that selection.

1. Recycling Versus Recycling or Disposal

A fundamental question for the universal hazardous wastes regulated under the special collection system (part 273) regulations is whether to limit the scope of the regulations based on whether the wastes will be recycled or disposed. EPA believes that there are three potential options: (1) Limiting the

[4] Generally, these requirements include limited standards for accumulation by generators (without permits); manifests to track shipments from the waste's origin to its final disposal; permits or self-implementing "interim status" standards for treatment, storage, or disposal facilities; reports on hazardous wastes managed; and notifications of applicable restrictions on land disposal.

scope of the part 273 regulations to hazardous wastes being recycled only, (2) not limiting the scope of the regulations (i.e., applying the regulations to wastes destined either for recycling or disposal), or (3) applying the regulations uniformly to generators and transporters, while limiting the part 273 consolidation point requirements to those consolidation points managing universal wastes destined for recycling only. These options present different implementation and policy concerns, and are discussed more fully below. For the reasons discussed below, today's proposal adopts the position that the part 273 special collection system regulations should be applicable to wastes that are collected for either recycling or disposal (Option 2).

Option 1: Recycling only. Under the first option, the part 273 regulations would only be available for universal hazardous wastes that are being recycled (and not available for wastes sent for disposal). This approach would require that the initial generator determine whether the waste will be recycled or disposed, in order to know whether the part 273 regulations apply to the generator's management of the waste.

EPA considered this approach as a means to achieve one of the objectives of RCRA: "to conserve valuable material and energy resources * * * by encouraging * * * properly conducted recycling and reuse" [see RCRA section 1003(a)(6)]. If the part 273 regulations were limited to those universal hazardous wastes that will be recycled (while universal hazardous wastes that are to be disposed are subject to the usual subtitle C controls), waste managers may shift wastes towards recycling under the part 273 requirements (and away from disposal under the usual subtitle C controls). In addition, EPA believes that separation of these wastes from the industrial and/or municipal waste stream increases the likelihood that they will be recycled. Thus, a program that facilitates collection may increase the recycling rates for these wastes.

There are several potentially serious drawbacks to this approach, however. First, in order for managers of universal wastes to determine whether they would be subject to the part 273 regulations or the full hazardous waste management regulations (40 CFR parts 262 through 270), they would be required to know the final disposition of the wastes (i.e., recycling or disposal). Due to the volatility of many recycling markets, however, this determination may be cumbersome or impossible to make (particularly for persons participating in the early stages of the collection system).

Second, larger quantities of hazardous wastes collected for recycling (i.e., an increase of the supply of available secondary materials) may cause some recycling markets to become overwhelmed with available input materials. The increased supply to the recycling market may exceed the available recycling capacity, and may result in an overaccumulation of the waste (at least temporarily). The increased supply of secondary materials could also cause a depression in the price of the yet-to-be-recycled secondary materials; under certain market conditions the generator may have to pay the recycler to accept the waste. If the cost of recycling is greater than the cost of disposal, the waste probably will not be recycled. The waste may be either disposed or overaccumulated (and, potentially, as a result of overaccumulation, pose a threat to human health and the environment).

Third, implementing such a system would be complicated by the need for implementing agencies to identify the intent of generators or owners/operators of consolidation points regarding future waste management (i.e., recycling or disposal) in order to determine which regulations apply to that individual. Finally, limiting the scope of these rules to wastes that are recycled only may stifle innovation. Innovators with new treatment and disposal technologies which are equally protective of human health and the environment as recycling technologies would not have the option to manage the waste under the part 273 requirements. These distinctions, which are not based on the actual risks of the recycling or treatment/disposal processes used, may thus create artificial barriers to safe treatment of the waste.

Option 2: Recycling or disposal. Under the second option, the regulations in part 273 would be available for universal hazardous wastes, regardless of whether they are recycled or disposed. Thus, waste generators need not be concerned with the waste's ultimate disposition (i.e., whether the final waste handler will decide to recycle or dispose of the waste) since the same requirements would apply in either case.

There are two advantages to this approach. First, universal hazardous wastes that will be disposed rather than recycled[5] are likely to be directed away from subtitle D facilities (where they currently may be managed) toward subtitle C facilities that provide more environmentally protective controls.

Second, this approach does not introduce a significant complication for implementing agencies: having to distinguish between universal hazardous wastes that are intended for recycling and those intended for disposal, and having to verify a waste handler's intent (i.e., recycling versus disposal).

Option 3: Hybrid of Options 1 and 2. A third option would be to make the part 273 reduced requirements available for generators and transporters, but to condition availability of the part 273 requirements for consolidation points on whether the universal wastes are recycled. Under this approach, all generators and initial transporters would be subject to the reduced requirements of part 273, whether their wastes are to be recycled or disposed. Consolidation points that send the universal wastes on for recycling would comply with part 273 requirements in lieu of a permit, while those consolidation points sending the wastes on for disposal would comply with parts 264, 265, and 270, including the requirement to obtain a permit for hazardous waste storage.

By reducing the requirements for wastes that are recycled relative to the requirements for wastes that are disposed, this approach may provide significant incentives for recycling. In addition, generators would not be required to determine whether the wastes will be recycled or disposed. However, under this approach, owners and operators of consolidation points would need to know whether the wastes will be recycled or disposed in order to determine which requirements apply. This determination may be very difficult to make, given the nature of different actors in these markets. In addition, this hybrid approach poses implementation concerns similar to those described under Option 1. Specifically, the consolidation point owner/operators' intent regarding final waste management options must be identified while the waste is still in the collection system. Finally, reducing the requirements for recycled wastes relative to those that apply for disposed wastes increases incentives for sham recycling.

EPA is proposing option two (recycling and disposal) in today's notice, for several reasons.[6] First, the

[5] For example, in cases where recycling technologies have not been developed, or recycling is not economically feasible.

[6] It should be noted that under the land disposal restrictions program, recycling may be required for some universal wastes. For example: (1) Effective August 8, 1990, thermal recovery of metals in

part 273 regulations will be much easier to implement if no distinctions are made between universal hazardous wastes that are recycled and universal wastes that are disposed. Second, the regulated community, particularly generators, should find the part 273 regulations less complex in that the waste's final disposition would not affect the management requirements applicable during the collection phase. Third, Options 1 and 3, which would provide reduced requirements for recycled wastes relative to disposed wastes, also would increase incentives for sham recycling. Option 2 minimizes the incentives for sham recycling to occur. Fourth, the simplified special collection system regulatory approach should decrease the quantities of these hazardous wastes that are managed in subtitle D municipal waste landfills, combustors, and composting projects and therefore, regardless of whether these wastes are recycled or disposed, environmental benefits may be gained.

EPA requests comment on the possible adoption of Option 2, which applies the special collection system regulations to wastes that are either recycled or disposed. EPA also requests comment on the advantages and disadvantages of all three options, and on any additional options commenters identify. Commenters should provide specific examples of how they believe the requirements would or would not be as environmentally protective as the current subtitle C requirements, as well as information on the likelihood that the streamlined requirements will affect the development of recycling markets.

2. Types of Wastes Subject to Special Collection System Regulations

EPA recognizes that there may be a number of hazardous wastes for which special collection system regulations may be appropriate. EPA will use the criteria discussed below to identify hazardous wastes that are appropriately regulated under the part 273 requirements. The Agency developed the criteria proposed today to identify the general nature of hazardous wastes that are amenable to special collection systems.

In today's proposal, EPA is only providing specific regulatory language in part 273 for hazardous waste batteries and for suspended or canceled and recalled pesticides that are hazardous wastes. However, there are a number of other hazardous wastes for which these special requirements may be appropriate (for example, automobile antifreeze, or paint application wastes, or used commercial items containing mercury such as thermostats and thermometers).[7] Thus, EPA is proposing a set of criteria for evaluating potential candidate wastes for inclusion in the scope of the part 273 regulations. These proposed criteria are intended to aid commenters who wish to recommend additional wastes for similar consideration; EPA may use commenters' suggestions to include additional hazardous wastes (besides hazardous waste batteries and suspended or canceled and recalled pesticides) in the final rule. If the part 273 regulations are promulgated, the public would be able to petition the Agency to amend the part 273 regulations to include additional wastes that meet the final criteria.

A related issue is that the technical problems posed in managing different types of universal hazardous wastes may vary (e.g., liquids pose different storage problems than solids, while batteries contain heavy metals and/or substances that present different hazards, such as reactivity or corrosivity). Therefore, it is possible that EPA will promulgate different requirements for different types of universal hazardous wastes, but impose similar administrative requirements for tracking the movement of the wastes. When suggesting additional wastes for regulation under part 273, commenters should also note any specific management standards that they believe are necessary to protect human health and the environment.

As noted above, there are several waste types (in addition to batteries and pesticides) that the Agency believes may be appropriately regulated under the part 273 special collection system regulations. In particular, additional discussion is warranted for motor vehicle antifreeze, and used mercury-containing thermostats.

Used antifreeze is generated when radiator coolant is drained and flushed from automobiles and other vehicles. The Agency has limited data, available in the docket for this notice, indicating that some used antifreeze may exhibit the characteristic of toxicity due to the presence of lead, tetrachloroethylene, and/or benzene. The Agency believes that used antifreeze is generally managed by disposal in municipal sewer systems, although private and municipal programs have begun recycling used antifreeze. This material then may be a good candidate for regulation under part 273. In developing special collection system regulations for used antifreeze, EPA could develop technical standards tailored for antifreeze-water mixtures, such as tank and container storage requirements, and possibly tracking and recordkeeping requirements. The Agency requests comment on whether used automobile antifreeze fits the criteria for regulation under part 273 that are proposed in today's notice (discussed below), and on specific management requirements that would be appropriate.

Additional wastes for which regulation under part 273 may be appropriate are paint residues,[8] used thermometers, and used thermostats. These wastes are believed to be major contributors of mercury to the municipal waste stream.[9] The Agency is particularly interested in whether used mercury-containing thermostats could potentially be managed under a part 273-type special collection system.

The ambient temperature in homes, businesses, warehouses and other buildings is controlled using a thermostat that is part of the building's heating, ventilation, and cooling system. A thermostat usually consists of a metal structure that contains a crush-resistant vial of liquid mercury. Thermostats are specifically designed both to hold the mercury vial steady within the unit, and to prevent it from breaking. Based on experimental data, EPA estimates that each thermostat contains 2.82 grams of mercury.[10] A thermostat is usually disposed of when it ceases to operate properly and is replaced, when it is replaced with an upgraded thermostat (such as the programmable electronic type), or when the building in which the thermostat is located is torn down or demolished. The average life of a thermostat is estimated to be twenty years.[11]

Due to the mercury content, it is likely that used thermostats will exhibit the characteristic of toxicity, and thus will be regulated hazardous waste when

certain types of industrial furnaces is required for cadmium-containing hazardous waste batteries; (2) effective May 8, 1992, lead recovery in secondary smelters is required for lead-acid batteries; and (3) effective May 8, 1992, recovery of mercury by retorting or roasting in a thermal processing unit is required for high-mercury, inorganic wastes (§ 268.35(a), § 268.35(c), and Tables 1 and 2 of § 268.42).

[7] In separate rulemakings, EPA has addressed used oil [57 FR 21524, May 20, 1992; and 57 FR 41566, September 10, 1992].

[8] Mercury has not been used in paints since 1991 and thus the mercury contribution from paint residues is projected to decrease rapidly in the future. Note, however, that these estimates do not include interior and exterior surface paints.

[9] Characterization of Products Containing Mercury in Municipal Solid Waste in the United States, 1970 to 2000; U.S. EPA; OSW # EPA530–R–92–013; NTIS # PB92–162569; April 1992.

[10] Ibid.

[11] Ibid.

disposed of by businesses or other commercial entities. In the context of recent interest in removing mercury from the municipal waste stream, the Agency has received information that one thermostat manufacturer is currently developing a reverse distribution, or manufacturer "take back" system to collect used mercury-containing thermostats and to recover and reuse the mercury in the production of new thermostats. In addition, at least one state has specifically banned the disposal of mercury containing thermostats in the municipal waste stream and is working to implement a collection system for these items. Other states are also moving to reduce the mercury level in municipal waste through removal of mercury containing items.

Used thermostats appear to be a good candidate waste for the special collection system approach to regulations for waste collection. It is believed that although some thermostats are replaced by homeowners doing their own maintenance work, many are replaced by heating, ventilation, and cooling system repair services. This concentration of waste generation with a limited universe of people may offer an opportunity for achieving a relatively high return rate, with a minimum of effort, by allowing program implementers to direct education and outreach efforts to service companies and trade associations.

EPA could develop a special collection system under part 279 for used mercury-containing thermostats similar to those proposed today for hazardous waste batteries (discussed in detail below). Such a system could utilize the same recordkeeping and tracking procedures proposed today for hazardous waste batteries. Generators and consolidation points storing large quantities of thermostats could be required to notify and obtain EPA Identification Numbers. The quantity cut-off for such notification could be based on the size of a typical, final consolidated shipment to a recovery or disposal facility, thus requiring notification only of those storing the largest quantities of these items. Manifests could also be required for shipment from the last consolidation point to the final destination facility.

Persons could be limited to sending thermostats to other participants within the special collection system (consolidation points and destination facilities). Storage could be limited to one year, or to some other time period if more appropriate to allow collection of sufficient quantities of thermostats for proper management. Management requirements could include management in containers, a prohibition on removing the mercury containing vial from the thermostats, a prohibition on breaking the vials, and requirements for response to releases. As with batteries, requirements for the destination facility (treatment, recycling, or disposal facility) would remain the same as under the current subtitle C system.

The Agency requests comment on whether used mercury containing thermostats fit the criteria proposed today for regulation under part 273 (discussed below). The Agency also requests comment on whether the special collection system requirements discussed above would be appropriate for these wastes, and on any additional requirements necessary to ensure that thermostats are collected in a manner that is protective of human health and the environment. The Agency specifically requests comment on the quantity of thermostats in storage that should trigger a requirement that generators and consolidation points notify EPA and obtain an EPA Identification Number.

EPA is not including fluorescent light bulbs in today's rule. EPA is examining whether these light bulbs pose a risk when managed in landfills. EPA requests information on the risk of these wastes in landfills or municipal waste combustors. EPA also requests information on the risks of current or developing mercury recovery technology.

EPA is proposing two sets of criteria to evaluate whether other candidate wastes are appropriately included in the scheme advanced today for hazardous waste batteries and recalled pesticides. The two sets of criteria will be used to evaluate both the extent of the problem posed by a particular type of waste, and the suitability of the special collection program for contributing to improved management of the particular waste and to the realization of EPA's policy goals discussed above. For the convenience of the reader, both sets of criteria are listed below in summary form. A more detailed discussion of each of these points follows.

To determine the extent of the problem, EPA proposes to evaluate the following:

1. Whether the waste, as generated by a wide variety of generators, is hazardous under the subtitle C regulations;
2. The presence and amount of the waste in commercial, agricultural, or community activity waste streams;
3. Whether the waste is generated by a large number of sources;
4. Characteristics of generation sites;
5. Potential risk posed by the presence of the waste in the municipal solid waste stream; and
6. Other relevant information.

To determine suitability of the part 273 regulations as a method to improve management of the particular waste, EPA proposes to evaluate:

1. Whether the waste presents a relatively low level of risk during storage and transport;
2. Characteristics of the system that would be used to collect the waste;
3. Whether special collection system regulations would facilitate removing the waste from the municipal waste stream;
4. Whether the implementation of the hazardous waste program would be improved by special collection system regulations; and
5. Other relevant factors.

The first set of factors, found in proposed § 273.2(a), is a set of information requirements that the petitioner must provide when petitioning for wastes to be considered for regulation under part 273. To be eligible for regulation under part 273, the petitioner must demonstrate that the hazardous waste presents a problem to human health and the environment due to its presence in the municipal waste stream or due to other, widespread management practices. The Agency is proposing the following information items, to determine the extent of the problem and the appropriateness of regulating the hazardous waste under part 273.

First, since EPA has only limited resources to undertake special rulemakings of this type, EPA would generally focus such efforts on universal hazardous wastes that are listed hazardous wastes or exhibit a characteristic of hazardous waste. Some wastes (e.g., used automobile antifreeze) may exhibit a hazardous waste characteristic in certain cases. Therefore, petitioners should supply the Agency with any available data pertaining to whether or how often the wastes are hazardous. In addition, petitioners should also submit any available quality assurance and quality control documentation of the sampling procedures and test methods used.

Second, we would expect that the hazardous waste would be present in the municipal waste stream (for example, in commercial, agricultural, or community activity waste streams) in significant amounts. This criterion would serve to identify those wastes that typically or often are part of the municipal waste stream, as opposed to those that are exclusively or primarily industrial wastes. One of the Agency's three major goals for providing a conditional exemption for universal hazardous wastes and establishing the

part 273 regulations is to encourage separation of these wastes from the municipal waste stream. Thus, the Agency may limit its consideration of candidate waste streams to those universal hazardous wastes that are found in significant amounts in the municipal waste stream.

Third, EPA envisions that wastes regulated under the special collection system requirements would be generated by a large number of generators nationwide. A large number of generators, coupled with infrequent generation, results in an extremely large administrative burden on EPA and the states that implement the RCRA hazardous waste program. For example, keeping track of the identity and location of generators, and the amounts and types of hazardous wastes that they generate (as is currently required under the subtitle C program), may not be appropriate for universal hazardous wastes; therefore, such wastes may be attractive candidates for the proposed part 273 regulations. Also, EPA's experience in implementing the subtitle C program has shown that many in the regulated community are not aware of the specific requirements that apply to them, and therefore may not be complying with all applicable hazardous waste management requirements. Information on the number of generators and the quantity of universal hazardous wastes that they generate is necessary for EPA to determine whether the hazardous waste is generated by the types of individuals or organizations that the part 273 regulations are designed to address. Therefore, petitioners should submit this kind of information to the Agency when petitioning for additional hazardous wastes to be considered under part 273.

Fourth, EPA will also consider the characteristics of generation sites. Wastes generated in isolated locations where: (1) No other hazardous wastes are generated, (2) the universal hazardous waste is the only waste generated, (3) the waste is generated only sporadically, and/or (4) small quantities are generated per month, will be more favorably considered for regulation under part 273. In addition, wastes that are frequently generated by small businesses would be likely candidates for special collection system regulations.

Fifth, and closely related to the amount of the waste present in the municipal waste stream, is the risk posed by that waste's presence in the municipal waste stream. RCRA's primary objective, stated in section 1003, is protection of human health and the environment. When the risks posed by a hazardous waste are relatively high, even if the waste is generated in relatively small quantities, the total risk posed by the waste may be of special concern. Therefore, universal hazardous wastes that pose significant risks to human health and the environment, particularly in the municipal landfill and/or municipal combustor settings, will be considered for regulation under part 273. The Agency is particularly concerned about universal hazardous wastes that may pose significant risk potential; EPA is interested in focusing its resources on ensuring proper management of wastes that pose significant risks.

Finally, there may be other factors that are relevant, due to special characteristics of the universal hazardous waste and practices used to manage the waste. EPA would consider such other relevant information that is included in a petition.

The second set of criteria, proposed in § 273.2(b), will be used to evaluate petitions to determine if part 273 regulations would satisfactorily address the problem presented by the hazardous waste. EPA will determine whether regulations can be developed under part 273 for a particular waste that would achieve the Agency's goals for the special collection system regulatory program. The criteria that EPA proposes to use are discussed below.

First, EPA will consider wastes for inclusion in part 273 that pose a relatively low level of risk, or that are relatively easily contained and managed, during storage and transport. In general, EPA expects that special collection system regulations will be most appropriate for hazardous wastes that are or can be managed securely in containers. Many of the requirements proposed today for special collection system wastes are less stringent than the current subtitle C storage and transport requirements (e.g., consolidation points are not required to have permits for storage,[12] and there are no manifesting requirements for certain shipments). Therefore, the Agency is proposing to restrict the applicability of the part 273 requirements to carefully defined and managed wastes, where the regulations can be tailored to minimize risks to human health and the environment during storage and transport.

Second, EPA will consider the characteristics of the systems for collecting the wastes. If, for some wastes, the collection systems ensure close stewardship of the hazardous waste (as in a recall scenario), the wastes would be better candidates for a special collection system exemption than other wastes that are not managed as carefully. EPA may give preference to such carefully-managed wastes when evaluating whether to develop part 273 requirements for additional hazardous wastes.

To give such preference, one approach EPA is considering is to allow those hazardous wastes which are (or would be) managed in a "reverse distribution system" supervised by the original product manufacturers to be exempt under the proposed part 273 regulations. In the event the manufacturers, and possibly others in a product's distribution chain, desire to become involved in the "waste" part of their products' life cycle, information that those parties submit in support of a petition would be useful in determining the degree of stewardship that the special collection system hazardous wastes would be subject to.

This approach could work for either unused products returned from end-users and/or retailers, or for used products returned from end-users. For example, some manufacturers already encourage the return of their products that have gone beyond their "shelf life," and may have credit or refund arrangements with their customers to encourage the return of unsold products. Such credit or refund systems could be a significant incentive for the return of products that happen to be hazardous wastes, and thus it may be appropriate for EPA to consider for special collection system regulation those hazardous wastes that are likely to be returned to their original manufacturers. EPA believes that harnessing market forces in this way makes good sense from both an economic and an environmental standpoint. As discussed above, EPA has also received information indicating that manufacturers interested in product stewardship for other used products, such as mercury containing thermostats, may be developing similar reverse distribution systems to retrieve these items from users for recycling or proper disposal.

Third, EPA would consider whether the waste management practices currently in use (documented by the petitioner under § 273.2(a)) would be improved by implementing special collection system regulations for the waste. In other words, EPA would consider whether special collection system regulations can be designed to alter current waste management practices, and to facilitate the wastes'

[12] And thus, the corrective action requirements of RCRA sections 3004 (u) and (v) and 3008(h) generally would not apply.

removal from the municipal waste stream.

Fourth, EPA would consider whether viable recycling technologies are available for a petitioner's waste, or are likely to be developed, and whether the part 273 regulations could be used to facilitate recycling. EPA would still consider a petitioner's request even if no recycling technology exists for a particular waste and no technology is under development. The weight of evidence of the other criteria may be sufficient for EPA to determine that part 273 regulations are appropriate for the petitioner's waste. Therefore, it is not imperative that a petitioner demonstrate that increased recycling would result from regulation of the waste under part 273. However, if the petitioner is able to demonstrate that environmentally protective recycling may occur, EPA would consider that result in determining whether to develop part 273 regulations for the petitioner's waste.

Fifth, EPA will use data provided by the petitioner documenting problems posed by the waste's management, to determine whether the part 273 requirements could be tailored to improve implementation of the hazardous waste regulatory program. For example, EPA believes there may be substantial confusion in the regulated community regarding the applicable hazardous waste requirements for waste battery management. (See the letters in the docket for today's proposal in "Letters on Battery Management.") Today's proposal is designed to alleviate this confusion by setting up special requirements that are specific to hazardous waste batteries. The data provided by the petitioner would be used by EPA to determine whether part 273 requirements would change waste management practices and improve implementation of the hazardous waste program.

Sixth, EPA may consider other factors that are appropriate.

Finally, EPA will also take into consideration, as a way to set priorities among the many various waste streams that may be suggested for this program, the quantity and quality of the data submitted by the petitioner and available to support a petitioner's request. If a petitioner's request is complete and supporting data are adequate, EPA is likely to evaluate the request and determine whether to propose a regulatory amendment sooner than if a request has only minimal information.

Petitioners need not provide evidence on all of the factors and criteria discussed above. Rather, depending on the characteristics of the particular waste described in the petition, EPA would evaluate the candidate waste for each criterion as appropriate given the type and quality of the data submitted. However, EPA will consider the weight of evidence for all applicable criteria regarding whether the regulations are appropriate for the universal hazardous waste and whether the special collection system regulations will accomplish the desired results EPA has identified for the proposed part 273 regulations.

EPA requests comment on the appropriateness of the criteria listed above for selecting additional hazardous wastes to be regulated under part 273, and whether there are any other criteria that should be considered. Most importantly, EPA emphasizes that each additional waste considered for regulation under the part 273 special collection system regulations will be evaluated against each of the criteria to determine whether such regulation would further the Agency's waste management goals as discussed above. EPA plans to focus its attention on this kind of program, but of course only wastes that the Agency believes can successfully be managed under such a system would be included under part 273, based on the strength of the case rather than on the amount or quantity of information submitted.

As a final point on which hazardous wastes would be covered under today's proposal, EPA notes that we chose not to include in the part 273 requirements lead-acid batteries that are being reclaimed. Lead-acid batteries being reclaimed are already subject to special requirements under part 266, subpart G. Under those regulations, facilities that store lead acid batteries that are to be reclaimed need not obtain a permit for that storage (as long as they do not reclaim the batteries themselves). By leaving the part 266, subpart G requirements in place, no new requirements would be imposed on these lead acid battery "consolidation points." The proposed part 273 requirements would be more stringent than the current part 266, subpart G requirements (e.g., notification to EPA would be required if more than 20,000 kilograms of batteries were stored), and less stringent in some ways (e.g., no land disposal restrictions notification is required under proposed part 273, while it is required under the current regulations). EPA requests comment on whether lead acid batteries that are reclaimed should be regulated under part 273, rather than under part 266, subpart G.

3. Conditionally Exempt Small Quantity Generator Waste

Conditionally exempt small quantity generators (CESQGs) generate less than 100 kg of non-acute hazardous waste per month (or, less than one kilogram per month of acute hazardous wastes). These CESQGs pose some challenging issues with respect to the scope and implementation of today's proposed rule. These issues stem from the fact that CESQG waste is the same as other hazardous waste (i.e., it looks the same and it poses similar risks) but is regulated differently based solely on the quantity generated by an individual generator; in fact, wastes generated from these sources may be legitimately disposed as part of the municipal waste stream under current regulations (see § 261.5).

Today's proposed regulations would not require CESQGs who generate universal hazardous wastes to manage these wastes under the part 273 special collection system regulations, but would allow CESQGs to manage their wastes under the special collection system if they choose to do so (see proposed changes to § 261.5 (f) and (g)). At this time, EPA is not proposing to require that CESQG universal hazardous wastes be managed under part 273 because the Agency believes that the existing CESQG requirements and the proposed part 273 requirements provide a similar level of environmental protection, and thus individual CESQGs should have the option of managing their waste under either system.

The Agency is also concerned that the proposed part 273 regulations might impose a greater regulatory burden on the large universe of CESQGs than the current regulations. Specifically, under the CESQG regulations, CESQGs must only: (1) Identify their hazardous wastes, (2) determine the quantity of hazardous waste generated, (3) limit on-site storage of hazardous wastes to 1,000 kg or less, and (4) take their wastes only to certain treatment, storage, or disposal facilities [13] (see § 261.5).

[13] CESQGS must either treat or dispose of their hazardous wastes in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is: (1) Permitted to manage hazardous waste under part 270 of the federal hazardous waste regulations; (2) granted interim status to manage hazardous waste under parts 265 and 270 of the federal hazardous waste regulations; (3) authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of the federal hazardous waste regulations; (4) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or (5) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial reuse, or legitimate recycling or reclamation.

In comparison, under the generator requirements of part 273 (which are discussed in detail in section II.C.2), there would be certain requirements for the condition of special collection system wastes; storage of wastes would be limited to one year; specific actions would be required in response to releases;[14] and exports of universal wastes are subject to export notification. The Agency notes, however, that one of the current CESQG requirements may actually be more stringent than the analogous requirement imposed under part 273. Specifically, CESQGs may, at a minimum, send their waste to a facility (other than a recycling facility) that is permitted, licensed, or registered by the state to manage municipal or industrial wastes, while special collection system generators may, at a minimum, send their waste to a storage facility that meets the requirements of a consolidation point (see section II.C.4. of this notice). Although there are different requirements proposed for consolidation points (for example notification and recordkeeping), these storage facilities would not be required to obtain permits, licenses, or registration from states (although under state law states may require such authorization to manage these wastes). EPA requests comment on whether the burden posed by the Part 273 regulations would increase CESQGs' regulatory requirements.

In addition, the Agency solicits comment on whether, at some future time, management of CESQGs' universal hazardous wastes under the part 273 special collection system regulations should be required. EPA currently has no information on the proportion of these universal hazardous wastes that are generated by conditionally exempt generators (versus generators of more than 100 kilograms of hazardous waste per month). However, the Agency believes that CESQGs may account for a relatively large proportion of the generating universe and/or account for a large portion of the total quantity of universal hazardous wastes that are currently being managed in the municipal waste stream. EPA requests comment on what proportion of the wastes for which special regulations are proposed today are generated by CESQGs. Specific information on the generation rates of hazardous waste batteries and suspended/canceled and recalled pesticides would be most useful.

[14] Although CESQGs are in effect required to take similar actions to avoid on-site disposal of released material which would require, at a minimum, a state license, permit, or registration under § 261.5.

One reason EPA would consider regulating CESQG universal hazardous waste under the special collection system requirements is that, by regulating all universal hazardous wastes uniformly, and without regard to the monthly quantities of hazardous wastes generated, implementation and CESQG decision making would be simplified with a minimal (if any) increase in the regulatory burden imposed on this large universe of generators. If universal hazardous wastes generated by CESQGs were regulated under the special collection system regulations, confusion regarding which regulations apply to CESQGs (the conditional exemption of § 261.5, or the special collection system regulations of part 273) might be reduced. (This confusion is likely to result from the fact that the wastes look the same regardless of who generates them.) Therefore, the Agency will consider regulating universal hazardous wastes generated by CESQGs under part 273 based upon comment received in response to this notice. The Agency specifically requests comment on whether it would be simpler to require that all universal waste (other than household waste) be managed under the part 273 regulations regardless of whether it is generated by a CESQG or fully regulated generator. EPA currently does not plan to promulgate a final rule bringing CESQG waste under part 273 without first publishing a supplemental notice on the subject.

Under today's proposal, managers of hazardous waste batteries and returned pesticides that are generated by CESQGs have the option of managing those wastes under the part 273 requirements. If the universal wastes from CESQGs are commingled with universal wastes from larger hazardous waste generators, and the commingled waste is a hazardous waste under 40 CFR 261.3 (i.e., is listed or exhibits a characteristic), the commingled wastes must be managed under either the part 273 requirements or the full hazardous waste regulations (parts 260 through 272). In today's notice EPA is restating this result in the part 273 regulatory text to clarify the regulations' applicability for those parties managing these wastes generated by both CESQGs and larger hazardous waste generators.

4. Excluded Household Hazardous Waste

Hazardous wastes generated by households are currently excluded from the definition of hazardous waste (40 CFR 261.4(b)(1)). Therefore, universal hazardous wastes generated by individual citizens at their households are not subject to the proposed part 273 regulations, provided an establishment managing the household-generated universal hazardous wastes collects and stores them separately from other regulated hazardous wastes. However, EPA believes that by proposing today's simplified special collection system regulations, a person or establishment collecting universal hazardous wastes generated by households may be encouraged to manage all of these wastes in accordance with the proposed part 273 regulations (and thus avoid the need to manage household wastes separately from other regulated universal wastes in order to retain their exempt status).

Currently, persons or municipalities operating household hazardous waste collection programs must meet certain requirements if they also collect hazardous wastes from CESQGs (see 40 CFR 261.5(f)(3) and (g)(3)). Under the proposed part 273 regulations, operators of these programs would be able to manage household-generated universal hazardous wastes, CESQG-generated universal hazardous wastes, and special collection system hazardous wastes generated by fully regulated generators under the part 273 regulations. Operators of these programs would fall within the definition of a consolidation point. For example, if a municipality collects hazardous waste batteries from businesses as well as private citizens, the operators of the municipal collection program could elect to manage all of the batteries under the part 273 requirements, and therefore, need not limit their acceptance of batteries to those generated by CESQGs. Such provisions should greatly simplify requirements for household hazardous waste collection programs at the local and municipal levels of government.

C. Proposed Waste Management Requirements

1. Applicability of Part 273 Regulations

Today's proposed regulations would regulate a limited set of hazardous wastes, referred to as universal hazardous wastes, that pose different waste management issues than those posed by other hazardous wastes. EPA will determine the applicability of the part 273 requirements by the use of defined selection criteria, which are described in section II.B above. In addition to the specific types of wastes proposed today, individuals may petition the Agency to regulate other wastes under part 273 special collection system requirements in lieu of otherwise applicable subtitle C requirements. In the event that EPA

determines that additional hazardous wastes merit special collection system regulations, EPA would develop regulations for those wastes under part 273.

Today's proposal includes specific regulatory language for two of these universal hazardous wastes: Batteries and suspended or canceled and recalled pesticides that are hazardous wastes.

a. Subpart B—Batteries that are hazardous wastes. Today's proposal sets forth standards for the management of hazardous waste batteries in subpart B of part 273. Under this Subpart, regulation of the universe of hazardous waste batteries would be simplified and made more consistent.

As used in today's proposal, the term "battery" refers to a device designed to generate electric currents, that is comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a medium that separates the electrodes. The term includes both "wet" and "dry" batteries (i.e., those that contain a liquid electrolyte and those from which the liquid electrolyte has been removed, or those which contain a solid or gelled electrolyte). Batteries are generally described by identification of the metals used in the electrode (and sometimes by the type of electrolyte). For example, lead-acid batteries are cells that contain lead electrodes and an acidic electrolyte, and nickel-cadmium batteries are cells that contain electrodes made of nickel and cadmium.

EPA requests comment on this definition of "battery." Commenters should state whether the definition is clear and will be understood by those in the regulated community, and whether the regulation should distinguish between "wet" and "dry" batteries. In addition, there may be other devices, such as electric current generators, which could meet the definition of "battery" proposed today. EPA does not intend to cover any electrical devices besides those included in the common understanding of "battery." Commenters should provide specific wording that would limit the regulation's coverage to those electrical devices commonly understood to be 'batteries," or state whether a separate regulatory definition is even needed.

The proposed part 273 regulations are applicable to all types of hazardous waste batteries except lead acid batteries, as discussed above. No distinctions are made based on the battery's size or the composition of the electrode or electrolyte materials. This result is intended to greatly simplify hazardous waste battery management, since there currently are a number of exemptions that may apply, and determining the regulatory status of a given battery can be a complex procedure.

First, waste batteries are hazardous if they exhibit one or more of the four hazardous waste characteristics identified in 40 CFR part 261, subpart C. Sometimes, batteries may exhibit one or more of the four characteristics, while in other cases they may not. EPA believes that batteries that do exhibit a characteristic of hazardous waste generally exhibit the characteristic of corrosivity (40 CFR 261.22), the characteristic of reactivity (40 CFR 261.23), or the Toxicity Characteristic (40 CFR 261.24). The Agency believes that lead-acid, nickel-cadmium, mercury, silver, and alkaline batteries may, at least in some instances, exhibit the Toxicity Characteristic. Lithium batteries may also exhibit the characteristic of reactivity. Batteries may also exhibit the characteristic of corrosivity if they contain corrosive electrolyte (see the discussion at 48 FR 14498, April 4, 1983).

Currently, all generators of waste batteries (even conditionally exempt small quantity generators) must determine whether these batteries exhibit any of the hazardous waste characteristics and manage any that do exhibit characteristics in accordance with the subtitle C hazardous waste regulations. The Agency believes, however, that waste battery management programs that may develop under the reduced requirements of the special collection system regulations proposed today may be so simplified that generators may choose to manage all of their waste batteries under such a system. In effect, a generator complying with the part 273 requirements would be managing all batteries as hazardous waste and thus could choose not to make a case-by-case determination for each battery. In contrast, a generator who chooses to manage batteries as nonhazardous waste would have to have a basis to conclude that they are not hazardous.[15]

EPA currently does not have information on the percentage of the battery types discussed above that exhibit hazardous waste characteristics, or on other types of batteries that may exhibit hazardous waste characteristics. The Agency may conduct a sampling and analysis project to obtain more information on the types and quantities of waste batteries that exhibit characteristics. EPA welcomes comments and data on what types of batteries are hazardous wastes and therefore, may be regulated under part 273.

Second, the part 273 regulations will apply to hazardous waste batteries of all sizes, ranging from button to small cylinder to industrial size. Again, the approach where all sizes of batteries are regulated under one regulatory scheme should greatly simplify waste battery management practices. EPA requests comments on this approach as well.

b. Subpart C—Suspended and/or canceled pesticides that are recalled. Subpart C of today's proposed rule creates a regulatory framework under RCRA for management of pesticides that are recalled. Specifically, it would establish requirements for pesticides that are suspended or canceled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and recalled, and that are collected for recycling or disposal.

To understand the basis for inclusion of recalled pesticides, it is important that readers of today's proposal understand the relationship between the authorities of RCRA subtitle C and FIFRA, also administered by EPA. Briefly stated, FIFRA regulates pesticides from initial distribution by producers to ultimate disposal; RCRA regulates hazardous wastes of all types, including pesticide wastes, from cradle to grave. The nexus of these two statutes is the point at which a pesticide under FIFRA becomes a hazardous waste under RCRA. At that point, both FIFRA and RCRA requirements may apply to the pesticide waste.

Prior to 1988, the overlapping authority of FIFRA and RCRA created few problems. The characteristics of pesticide use are such that pesticide wastes are ordinarily generated in small quantities by a large number of individual users such as farmers or householders, persons who are exempt or for whom special RCRA provisions have been created. Moreover, prior to 1988 EPA had no direct authority under FIFRA to regulate the storage, disposal or other disposition of a pesticide. (Indirectly, EPA could regulate through its labelling authority.) Recommended procedures for pesticide storage and disposal are contained in 40 CFR part 165. Thus, if a pesticide product became a hazardous waste, it was (and is) regulated primarily under the authority of RCRA.

[15] Unused or off-specification batteries that are reclaimed are not solid wastes; thus, they are not hazardous wastes, and are not subject either to the part 273 requirements or the full hazardous waste regulations (§ 261.2(c)(3), and 50 FR 14216, April 11, 1985). Most persons, however, could simply comply with part 273 without making any solid or hazardous waste determinations.

Although any pesticide when discarded becomes a waste (which may be hazardous), the suspension or cancellation of a pesticide by the Agency can generate large volumes of pesticide wastes. FIFRA section 6 allows the Agency to remove pesticide products from the marketplace for adverse health or environmental effects. Under that section, EPA may suspend or cancel the registration of the product (the registration is a license permitting marketing). Suspension is an immediate cessation of sale, distribution and use and is undertaken concurrently with cancellation, a lengthier administrative process generally resulting in a permanent removal of the product from the market. Cancellation may also take place without prior suspension. However, FIFRA section 19 contains specific authorities to address pesticides that are suspended and then canceled.

In 1988, amendments to FIFRA section 19 greatly expanded EPA's authority over the storage, transportation and disposal of pesticides, including requirements addressed expressly to suspended and canceled pesticides. Under that section, EPA is authorized to require, among other things, the recall of suspended and canceled pesticides. In situations where a section 19 recall is not authorized (because the pesticide has not been both suspended and canceled), the Agency may engage in a recall of a pesticide that has been suspended or canceled, or a product that is in violation of FIFRA because of product or labeling deficiencies. These latter recalls, requested or negotiated by the Agency, may have all the characteristics of a mandatory recall under FIFRA section 19, including recordkeeping and reporting, a high level of stewardship for the recalled pesticide, and requirements for proper storage and disposition. The special collection system rules proposed today would cover both types of recalls—those of suspended and canceled pesticides authorized by FIFRA section 19, and those undertaken by agreement between the Agency and a registrant for other reasons. It should be noted, however, that if the pesticide holder elects to participate in a recall, and the person conducting the recall has not yet made a decision to discard the pesticides that are subject to the recall, the pesticides are not solid wastes.

The Agency will shortly propose regulations under FIFRA governing suspended and canceled pesticides, including requirements for a recall program. Under those regulations, the Agency would establish requirements for voluntary and mandatory recall programs, including responsibilities of registrants, others in the distribution chain, and holders of suspended and canceled pesticides.

Today's RCRA proposal will be coordinated with the upcoming FIFRA recall regulations, with the goal of reducing inconsistencies and potentially overlapping requirements for suspended and/or canceled hazardous waste pesticides.

As used in today's proposed rule, references to pesticides that are "canceled" and/or "suspended" have the same meaning that is used in FIFRA. To meet the applicability criteria of part 273, the pesticides must be: (a) Part of a voluntary or mandatory recall under FIFRA section 19(b); or (b) owned by a registrant responsible for conducting a recall under FIFRA and part of a voluntary or mandatory recall under FIFRA section 19(b); or (c) part of a registrant-conducted recall of a canceled or suspended pesticide.

EPA wishes to clarify here that the existing regulatory exemption for farmers disposing of waste pesticides from their own use on their own farms would remain unaffected by the regulations proposed today. Under this exemption (40 CFR 262.70), farmers disposing of waste pesticides that are hazardous wastes are not required to comply with parts 262 through 268 or 270, provided they triple rinse each emptied pesticide container in accordance with § 261.7(b)(3) and dispose of the pesticide residues on their own farms in a manner consistent with the disposal instructions on the pesticide label. The requirements proposed today do not supersede this exemption.

2. Generator Requirements

In developing the part 273 regulations applicable to generators, the Agency considered a number of control options. Although the regulatory language proposed today includes only a limited number of specific provisions for generators of special collection system wastes, other options considered for regulation of generators are also discussed below. The general requirements proposed today for generators are analogous to those proposed for transporters and consolidation points. The following discussion refers to the generator requirements; however, the issues are similar for transporters and consolidation points. The Agency requests comment on the appropriateness and protectiveness of all the options discussed for generators and also for transporters and consolidation points.

Today's proposal includes a number of provisions that would be imposed directly on generators of hazardous waste batteries or recalled pesticides. Each of these provisions is discussed below.

a. Waste generation. Since the number of generators is so large, and the variety of activities the generators are involved in is so wide, EPA believes it is essential to explain in one place how a battery or recalled pesticide becomes a waste, and how to determine whether it is a hazardous waste. The "when is it a waste" concept, for batteries and pesticides, is explained below, and is also defined in the regulations that apply to each of these waste types.

As with any hazardous waste, the generator of these special collection system hazardous wastes is the person, by site, whose act or process first causes the material to become a solid waste (and thus, a hazardous waste) subject to RCRA regulation (see the definition of generator at 40 CFR 260.10).

The generator regulations proposed today include specific language clarifying when each item or material becomes a solid waste. This language is crafted to identify the point at which a particular material becomes a waste, but not to amend or revise that determination as it is currently set forth in 40 CFR 261.2. For batteries, a used battery generally becomes a solid waste when a generator permanently removes it from service (for example, by removing it from the appliance or equipment in which it has been used).[16] An unused battery becomes a solid waste when the generator decides to throw it away (for example, by disposing of the battery on the land or incinerating it). Unused batteries (which, under the regulations, are considered commercial chemical products) which are reclaimed are not solid wastes under § 261.2(c)(3). See also 50 FR 14216, April 11, 1985. Waste batteries are hazardous wastes if they exhibit any of the four characteristics of hazardous waste set forth in 40 CFR part 261, subpart C (ignitability, reactivity, corrosivity, or toxicity).

For suspended or canceled and recalled pesticides, the point at which the recalled pesticide becomes a waste depends on when a decision to discard it[17] is made. This decision might be

[16] In the case of appliances with built-in batteries that cannot be separated or removed from the appliance itself, the generator must determine the regulatory status of the entire appliance.

[17] However, if the unused pesticide is to be reclaimed, or used in a manner consistent with its normal use, under 40 CFR 261.2(c)(3) or 261.2(c)(1)(ii), respectively, it is not defined as a

Continued

made by either the pesticide holder or the pesticide's registrant, and in a recall situation determining "when is it a waste" can be somewhat complex.

A pesticide holder who has decided not to participate in a recall, but who wants to dispose of the pesticides in another manner, is the generator because the holder has decided to discard them. If the pesticide holder elects to participate in a recall in which the person conducting the recall has already decided to discard the collected pesticides, the point the holder decides to participate in that recall (and, for FIFRA section 19(b) recalls, notifies the registrant of his decision) is the point at which the pesticides become wastes. At that point, the pesticide holder becomes the generator.

However, if the pesticide holder elects to participate in a recall, and the person conducting the recall has not yet made a decision to discard the pesticides that are subject to the recall, the pesticides are not solid wastes.

Finally, if the pesticide holder elects to participate in a recall at a point where the person conducting the recall has not yet decided what to do with the collected pesticides, and later on, the person conducting the recall decides to dispose of them, the pesticides become wastes at that later point. If they are still in the holder's possession at that point, the holder is the generator (although the person conducting the recall could be viewed as a co-generator, who shares potential RCRA liability). If they have already been collected or are at some point in the collection chain, whoever is in possession of them at the point the decision to discard is made is the generator, along with the party who makes the decision.

Further, it should be noted that unused waste pesticides are hazardous wastes if they exhibit one or more of the hazardous waste characteristics set forth in 40 CFR part 261, subpart C, or if they are listed in 40 CFR part 261, subpart D.

b. Condition of wastes. Today's proposal includes packaging and physical condition requirements that recalled pesticides must meet to qualify for the conditional exemption of part 273. (However, hazardous wastes that do not meet these physical condition requirements may still be managed under the parts 260 through 272 full hazardous waste management requirements that currently apply.) There are no analogous packaging or physical condition requirements included in the proposal for batteries.

The same requirements for physical condition of pesticides are imposed on generators, transporters, and consolidation points; however, they are discussed in detail in the preamble only in this discussion of the generator requirements.

To limit the potential health and environmental hazards associated with recalled pesticides, the Agency is proposing that generators may manage under the part 273 regulations only suspended or canceled and recalled pesticides that are either: (1) Packaged in their original packaging, which may be either a portable container or a stationary tank, that is closed and not leaking; (2) packaged in their original packaging and overpacked in a larger container that is closed and non-leaking; (3) contained in a tank that meets the hazardous waste tank requirements; or (4) contained in a transport vehicle or vessel.

EPA is today proposing this range of containment options in order to allow flexibility in choice of packaging and tank storage. However, there is a significant issue associated with the pesticide containment provisions. The stationary tanks that were used to hold the pesticide when it came down the distribution chain as a product may not be available to hold the pesticide once it is a hazardous waste and is being recalled. When the pesticide is being distributed for sale, there are significant incentives to contain the pesticide carefully and use only tanks that are structurally sound and not leaking. Once the pesticide becomes a hazardous waste, however, the same incentives no longer exist. In a recall situation, the hazardous waste pesticides that are consolidated at dealers' and distributors' locations may need to be placed in tanks (although they could also be stored in portable containers such as 55-gallon drums, or in transport vehicles or vessels). The dealers' or distributors' tanks may already be filled with other pesticides, that are not subject to the recall, and there may be few available tanks in which to store the recalled pesticide. EPA is concerned that the available tanks may not be structurally sound, may not be compatible with the chemical composition of the recalled pesticide, or for other reasons would not be appropriate to use for storing the hazardous waste pesticide for a period of up to one year. EPA believes that storage in tanks that were used to contain that same pesticide when it was being distributed for sale would be adequate. (This option is found in the proposed regulations at § 273.21(b)(1)(i).) As noted above, the generator also has other storage options available, and thus EPA believes the proposed requirement in its entirety is practical. EPA requests comment specifically on this provision, and on whether there are other options that would also be environmentally protective. In addition, EPA requests comment on whether the second packaging option (packaged in original packaging and overpacked in a larger container) should be expanded to include any repackaging technique. In other words, should the regulations allow recalled pesticide handlers to repackage hazardous waste pesticides from original packaging into other, different containers (physically transferring the pesticide from its original packaging into a different container)? Would allowing this practice create potential pesticide spillage problems?

c. Storage. Another set of provisions proposed today for generators involves storage of special collection system wastes and is derived from the land disposal restrictions of RCRA section 3004. EPA is proposing that managers handling these wastes under the special collection system regulations comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements of § 268.7 (notification and recordkeeping).[18] The current land disposal restrictions requirements are discussed below in section II.C.7. of this preamble, entitled land disposal restrictions.

The Agency has determined that the RCRA section 3004(j) prohibition on storage of land disposal restricted wastes must be included in the generator requirements (and also in the requirements for transporters and owners/operators of consolidation points). This requirement for generators is proposed as an explicit storage time limit (up to one year). For the special collection system regulations, EPA chose to simplify the existing regulatory language at 40 CFR 268.50 to accomplish the same result as the § 268.50 requirement (allowing the accumulation of hazardous wastes only for the purposes of facilitating proper recovery, treatment or disposal). The simplified language assumes that the generator's sole reason for storing the

solid waste. Under 40 CFR 261.3(a), materials that are not solid wastes are not hazardous wastes. Thus, unused pesticides that are reclaimed or used in a manner consistent with normal use are not hazardous wastes, and would not be subject to part 273 or any of the RCRA hazardous waste regulations.

[18] The reduced requirements of part 273 would be available only to hazardous waste handlers who comply with the part 273 requirements; if not in compliance with the part 273 requirements, the handler must manage the hazardous waste in accordance with the full parts 260–272 requirements.

special collection system hazardous wastes, for up to one year, is to accumulate the quantities necessary for proper recovery, treatment or disposal. However, EPA is not reopening the public comment period for the general question of the land disposal restrictions storage prohibition. EPA is only requesting comment on the specific question of how to address the statutory land ban storage prohibition for special collection system wastes.

In order to enforce the one-year storage limit, today's proposal includes a performance standard which would require generators to demonstrate that their special collection system wastes have not been stored for more than one year from the date they became wastes. Generators could use several options to make this demonstration. For example, EPA believes that generators of small quantities of batteries or a limited number of containers full of recalled pesticide, may choose to simply mark each waste item with the date it became a waste. However, for generators of larger quantities, a marking system may be impractical. Instead, such generators may choose to designate specific areas for storage of their special collection system hazardous wastes that became wastes at various times. The proposed regulation would also allow the use of an inventory system to achieve the same result. Are there other techniques that generators could use to demonstrate that their special collection system wastes have been stored for less than one year? EPA is interested in commenters' views on these or other specific techniques that would enable generators of these waste items to demonstrate that they are storing the wastes for less than one year.

d. Notification. EPA is proposing to require generators storing more than 20,000 kilograms of hazardous waste batteries at any time to notify EPA of their waste activities. This notification would consist of a letter to the EPA Regional Administrator, identifying the generator's facility.[19] EPA would then assign an EPA Identification Number to the generator.

Currently, generators of more than 100 kilograms of hazardous wastes per month are required to obtain an EPA Identification Number (a twelve-digit number that EPA or state agencies assign to hazardous waste handlers). Generally, generators and other hazardous waste handlers obtain the identification number by submitting a form which includes basic information about the facility and waste management activities. Thus, the notification requirement proposed today is similar to the existing requirement, but would apply to an extremely small fraction of the generators who are currently required to notify and obtain an EPA Identification Number.

EPA believes that, since there would be no cradle-to-grave tracking system for special collection system wastes under the proposal, notification is necessary to identify only those parties managing very large quantities of hazardous waste batteries. Without some form of notification, state agencies and/or EPA would have no knowledge of the identities and locations of facilities storing these large quantities of these wastes, and thus would not be able to inspect these facilities to ensure compliance. Through such inspections, facilities that are managing wastes improperly can be required to come into compliance to prevent incidents of environmental damage.

However, the population of generators of hazardous waste batteries is quite large; thus, for administrative reasons, EPA believes that it is necessary to limit the notification requirement to only those generators managing significant amounts of these wastes. To accomplish this, the proposal would require generators storing more than 20,000 kilograms of hazardous waste batteries to notify. EPA believes that generators of smaller quantities will send their wastes to a nearby location, through routine pickups, in order to consolidate many generators' wastes in quantities sufficient to allow economical shipments to more distant treatment, recycling or disposal sites. It is likely that only the largest generators will accumulate enough wastes on-site in order to make long-distance shipments economical. The 20,000 kilogram quantity proposed today for batteries (which is slightly more than 44,000 pounds) roughly corresponds to the weight of a typical fully loaded highway transport vehicle. This limit is designed to require notification from generators who would be accumulating extremely large quantities of hazardous waste batteries for long-distance transport.

EPA expects that the vast majority of the battery generator population will be in the commercial, agricultural, governmental, service, medical, and/or educational sectors of society. For administrative reasons, it is somewhat impractical to attempt to catalog all of the hazardous waste generators present throughout the country by requiring them to notify EPA or state agencies, and then assigning them Identification Numbers to keep track of their activities in databases. EPA requests comments on this approach and on any other approaches that may be appropriate.

Generators of hazardous waste pesticides would not be required to notify, under today's proposal, because EPA expects that the larger generators who are commercial applicators or distributors would already be notifying EPA and state agencies under the FIFRA section 6(g) policy (see the proposed policy at 56 FR 13042, March 28, 1991, discussed further in this preamble in section II.C.4).

Would different quantity limits for hazardous waste batteries be appropriate? For example, if EPA set the notification quantity limit at a level that would be slightly above the quantity held in a typical transport vehicle, then it is possible that no parties managing the special collection system batteries would ever notify EPA (except for the destination facilities that receive the wastes for treatment, recycling or disposal, who are already required to notify). On the other hand, if EPA sets the notification quantity limit significantly less than the quantity held in a typical transport vehicle, then a very large number of parties would be required to notify. EPA requests comments on the notification quantity limits being proposed today, and on the proposed approach not to require special collection system pesticide waste generators to notify.

e. Prohibitions. Generators would be prohibited from diluting or disposing of special collection system hazardous wastes on-site. Under the current land disposal restrictions regulations at 40 CFR part 268, dilution to meet the land disposal restrictions treatment standards is prohibited under § 268.3(a). See 55 FR 22656–57 (June 1, 1990). The prohibition in today's proposal is the mechanism to continue the existing dilution prohibition under the current land disposal restrictions regulations, and to continue the existing statutory prohibition on placing hazardous wastes on the land without treatment.

In addition, treatment of the wastes would be prohibited (except that treatment that is necessary to respond to releases, or treatment of battery electrolyte that is allowed under the current hazardous waste generator requirements). These requirements are designed to ensure that only storage, transportation, and consolidation are conducted at the locations in the special collection system that are subject to reduced requirements, and also ensures that generators (and similariy, transporters and consolidation points) do not manage these special collection system wastes in a way that would be

[19] Alternately, the generator could complete EPA Form 8700–12, "Notification of Regulated Waste Activity," by checking the box indicating that he or she is a hazardous waste generator.

out of compliance with the substantive requirements of the land disposal restrictions.

Generators are further prohibited from sending or taking special collection system wastes to any place other than a consolidation point (for storage and consolidation) or to a destination facility (for storage, treatment, recycling, or disposal). (These terms are defined in proposed § 273.3.) As discussed below in section II.C.4, under part 273, consolidation points would be subject to requirements similar to the part 273 generator requirements, and destination facilities are interim status or permitted treatment, storage, recycling, or disposal facilities, or recycling facilities that do not store the wastes prior to recycling.[20] The Agency is not proposing a tracking system to ensure delivery to such facilities because the recordkeeping burden of such tracking systems might discourage participation in part 273 collection programs. However, each party would have to keep appropriate documentation, such as business records, to show that they are staying within the terms of part 273.

This prohibition is imposed on all entities in the special collection system, including generators, transporters, and consolidation points. As each entity is only allowed to send the wastes to another entity within the system (who is similarly limited to sending the wastes to an entity within the system), this prohibition would ensure that the hazardous wastes are entered into the special collection system by the generator, and then continue through the system and eventually reach a treatment, storage, disposal or recycling facility that is subject to the full hazardous waste regulations, including the land disposal restrictions. Generators may transport the hazardous waste themselves (in which case they would also be subject to the part 273 transporter regulations proposed today), or may contract to have someone else transport the wastes.

The Agency requests comment on the protectiveness and practicality of the prohibitions described above.

f. Waste management. Today's proposal contains certain specific provisions for hazardous waste battery management, and general release response and employee training requirements that are common for generators of all special collection system hazardous wastes.

For hazardous waste batteries, instead of specific packaging requirements, or requirements that the batteries be in a specific physical condition (e.g., intact and not leaking), EPA is proposing a requirement that generators and other handlers manage the batteries in a way that minimizes releases of any battery components. Outdoor storage of batteries with plastic casings can allow the sun's ultraviolet radiation to cause deterioration of the casings, with the potential for a release of the battery's components. Thus, a general performance standard requiring management practices to minimize releases of battery components should prevent poor management practices that could lead to significant environmental damages.

For all of the special collection system wastes, there is a need for personnel training to make a generator's employees aware of potential safety hazards posed by the wastes. EPA is proposing a requirement for basic training on potential safety hazards posed by the special collection system wastes. This proposed requirement is adapted from the current small quantity generator personnel training requirements (at 40 CFR 262.34(d)(5)), and is a reduction of current requirements for large quantity generators (40 CFR 265.16, cross-referenced at 40 CFR 262.34(a)(4)). The Agency requests comment on whether these requirements should be further reduced or eliminated.

In addition, EPA is proposing a release response requirement for generators and other handlers. For example, in the event of a release of electrolyte at a waste battery generator's facility, the generator would be required to immediately contain all released wastes and appropriately manage the released waste and any contaminated environmental media or other materials resulting from the release. The generator would be considered the generator of any hazardous wastes produced during response activities and would be required to comply with 40 CFR part 262 for management of these wastes. These requirements proposed today are already imposed on generators of more than 100 kilograms of hazardous waste per month (see 40 CFR 262.34, which references part 265 subparts C and D). The above training and release response requirements are proposed in lieu of the otherwise applicable training and emergency preparedness and prevention requirements (40 CFR 265.16 and subparts C and D of part 265) because, given the circumstances where only universal wastes are handled, the Agency believes that this general performance standard is sufficient to protect human health and the environment.

It should also be noted that under 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) (see 48 FR 2509, January 19, 1983), a person conducting an immediate response to a release is not required to obtain a permit under 40 CFR part 270. However, any continued storage, treatment, or disposal of released materials and cleanup materials would not be exempted from the full subtitle C hazardous waste management regulations. The release response requirements proposed today would be consistent with the current regulations (40 CFR 264.56(g) and 265.56(g)).

EPA also notes that certain reporting requirements under CERCLA, codified in the regulations at 40 CFR 302.6, apply to releases of hazardous substances, including wastes that exhibit a hazardous waste characteristic. Reporting is required for releases of more than a "reportable quantity." 40 CFR 302.4 and 302.6 identify reportable quantities for hazardous substances. For example, the reportable quantity for a waste exhibiting the toxicity characteristic due to the presence of cadmium is one pound. Persons managing wastes under the special collection system continue to be subject to these CERCLA reporting requirements.

g. Exports. The final requirement for generators (which is also imposed on transporters and owner/operators of consolidation points) is compliance with the export notification and consent requirements mandated by RCRA section 3017. EPA expects that, typically, generators are unlikely to generate large enough quantities of special collection system hazardous wastes that they will be exporting the wastes themselves. However, in the event they do wish to export their special collection system hazardous wastes, they must comply with the export notification and consent procedures of 40 CFR part 262 subpart E (although they would not need to use a manifest for the shipment). These generators (except for generators of lead-acid batteries, and generators of used batteries being sent for regeneration, discussed below) are already currently regulated under the part 262, subpart E requirements (which do require use of a manifest with the shipment).

In cases where the registrant decides to export a suspended or canceled and recalled pesticide to a foreign country for use as a pesticide, the RCRA export

[20] Hazardous waste recycling facilities (other than those facilities that burn hazardous wastes for energy recovery) are currently only required to obtain a subtitle C permit if they store the hazardous wastes prior to recycling them. A permit is required for the storage units but not for the recycling activity.

regulations do not apply because the pesticide would not be a solid or hazardous waste. (Unused commercial chemical products that are used in a manner constituting disposal are not solid wastes under CFR 261.2(c)(1)(ii) if land application is their ordinary manner of use.) Instead, in such situations the requirements of FIFRA section 17(a) apply to the registrant. These requirements include providing a notice to the foreign purchaser that the product is not registered for use in the United States and cannot be sold in the United States. The foreign purchaser must sign a purchaser acknowledgement statement indicating that it is aware of that fact. A copy of the acknowledgement statement is to be submitted to EPA and thereafter is transmitted to an appropriate official of the importing country. The product to be exported must also be packaged according to the specifications of the foreign purchaser.

The Agency requests comment on the application of export requirements to generators of special collection system wastes.

h. Other generator requirements under consideration. Other options that the Agency is considering for regulating generators (and, similarly, transporters and owners/operators of consolidation points) are discussed below. The Agency points out that although the limited regulations proposed today may be appropriate for the specific types of wastes discussed here (hazardous waste batteries and recalled pesticides), different regulatory options may be appropriate for other types of wastes. The Agency requests comment on the specific regulations proposed for batteries and returned pesticides, as well as on requirements that would be suitable for additional wastes that commenters believe are appropriately regulated under part 273.

Under today's proposed regulations, generators of special collection system hazardous wastes are not subject to any recordkeeping requirements for knowing their wastes' destination. This is a significant reduction of the current recordkeeping burden placed on these generators. For instance, generators of all batteries that are hazardous wastes (except lead-acid batteries being reclaimed and used batteries sent for regeneration) are currently subject to the uniform hazardous waste manifest requirements. These generators would no longer be required to comply with the hazardous waste manifesting requirements if they are in compliance with the part 273 regulations. EPA is proposing this reduction in paperwork to encourage participation in part 273 collection programs. As collection programs are established and expanded, participation may come to include parties currently managing their waste in the municipal waste stream. Thus, the overall effect of the reduced requirements may lead to larger numbers of generators sending their waste into protective systems.

The Agency is aware that without some form of tracking system, generators have no assurance that shipments of special collection system wastes reach their intended destination. EPA is aware that generators may be concerned about potential Superfund[21] liability for shipments that do not reach their intended destination and instead are improperly managed. As an alternative to today's proposed approach, the Agency requests comment on the need for a tracking system or recordkeeping requirements for generators, and on the form any tracking systems should take.

Finally, EPA is considering a phased approach to imposing technical storage requirements, tailored to address the specific potential environmental problems that could be caused by special collection system wastes. After reviewing the current subtitle C technical storage requirements, and comparing those requirements to the specific hazards that may be posed by the practice of accumulating large quantities of special collection system wastes in one place, EPA is concerned that some of the current subtitle C requirements may be inappropriate for the specific problems posed by certain universal wastes. For example, the current subtitle C requirements require that containers holding hazardous wastes be closed except when adding or removing waste (see 40 CFR 265.173). However, for hazardous waste batteries that evolve hydrogen gas, a generator who chooses to store his or her used batteries in an enclosed container may in fact increase the potential for a fire or explosion.

Thus, EPA is not proposing technical storage standards today, but instead intends to wait until after promulgation of the final special collection system rules in order to allow collection systems to develop, and in order for waste handlers to develop common-sense, practical management techniques that would minimize potential safety and environmental hazards. At that point, EPA would review the need for imposing technical storage requirements, and, if requirements are necessary, would propose and then promulgate them. Since many universal wastes are not currently managed together in large amounts (and instead are dispersed throughout the municipal waste stream, or are managed in other ways, such as in public sewer systems), it is difficult to predict what specific technical management requirements would be necessary. EPA is considering awarding a grant to one of the first RCRA-authorized state agencies that adopt the final special collection system rules, in order for that agency to encourage the development of state-wide special collection systems, obtain practical implementation experience, and then make recommendations to EPA about the need for specific technical requirements for the various special collection system wastes. (In addition, it may be possible for the state to recommend modifications to the special collection system administrative requirements.)

As another specific example of how sudden changes to current waste management practices could potentially cause problems in managing universal hazardous wastes, consider the situation with lead-acid battery storage at collection points not reclaiming the batteries. (Although we are not today proposing any additional requirements for lead-acid battery storage, this example is useful because it illustrates the potential problems with imposing new technical requirements for specific wastes.) Lead-acid batteries are a source of hydrogen, a highly flammable gas that evolves as a result of the chemical reactions occurring during use of the battery. Current RCRA requirements do not specify any storage standards for facilities collecting used lead-acid batteries for reclamation (provided the batteries are not reclaimed at the storage facility). Typically, the used batteries may be stored outside, where any hydrogen present can easily dissipate. However, bills have been introduced in the U.S. Congress that would require lead-acid battery retailers to accept lead-acid batteries back from consumers. In a crowded urban area, there may be no available space for outdoor battery storage; as a result, the lead-acid batteries returned from consumers would be stored indoors, where the evolved hydrogen gas could accumulate in an enclosed, unventilated area, and present a significant fire hazard. Although there do not appear to be significant problems occurring under the current system, a radical change in used lead-acid battery management techniques could create potential safety hazards that are not present under the current system.

[21] Also known as the Comprehensive Emergency Response, Compensation and Liability Act.

The Agency requests comment on the phased approach for implementing technical storage standards discussed above, and also on whether there should be additional requirements included in the final part 273 rules for storage of particular special collection system wastes that pose special hazards.

3.Transporter Requirements

Today's proposed regulations for transporters of special collection system wastes include five provisions that are generally the same as five of the provisions proposed for generators of special collection system wastes (these include requirements for condition of wastes, storage, prohibitions, waste management, and exports). Each of these requirements is discussed in detail in the generator section above, as are other options considered by the Agency for regulation of these wastes. The Agency requests comment on the application of these provisions to transporters, and on the same issues and options that are discussed in the generator section.

The proposed requirements concerning condition of wastes are similar to those proposed for generators. There are no specific requirements proposed for the condition of batteries. However, pesticides would be required to be contained in original packaging, overpacks, or in transport vehicles or vessels.

The storage limitation for transporters is somewhat different than that imposed on generators. Transporters who hold the hazardous wastes temporarily during the course of transport may hold the wastes at a loading dock, parking area or other location (transfer facility) for no longer than ten days. The ten-day limit on temporary storage during the course of transport is analogous to the current ten-day limit imposed on hazardous waste shipments under the full part 263 hazardous waste transportation regulations (see 40 CFR 263.12) and under the land disposal restrictions regulations (see 40 CFR 268.50(a)(3)). Transporters who store wastes in the course of transport for longer than ten days would be regulated as consolidation points.

EPA requests comment on whether another time limit is appropriate, but notes that the consolidation point (discussed below) can act much like a transfer facility for shipment stops that last longer than ten days.

The prohibitions and waste management requirements proposed today are also the same as those proposed for generators. Transporters would be prohibited from diluting or disposing of special collection system wastes, in order to meet the substantive land disposal restrictions requirements. They would also be required to transport the wastes only to a consolidation point or destination facility. Treatment would be allowed only if it occurs in response to a release. In the event of a release of a special collection system hazardous waste, the transporter would be required to manage the waste under all requirements that currently apply. In addition, transporters of hazardous waste batteries would be required to minimize releases of battery components.

The provisions described above would apply to shipments between a special collection system waste generator and a consolidation point, between a generator and a destination facility, and between one consolidation point and another consolidation point. However, for shipments from a consolidation point to a destination facility, EPA is proposing today to have transporters comply with the full part 263 requirements, including use of the manifest. EPA believes it is necessary to know who these transporters are, and for them to use a uniform hazardous waste manifest that shows the party originating the shipment. The quantities involved in these shipments (from the "last" consolidation point to the destination facility) are likely to be fairly large, necessitating more strict controls on the shipment's movement.

To better illustrate the proposed manifest requirements, here are four examples:

- *From Generator to Consolidation Point A, to Consolidation Point B, to Destination Facility C.* The shipment from the generator to Consolidation Point A is not manifested; likewise, the shipment from Consolidation Point A to Consolidation Point B is not manifested. The shipment from Consolidation Point B to Destination Facility C is manifested.
- *From Generator to Destination Facility D.* This shipment is not manifested.
- *From Generator to Destination Facility E, to Destination Facility F.* The shipment from the generator to Destination Facility E is not manifested; the shipment from Destination Facility E to Destination Facility F is manifested.
- *From Generator to Consolidation Point G, to Destination Facility H, to Destination Facility I.* The shipment from the generator to Consolidation Point G is not manifested. The shipment from Consolidation Point G to Destination Facility H is manifested, as is the shipment from Destination Facility H to Destination Facility I.

These examples illustrate that, for generators, manifesting is not required. Consolidation points shipping to one another would also not need to manifest the shipment. However, those consolidation points shipping to a destination facility would need to manifest, as would destination facilities shipping to each other.[22]

If transporters were involved in shipments of special collection system hazardous wastes being exported from the United States, today's proposal would specify that a transporter who knows that a shipment does not conform to the EPA Acknowledgement of Consent could not accept the shipment for export. However, in the event the receiving country had consented to the shipment, the transporter would be required to carry the EPA Acknowledgement of Consent with the shipment, and deliver the shipment to the facility designated by the person initiating the shipment.

EPA requests comments on the adequacy of the proposed transporter requirements, and on whether other requirements are necessary to prevent mismanagement of special collection system hazardous wastes. EPA also requests comment on the options discussed in section II.C.2., generator requirements.

The reader should note that the reduced requirements described above for transporters in the part 273 regulations would apply to shipments between the original generator of the special collection system hazardous waste and the consolidation point or destination facility. The part 273 transporter requirements would also apply to shipments between consolidation points. However, a special collection system hazardous waste shipment from a consolidation point to a destination facility, or from one destination facility to another destination facility, would remain subject to the full part 263 transporter regulations. In addition, shipments from one destination facility to another would be fully regulated; for example, the land disposal restrictions notifications would be required for all movements once the special collection system hazardous waste reaches a destination facility. (In other words, shipments from the "last" consolidation point on are manifested. Once a shipment has reached a destination facility, it is fully regulated; i.e., not only would hazardous waste manifest requirements be in place, but also the

[22] It would not be possible for a destination facility to ship to any facility other than another destination facility.

part 268 land disposal restrictions requirements (see 40 CFR 264.71(c) and 265.71(c), and proposed § 268.1(e)(4))).

It should also be noted that transporters must comply with all applicable Department of Transportation regulations governing the transport of these materials. Since the shipments from the original generator to a consolidation point or a destination facility, or between consolidation points, would not require a manifest, the U.S. Department of Transportation's (DOT) hazardous materials regulations may or may not apply to the shipment. EPA requests comment on whether any supplemental RCRA requirements might be necessary when DOT rules do not apply.

4. Consolidation Point Requirements

Today's proposed regulations for owners or operators of consolidation points managing special collection system wastes include provisions that are generally the same as those proposed for generators of special collection system wastes (condition of wastes, storage, prohibitions, waste management, notification, and exports). Each of these requirements is summarized below and discussed in detail in the generator requirements section above (section II.C.2.). In addition, shipments from a consolidation point to a destination facility must be manifested. Thus, consolidation points shipping to destination facilities would also need to notify EPA and receive an EPA Identification Number.

The Agency requests comment on the application of these provisions to consolidation points, and on the issues and options that are discussed in the generator requirements section.

a. Specific requirements for consolidation points. Today's proposal includes a number of provisions that are applicable to owners and operators of consolidation points managing special collection system wastes, and that are similar to the requirements proposed for generators of those wastes.

First, the proposed provision concerning condition of wastes is the same as that proposed for generators and transporters; hazardous waste pesticides must meet certain packaging requirements. There are no specific requirements for the condition of hazardous waste batteries.

Second, EPA is proposing that consolidation points that manage special collection system hazardous wastes may store these wastes for only one year. As with generators, EPA is proposing this requirement to meet the land disposal restrictions storage prohibition. A number of options (described in section II.C.2 above) would be available to the consolidation point owner or operator in order to demonstrate compliance with the one-year storage prohibition. EPA requests comment on the options in the proposed rule language or other options that might be used. EPA is not reopening the comment period on the general land disposal restrictions storage prohibition, but is asking for public comment on how to implement the statutory prohibition for special collection system wastes managed at consolidation points.

Third, EPA is proposing to require that owner/operators of consolidation points storing more than 20,000 kg of hazardous waste batteries notify EPA of their waste management activities. As with the special collection system generators of waste batteries, the notification would consist of only a letter to the EPA Regional Administrator, identifying the consolidation point owner or operator's facility and basic information about the special collection system wastes being managed there. EPA would then issue an EPA Identification Number to the consolidation point. In addition, those consolidation points that do not meet this quantity limit but do want to ship directly to a destination facility would be required to notify EPA and receive an Identification Number, which they would use when initiating a uniform hazardous waste manifest.

All off-site facilities storing hazardous waste batteries[23] are currently required to notify EPA and receive an EPA identification number. Thus, the notification requirement proposed today sets forth only a modified version of an existing requirement for off-site facilities storing large quantities of these wastes; the proposed quantity limit would mean that only a small fraction of the storage facilities currently required to notify would need to notify EPA. Under today's proposal, off-site facilities storing less than 20,000 kilograms of waste batteries (which are currently required to notify), would not be required to notify, unless they were shipping directly to a destination facility.

Although today's proposal would generally require notifications only from those consolidation points storing very large quantities of special collection system batteries, EPA nonetheless believes that this notification requirement is essential to identify parties storing large quantities of waste batteries, in order to ensure their compliance with the regulatory requirements proposed today. In addition, as the quantity of these wastes managed at any one location increases, the potential for releases may also increase, as may public concern about management practices.

In addition, EPA is proposing to place the notification requirement on any consolidation point which is the "last" consolidation point in the chain leading from the original generator to the treatment, storage, recycling or disposal facility (destination facility). Under this approach, EPA and state agencies would be able to locate these "last" consolidators, regardless of the quantities managed, and thus would be in a better position to monitor the facilities' compliance with the special collection system requirements. EPA hopes to prevent possible environmental problems with this approach.

This proposed notification requirement would apply only to consolidation points handling hazardous waste batteries and not to consolidation points handling only hazardous waste pesticides that are suspended and/or canceled and recalled. The Agency believes that requirements for identifying recall participants and recordkeeping that are authorized by FIFRA section 19(b) provide sufficient information concerning the identity and location of persons managing these pesticides. In addition, FIFRA section 6(g) requires notice to EPA and appropriate state and local officials of the location, quantities, and possession of pesticides that are suspended or canceled under FIFRA section 6. The notice is required of persons who distribute or sell canceled or suspended pesticides; thus, dealers and distributors who are acting as consolidation points in a recall typically will already have notified EPA (and state and local officials) of their possession of the pesticides. See the proposed policy published at 56 FR 13042, March 28, 1991, that clarifies the responsibilities of persons required to submit information under FIFRA section 6(g), establishes the procedures to be followed in order to comply with FIFRA section 6(g), and clarifies when FIFRA section 6(g) information must be submitted.

EPA requests comment on the proposed notification requirements for owners and operators of consolidation points, on the proposed 20,000 kilogram limit for applying the notification requirements, and on any other approaches that may be applicable.

Fifth, the prohibitions proposed for consolidation points are the same as

[23] Except for lead-acid batteries and used batteries sent for regeneration.

those proposed for generators and transporters. The owner or operator of the consolidation point would be prohibited from diluting or disposing of the special collection system wastes on-site, to comply with the land disposal restrictions dilution prohibition and to meet the statutory ban on land disposal. The consolidation point owner or operator may only treat the wastes in response to a release, or to manage battery electrolyte. Facility owners or operators who wish to conduct other kinds of treatment would be able to do so as a destination facility, discussed below. The consolidation point owner/operator would also be prohibited from sending the special collection system wastes to any place other than another consolidation point or a destination facility.

Sixth, the proposed provisions for waste management are the same as those proposed for generators and transporters. Owners/operators of consolidation points are required to immediately contain releases of special collection system wastes and to appropriately provide for treatment, storage, and/or disposal of released wastes, and contaminated media or other materials resulting from the release. As with other handlers of these special collection system wastes, the owner or operator of a consolidation point is not required to obtain a permit under 40 CFR part 270 (40 CFR 270.1(c)(3)) for immediate response activities. Hazardous waste batteries would be required to be managed in a way that would minimize releases of battery components. The consolidation point employees would have to be trained to know about the basic precautions necessary for safe waste handling and emergency procedures. The reader should note that today's proposed requirement is a very significant reduction from the current personnel training requirements, found at 40 CFR 264.16 and 265.16, but EPA believes it is adequate to allow safe consolidation point operations.

Finally, the owner or operator of the consolidation point must comply with the export notification and consent procedures of §§ 262.53, 262.56(a) (1)–(4), and (6), 262.56(b), and 262.57 for special collection system hazardous waste exports. (A consolidation point is more likely to be exporting than an original generator, since EPA expects larger quantities to be accumulated at consolidation points.) A consolidation point shipping to a destination facility is required to use a uniform hazardous waste manifest; for exports to destination facilities in other countries, the consolidation point would also use a hazardous waste manifest. Thus, the Acknowledgment of Consent, along with the manifest, would accompany the shipment.

Note that if the registrant for a suspended or canceled and recalled pesticide decides to export the pesticide to a foreign country for use as a pesticide, then the RCRA export regulations generally would not apply because the pesticide is not a solid waste (see 40 CFR 261.2(c)(1)(ii)). Instead, in such situations the requirements of FIFRA section 17(a) apply.

b. Other consolidation point requirements under consideration. In addition to the requirements proposed today, EPA solicits comment on whether there are any other requirements needed for special collection system hazardous waste management at consolidation points. EPA considered limiting the applicability of the part 273 regulations to situations where the special collection system hazardous wastes are contained in their original containers (or casings), or containment systems in which they were stored when they were products, and are not leaking, as one approach to ensuring containment. However, EPA recognizes that these limitations may not always be practical, and therefore could limit participation in part 273 programs. There may be other appropriate requirements that could achieve the same degree of protectiveness. In a later proposal, once the special collection system regulations have been implemented for a period of time, EPA would consider the need for specific technical management standards.

In addition, in developing this proposal, the Agency considered the appropriate party or parties on whom to place the burden of compliance with administrative requirements such as the use of the manifest, and notifying receiving facilities of land disposal restrictions. EPA has chosen to structure the regulation so that manifest requirements are only imposed on the final consolidation points, and on destination facilities. The land ban notifications would be imposed only on destination facilities. The Agency believes that the objectives of RCRA stated in section 1003 (protection of human health and the environment, and conservation of valuable material and energy resources) are fully met through this waste management scheme. The Agency requests comment on whether all consolidation points should be subject to manifesting and land disposal restrictions notification requirements, or whether, as proposed today, the final consolidation points should use manifests or other tracking mechanisms and/or the "full" subtitle C requirements should be applied only to the destination facility.

5. Destination Facility Requirements

The regulations proposed today for destination facilities merely retain the current parts 264, 265, and 270 and § 261.6(c)(2) requirements applicable to treatment, storage, disposal, or recycling facilities managing hazardous wastes. The special collection system regulations refer to the full subtitle C hazardous waste regulations that are currently applicable for permitted or interim status hazardous waste treatment, storage, recycling, and disposal (TSD) facilities, or for recycling facilities that do not store prior to recycling. Under these requirements, owners/operators of destination facilities managing special collection system hazardous wastes are subject to all applicable requirements of parts 264 and 265, which include notification requirements, general facility standards (e.g., contingency plans, personnel training, closure, corrective action, and financial assurance), and unit-specific management standards (e.g., subpart I for containers, and subpart J for tanks). Destination facilities (other than recycling facilities that do not store before recycling) are also required to obtain a RCRA permit or operate under interim status. In addition, the owner or operator of the destination facility must comply with all applicable land disposal restrictions as specified in 40 CFR part 268.

The export provision proposed for destination facilities specifies that exports initiated by the destination facility (e.g., a permitted storage facility that warehouses large quantities of batteries) are subject to the export notification and consent procedures. Since the destination facility is required to initiate a uniform hazardous waste manifest for the shipment from the facility, and the quantities managed in the export shipment are likely to be large, EPA believes it is appropriate to require the facility owner or operator to comply with the current requirements for primary exporters, specified in part 262, subpart E. EPA requests comments on this approach.

6. Exports

The hazardous wastes that are proposed to be regulated under part 273 are hazardous wastes that currently are subject to manifest and export requirements. Because the wastes in question may pose hazards if not properly managed, EPA has determined

that the hazardous wastes subject to special collection system requirements should remain subject to the requirements mandated by RCRA section 3017. Under this section of RCRA, the export of hazardous waste from the U.S. is prohibited unless certain conditions are met. The conditions include advance notification to the receiving country and prior consent of the receiving country before the shipment can occur.

The reduced requirements proposed today for tracking of waste shipments under part 273 apply to many of the domestic shipments of special collection system hazardous wastes. When these wastes are exported outside the United States, the primary exporter must comply with all applicable export requirements in part 262, subpart E. If a manifest would be required for the domestic shipment, it is required for an export shipment as well.

Thus, in today's proposal, any person (including the original generator, a broker, a transporter, a consolidation point, and any treatment, storage, disposal, or recycling facility) exporting hazardous wastes that are regulated under the proposed part 273 regulations, who is a primary exporter,[24] must comply with the applicable hazardous waste export requirements of 40 CFR part 262, subpart E. However, the specific requirements may vary, depending on the person who is initiating the export. For example, a generator who is exporting hazardous waste batteries or suspended or canceled and recalled pesticides which are hazardous wastes must comply with 40 CFR 262.53 (notification of intent to export), 262.56(a) (1)–(4), (6), and (b) (annual reports), and § 262.57 (recordkeeping); consolidation points must also comply with these requirements if they are shipping to a consolidation point in another country. However, if a consolidation point owner or operator is shipping to a destination facility in another country (or a facility that would be a destination facility if it was located in the U.S.), a manifest would be required for the shipment. Similarly, destination facilities must comply with 40 CFR 264.71(c) (initiating a manifest for the shipment) and part 262. Transporters may not accept shipments for export if they know that the shipment is not being sent in conformance with the hazardous waste export provisions.

While EPA is interested in encouraging collection systems, this is based on the premise that the waste will ultimately be managed at an appropriate facility. The export notification requirements help ensure that this is the case when wastes are shipped to foreign facilities, and EPA is aware of no information indicating an exemption from export notification would be appropriate for these wastes.

7. Land Disposal Restrictions

Pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), all hazardous wastes listed or identified in accordance with RCRA section 3001 are prohibited, on specified timetables, from land disposal. The regulations for the Land Disposal Restrictions (LDR) program in 40 CFR part 268 apply to "persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities,"[25] unless they are specifically excluded from regulation in Parts 261 or 268.

Accordingly, generators, transporters, owners/operators of consolidation points, and owners/operators of treatment, storage, and disposal facilities (and facilities who do not store prior to recycling) managing special collection hazardous wastes under part 273 are currently subject to the full land disposal restrictions program. However, EPA believes that application of the full land disposal restrictions program to special collection system hazardous wastes at all steps in the collection sequence could result in overly burdensome regulation. This regulation could discourage generators, transporters, and consolidation points from entering the collection system, thereby discouraging both recycling and removal of the waste from the municipal waste stream, and ultimately leading to unsafe land disposal, contravening the ultimate aim of the land disposal restrictions provisions. To resolve this problem, the Agency is proposing to require that managers of special collection system hazardous wastes comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements. These substantive requirements include: (1) A prohibition on storing prohibited wastes directly on the land (land disposal); (2) a requirement to treat wastes to meet treatment standards prior to land disposal; (3) a prohibition on dilution; and (4) a prohibition on waste storage except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal.

The prohibition on dilution is imposed on generators, transporters, and consolidation points throughout the proposed part 273 regulations, so that those handlers are not avoiding the land disposal restrictions by diluting their wastes. Destination facilities are subject to all of the part 268 land disposal restrictions regulations, including the dilution prohibition in 40 CFR 268.3.

The prohibition on storing wastes directly on the land (which is a form of land disposal; see RCRA section 3004(k)) is implemented by requiring that these wastes be managed in order to minimize releases, and through a prohibition on disposal. The requirement that pesticides remain in the original container or tank by definition precludes the possibility of storage directly on the land. At the destination facility, these wastes may be removed from the original containers (or the battery casing may be breached). These destination facilities, however, are subject to all of the part 268 land disposal restrictions regulations, including prohibitions on storage on the land.

The requirement that wastes are treated to meet treatment standards prior to disposal is implemented through two mechanisms. First, the part 273 regulations require that the final destination of special collection system hazardous wastes is a facility that is an interim status or permitted treatment, storage, recycling, or disposal facility, or a facility that recycles but does not store prior to recycling. This is imposed through the requirements that generators, transporters, and consolidation facilities must send the waste only to consolidation points or destination facilities. The final destination facility is subject to all of the part 268 land disposal restrictions regulations, including the requirement to treat these wastes to meet treatment standards prior to land disposal.

Finally, the statutory prohibition on waste storage except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal[26] would be imposed through a one-year time limit on storage at generator sites and consolidation points. This statutory requirement is imposed in the current regulations at 40 CFR 268.50. EPA is not today reopening the issue of the one-year storage prohibition for comment;

[24] A "primary exporter" is defined in 40 CFR 262.51 as the person required to originate a manifest for a shipment of hazardous waste to a designated facility in a receiving country, and any intermediary arranging for the export.

[25] The land disposal restrictions requirements do not yet apply to wastes that exhibit the toxicity characteristic (TC) in 40 CFR 261.24, unless the waste would have exhibited the Extraction Procedure (EP) Toxicity Characteristic (the characteristic that preceded the current TC).

[26] See RCRA section 3004(j).

EPA is merely requesting specific comments on the statutory storage prohibition and how to interpret it for special collection system hazardous wastes.

For the special collection system hazardous wastes, EPA is proposing to simplify the existing "burden-of-proof" regulatory language of 40 CFR 268.50; however, the one-year storage prohibition proposed today would accomplish the same result as existing § 268.50. The simplified language assumes that the generator's sole reason for storing the special collection system hazardous wastes, for up to one year, is to accumulate the quantities necessary for proper recovery, treatment or disposal. Storage beyond one year would be prohibited. EPA believes that this assumption is a reasonable one, since the generators are generators of more than 100 kilograms of hazardous waste per month; however, the special collection system wastes will in many instances comprise an extremely small fraction of their total hazardous waste stream. (For example, a generator who generates 500 kilograms per month of spent solvents, and one 10-kilogram nickel-cadmium battery per month, would need to collect enough batteries to make a shipment to a recycler feasible.) EPA requests comment on this proposed approach.

EPA is proposing, however, not to impose the administrative requirements of the land disposal restrictions program on generators, transporters, or consolidation points managing these special collection system hazardous wastes. The Agency believes that land disposal restriction notifications are not necessary because the requirements described above ensure that the substantive requirements are met, without each party specifically notifying subsequent waste managers of the restrictions. Consequently, the Agency is proposing to add a provision to § 268.1 excluding special collection system hazardous wastes from the administrative provisions of part 268 when they are being managed by generators, transporters, and consolidation points. The final treatment, storage, recycling, or disposal facility (or facility that recycles without prior storage) continues to be subject to all applicable part 268 requirements.

The Agency requests comment on whether the requirements described above ensure that special collection system hazardous wastes will be managed in compliance with the substantive requirements of the land disposal restrictions program. EPA also requests comment on alternative mechanisms that would achieve the same goal. Further, comment is requested on whether any or all parties of the special collection system should be subject to the full part 268 land disposal restrictions regulations.

8. Release Response

Under the proposed part 273 regulations, generators, transporters, and consolidation points must respond to releases immediately by containing releases and appropriately managing any contaminated soil, etc. resulting from the release. Permitted treatment, storage, disposal and recycling facilities would be subject to full facility-wide corrective action, as would any other permitted facility. The Agency is concerned about the need for corrective action at consolidation points, where potentially large amounts of hazardous wastes may be stored for periods extending up to one year. However, the Agency has the authority under the imminent hazard provisions of RCRA section 7003 to require the owner or operator of a facility (or consolidation point) to take immediate action in response to an on-site release of hazardous waste. EPA requests comment on the need for limited corrective action requirements (for example, corrective action that is limited to special collection system waste storage units) or the need for full subtitle C corrective action at consolidation points.

9. Related Regulatory Changes

Today's proposed regulatory text includes a number of minor changes to other parts of the current hazardous waste regulations that are necessary to integrate part 273 into the regulatory structure. These changes include conforming changes to 40 CFR 260.10, 260.20, 261.5(c), 261.5 (f) and (g), 262.11, 264.1(g), 265.1(c), 268.1(f), and 270.1(c), and the addition of §§ 260.34 and 261.9.

The changes made to 40 CFR 260.10 are the addition of regulatory definitions for the terms "battery," "consolidation point," and "destination facility." Sections 260.20, 262.11, 264.1, 265.1, 268.1, and 270.1 contain minor conforming changes. Section 260.34 is added to specify procedures for handling petitions for additional special collection system wastes, and § 261.9 is added to direct the regulated community to part 273 for certain wastes.

The changes made to 40 CFR 261.5(c), the provision governing generator counting of hazardous wastes (i.e., counting to determine whether the generator is a conditionally exempt small quantity generator, small quantity generator, or fully regulated generator), are made for three reasons. First, the revised text indicates that generators are not required to include wastes managed in compliance with part 273 in the quantity calculations used to determine their generator status. Second, the revision is crafted to accomplish the same results as the existing regulation (i.e., wastes that are not counted under the current regulations continue not to be counted, and wastes that are counted under the current regulations would continue to be counted). Third, the revision is intended to simplify the existing language so that it is clear which wastes are to be counted and which are not.

The options for conditionally exempt small quantity hazardous waste generators to manage their wastes are proposed to be revised to include special collection system handlers. See 40 CFR 261.5 (f)(3) and (g)(3). Today's proposal would allow conditionally exempt generators to manage their special collection system hazardous wastes at facilities that are regulated under part 273. This proposed change is expected to significantly simplify the regulatory requirements for managing certain common consumer items frequently collected in municipal programs that accept hazardous wastes from small businesses.

Finally, the Agency requests comment on whether any change should be made to 40 CFR 261.6(a)(3)(ii). This provision excludes from the hazardous waste regulations used batteries that are returned to a battery manufacturer for regeneration (e.g., replacement of electrolyte or rewiring).[27] As a result, generators of used batteries who are sending them off-site for regeneration need not obtain an EPA Identification Number (if the only hazardous wastes they generate are the used batteries) and need not fill out a manifest for the shipment. Similarly, transporters carrying the used batteries are not regulated under RCRA, and the regeneration facility's storage of the used batteries is not regulated under RCRA. EPA is concerned that having two special requirements for batteries (i.e., the proposed part 273 requirements and the regeneration exemption at 40 CFR 261.6(a)(3)(ii)) is potentially confusing to regulated parties and implementing agencies. One of the major findings of the RCRA Implementation Study (mentioned

[27] On the other hand, batteries that are recycled in other ways (e.g., resmelting to recover metal content) currently are either fully regulated or are partially exempt under another exemption at 40 CFR part 266, subpart G (depending on the battery's composition).

earlier) is that the recycling rules or exemptions are complex and should be consolidated.

EPA has identified three approaches to regulating the subset of used batteries that are sent for regeneration. First, EPA could leave the current exemption as is; second, EPA could regulate only the collection of used batteries being sent for regeneration under today's proposed part 273 requirements, while the regeneration facilities could remain unregulated; and third, collection of the batteries could be regulated under the part 273 requirements and a RCRA subtitle C permit could be required for storage at the regeneration facility prior to regeneration. Each of these approaches, and their advantages and disadvantages, is discussed below.

In today's proposed regulatory text, the Agency has not made any changes to the current 40 CFR 261.6(a)(3)(ii) exclusion. The exclusion for batteries that are regenerated was originally promulgated because the Agency believed that regeneration activities do not pose a threat to human health and the environment, since the battery casing remains intact. If this exclusion is retained, these batteries will continue to be exempt from all hazardous waste regulation, including the part 273 special collection system regulations. A drawback to this approach is that handlers of used batteries may have difficulty determining whether the batteries will be regenerated or otherwise recycled/disposed, and thus whether they are regulated or exempt. Generators (and subsequent handlers) may not know whether the batteries are regenerable (and exempt), or are impaired such that they can not be regenerated (and are regulated). This uncertainty about the batteries' ultimate fate may cause handlers to improperly manage regulated hazardous waste batteries (unregenerable batteries) as if they were exempt.

Under the second approach, used batteries that are hazardous wastes would be regulated in the same way throughout the collection phase, regardless of whether the batteries are being regenerated, recycled in a manner other than regeneration, or disposed. At the same time, EPA could retain the regulatory exclusion for regeneration facilities. Thus, used batteries stored at a regeneration facility prior to regeneration would be unregulated (as under the current requirements). A variation on this approach would be to require the regeneration facilities to comply with the proposed part 273 consolidation point requirements for storage prior to regeneration.

The most significant advantage of this second approach is that the generator's initial determination of the applicable regulations would remain greatly simplified. The generator would not be required to determine whether the battery was to be regenerated rather than otherwise recycled/disposed of; in all cases the battery would be subject to the same limited part 273 requirements. In addition, since EPA continues to believe that there are minimal risks posed by regeneration activities, little or no change would be made to the regulations currently applicable to regeneration facilities. However, EPA requests comment on the quantity and types of batteries that are regenerated, the number of facilities conducting battery regeneration, and on the health or environmental risks posed by storage of the used batteries prior to regeneration.

The third approach would be simply to regulate these batteries under the part 273 special collection regulations proposed today for other batteries. This approach has the same advantage of the second approach, in that handlers of the used batteries during the collection phase would be regulated alike, regardless of the batteries' intended recycling technique. However, regeneration facilities would be subject to the full subtitle C hazardous waste regulations, including the requirement to obtain a permit (or interim status) for storage of batteries prior to regeneration.

In today's proposal, the Agency has not proposed to make any changes to the current exemption, to avoid unnecessarily disrupting the regeneration of used batteries. This option was selected because the Agency currently does not have sufficient data to evaluate the effects of such a change on the regulated community. The Agency, however, requests comment on the approaches discussed above for regulating batteries that are regenerated.

III. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found at 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could no longer issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authorities within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization for the new requirements or prohibitions. While States must still adopt more stringent or broader in scope provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

The amendments proposed today do not implement HSWA. When promulgated, these amendments, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on State authorization is discussed next.

B. Effect on State Authorization

The amendments to the hazardous waste regulations being proposed today are not being promulgated pursuant to HSWA and thus are only immediately effective in States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State laws.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. However, it should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (see 40 CFR 271.1(k)).

The modifications to the regulatory framework that are proposed today are less stringent than the current regulations. An authorized state could, however, choose to adopt the less stringent requirements proposed today, if those less stringent requirements are promulgated as final federal regulations and if the state wished to adopt them.

Although today's proposal would be less stringent than current RCRA subtitle C regulations, EPA believes that this new approach will contribute to more efficient and effective State programs. The need for simplified hazardous waste regulations was expressed by many State participants in the meetings described in section I.D of this notice. For these reasons, as well as the other reasons discussed throughout the preamble, EPA strongly encourages States to adopt the special collection system regulations if they are promulgated in the future.

IV. Executive Order No. 12291—Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will:

1. Have an annual effect on the economy of $100 million or more;
2. Significantly increase costs or prices to industry; or
3. Diminish the ability of the U.S.-based companies to compete in domestic or export markets.

The Administrator has determined that today's proposed amendments do not constitute a major rule because the amendments do not propose to significantly increase the regulatory burden such that there will be a significant effect on the economy. This proposed rule has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291.

EPA will analyze the costs of the current regulatory requirements for generators and collection facilities and of the requirements being proposed today. EPA will also analyze whether there are significant reduced environmental benefits from the modifications being proposed. It is EPA's current intent to complete this analysis and notice it for comment prior to promulgating a final rule.

V. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1597.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules unless the administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

40 CFR Parts 264 and 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 273

Hazardous materials, Packaging and containers.

Dated: January 20, 1993.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by revising the introductory text and adding, in alphabetical order, definitions for "battery," "consolidation point," and "destination facility" to read as follows:

§ 260.10 Definitions.

When used in parts 260 through 266, 268, and 270 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Battery means a device designed to generate electric currents, comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a separating medium. A battery may or may not contain a conductive medium or electrolyte.

* * * * *

Consolidation point means the area, including all contiguous property, used for storing wastes subject to 40 CFR part 273 requirements after receipt from generators or other consolidation points and prior to transport to another consolidation point or to a destination facility.

* * * * *

Destination facility means a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter; (2) Has received a permit (or interim status)

from a state authorized in accordance with part 271 of this chapter; or (3) Is a recycler regulated under 40 CFR 261.6(c)(2).

* * * * *

Subpart C—Rulemaking Petitions

3. Section 260.20 paragraph (a) is revised to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266, 268 and 273 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265. Sections 260.22 and 260.23 set forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from § 261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261.

* * * * *

4. Section 260.34 is added to read as follows:

§ 260.34 Petitions to amend part 273 to include additional hazardous wastes.

(a) Any person seeking to include additional hazardous wastes in the regulations under part 273 of this chapter may petition for a regulatory amendment under this section and 40 CFR 260.20.

(b) The petitioner must demonstrate to the satisfaction of the Administrator that the hazardous waste for which the petitioner is seeking a regulatory amendment merits the development of regulations under part 273. The petition must address all of the factors listed in 40 CFR 273.2(a) and the criteria listed in 40 CFR 273.2(b).

(c) The Administrator may request additional information needed to evaluate the merits of the petition.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (c), (f)(3), and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(c) When making the quantity determinations of this part and 40 CFR part 262, the generator must include all hazardous waste that it generates, except hazardous waste that meets one or more of the following conditions:

(1) Is exempt from regulation under 40 CFR 261.4 (c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(2)(iii) and 40 CFR part 266 subpart E; or

(5) Is managed under the requirements of 40 CFR 261.9 and 40 CFR part 273, or under the requirements of 40 CFR part 266, subpart G.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For special collection system wastes managed under part 273 of this chapter, a consolidation point or destination facility subject to the requirements of part 273 of this chapter.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For special collection system wastes managed under part 273 of this chapter, a consolidation point or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

7. Section 261.9 is added to read as follows:

§ 261.9 Requirements for special collection system wastes.

When managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this chapter, the wastes listed below are exempt from regulation under parts 262 through 270 of this Chapter:

(a) Batteries that are hazardous wastes; and

(b) Suspended and/or canceled hazardous waste pesticides that are recalled.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938.

Subpart A—General

9. Section 262.11 is amended by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 264, 265, 266, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

11. Section 264.1 is amended by adding a new paragraph (g)(11) as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(11) Wastes listed below, when managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this Chapter:

(i) Batteries that are hazardous wastes; and

(ii) Suspended and/or canceled hazardous waste pesticides that are recalled.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935 and 6936.

Subpart A—General

13. Section 265.1 is amended by adding a new paragraph (c)(14) to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(14) Wastes listed below, when managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this Chapter:

(i) Batteries that are hazardous wastes; and

(ii) Suspended and/or canceled hazardous waste pesticides that are recalled.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

14. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

15. Section 268.1 is amended by adding paragraph (f) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(f) Generators, transporters, and owners and operators of consolidation points are exempt from 40 CFR 268.7 and 268.50 for the hazardous wastes listed below provided they manage the wastes in compliance with 40 CFR part 273:

(1) Batteries that are hazardous wastes; and

(2) Suspended and/or canceled hazardous waste pesticides that are recalled.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

16. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

17. Section 270.1 is amended by adding a new paragraph (c)(2)(viii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(viii) Generators, transporters, and owners and operators of consolidation points managing the hazardous wastes listed below provided they manage the wastes in compliance with 40 CFR part 273:

(A) Batteries that are hazardous wastes;

(B) Suspended and/or canceled hazardous waste pesticides that are recalled.

* * * * *

18. Title 40 of the Code of Federal Regulations is amended by adding part 273 to read as follows:

PART 273—STANDARDS FOR SPECIAL COLLECTION SYSTEM WASTES

Subpart A—General

Sec.

273.1 Applicability and scope.
273.2 Criteria.
273.3 Definitions.

Subpart B—Batteries That Are Hazardous Wastes

273.10 Applicability.
273.11 Generator requirements.
273.12 Transporter requirements.
273.13 Consolidation point requirements.
273.14 Destination facility requirements.
273.15 Export requirements.

Subpart C—Suspended and/or Canceled Pesticides That Are Recalled

273.20 Applicability.
273.21 Generator requirements.
273.22 Transporter requirements.
273.23 Consolidation point requirements.
273.24 Destination facility requirements.
273.25 Export requirements.

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

§ 273.1 Applicability and scope.

(a) This part sets forth requirements for managing the following:

(1) Batteries that are hazardous wastes; and

(2) Pesticides that are hazardous wastes and that meet the applicability criteria of 40 CFR 273.20(a).

(b) The regulations in this part are a conditional exemption from full regulation under parts 260 through 272 of this chapter. Hazardous wastes listed in paragraph (a) of this section that are not managed in compliance with the requirements of this part must be managed according to the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

§ 273.2 Criteria.

Any person seeking to add hazardous wastes to this part may petition for a regulatory amendment under this section and 40 CFR 260.20 and 260.34. To be successful, the petitioner must demonstrate that regulation under this part is appropriate and that the part 273 requirements will improve waste management practices. To do so, the petitioner must submit adequate information to support the factors listed in paragraphs (a) and (b) of this section.

(a) *Demonstration that special collection system regulations are appropriate.* (1) The waste is listed in subpart D of part 261 of this chapter, or (if not listed) the proportion of the waste stream that exhibits one or more of the characteristics identified in subpart C of part 261 of this chapter;

(2) The hazardous waste is present in significant amounts in the municipal waste stream (e.g., commercial, agricultural, or community activity waste streams);

(3) The number of generators, on a national basis, is greater than 1,000;

(4) Typical generation sites include:

(i) Isolated locations where no other hazardous wastes are generated;

(ii) Locations where the hazardous waste is typically the only hazardous waste generated;

(iii) Locations where the hazardous waste is generated only sporadically or infrequently; or

(iv) Locations where there are small quantities generated per month;

(5) The risk posed by management of the hazardous waste in the municipal waste stream (i.e., in municipal combustors or landfills) is relatively high; and/or

(6) Other appropriate information.

(b) *Demonstration that Special Collection System Regulations Improve Waste Management Practices.* (1) The risk posed by the hazardous waste during storage and transport is relatively low, and special collection system regulations can be developed that are protective of human health and the environment;

(2) Systems to be used for collection of the waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(3) A special collection system would facilitate removal of the waste from the municipal waste stream;

(4) If viable recycling technologies are available for the hazardous waste, a special collection system would facilitate recycling;

(5) A special collection system would improve implementation of the hazardous waste regulatory program; and/or

(6) Such other factors as may be appropriate.

§ 273.3 Definitions.

For the purposes of this part:

(a) *Battery* means a device designed to generate electric currents, comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a separating medium. A battery may or may not contain a conductive medium or electrolyte.

(b) *Consolidation point* means the area, including all contiguous property, used for storing wastes subject to 40 CFR part 273 requirements after receipt from generators or other consolidation points and prior to transport to another consolidation point or to a destination facility.

(c) *Destination facility* means a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) Has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter, or (3) Is a recycler regulated under 40 CFR 261.6(c)(2). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

(d) *FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136y).

(e) *Generator* means any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

(f) *Transfer facility* means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(g) *Transporter* means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

Subpart B—Batteries That Are Hazardous Wastes

§ 273.10 Applicability.

(a) *Covered wastes.* (1) This subpart sets forth standards for managing hazardous waste batteries, except for spent lead-acid batteries that are sent for reclamation and that are managed under 40 CFR part 266, subpart G.

(2) Hazardous waste batteries that are not managed in compliance with the requirements of this part, or spent lead-acid batteries that are not managed in compliance with 40 CFR part 266, subpart G, are subject to the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

(b) *Household and Conditionally Exempt Small Quantity Generator Waste Batteries.* (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this subpart without changing the wastes' exempt status:

(i) Household hazardous waste batteries that are exempt under 40 CFR 261.4(b)(1); and/or

(ii) Conditionally exempt small quantity generator hazardous waste batteries that are exempt under 40 CFR 261.5.

(2) Persons who commingle household hazardous waste batteries and/or conditionally exempt small quantity generator hazardous waste batteries together with hazardous waste batteries regulated under this subpart must manage the commingled batteries under the requirements of this subpart.

§ 273.11 Generator requirements.

(a) *Generation of hazardous waste batteries.*

(1) The date a used battery becomes a waste is the date the generator permanently takes it out of service.

(2) The date an unused battery becomes a waste is the date the generator decides to throw it away.

(3) A waste battery is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(b) *Storage.* (1) A generator may store a hazardous waste battery for no longer than one year from the date the battery became a waste.

(2) A generator who stores hazardous waste batteries must be able to demonstrate that batteries are not stored for more than one year from the date they became wastes. A generator may make this demonstration by:

(i) Placing the batteries in a container and marking or labeling the container with the earliest date that any battery in the container became a waste;

(ii) Marking or labeling an individual battery with the date that it became a waste;

(iii) Maintaining an inventory system that identifies the date any battery in storage became a waste;

(iv) Maintaining an inventory system that identifies the earliest date that any battery in a group of batteries became a waste;

(v) Placing the batteries in a specific storage area and identifying the earliest date that any battery in the storage area became a waste; or

(vi) Any other method approved in advance by the Regional Administrator or the State Director.

(c) *Notification.* (1) A generator who stores more than 20,000 kilograms of hazardous waste batteries at any time must send written notification of hazardous waste battery storage to the Regional Administrator, and receive an EPA Identification Number, before exceeding the 20,000 kilogram quantity limit.

(2) This notification must include:

(i) The generator's name and mailing address;

(ii) The name and business telephone number of the person at the generator's site who should be contacted regarding the battery storage activity;

(iii) The address or physical location of the battery storage activity;

(iv) A statement indicating that the generator stores more than 20,000 kilograms of hazardous waste batteries.

(d) *Prohibitions.* A generator of hazardous waste batteries is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by removing electrolyte or responding to releases as provided in paragraphs (e)(1) and (e)(3) of this section; and

(3) Prohibited from sending or taking the hazardous waste batteries to a place other than a consolidation point, destination facility, or foreign destination.

(e) *Battery Management.* (1) A generator who removes electrolyte from hazardous waste batteries must determine whether the electrolyte exhibits a characteristic of hazardous waste identified in 40 CFR part 261, subpart C. If the electrolyte exhibits a characteristic of hazardous waste, the generator must manage it under all applicable requirements of 40 CFR parts 260 through 272.

(2) A generator must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(3)(i) A generator must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(ii) A generator must determine whether any materials resulting from the release are hazardous wastes, and if so, the generator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(4) A generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 273.12 Transporter requirements.

(a) *Shipments from a generator to a consolidation point, from a generator to a destination facility, or from one consolidation point to another consolidation point.* (1) A transporter of hazardous waste batteries may only store them at a transfer facility for ten days or less.

(2) A transporter of hazardous waste batteries is:

(i) Prohibited from diluting or disposing of them;

(ii) Prohibited from treating them, except by responding to releases as provided in paragraph (a)(3)(ii) of this section;

(iii) Prohibited from removing the electrolyte from them; and

(iv) Prohibited from transporting them to a place other than a consolidation point, destination facility, or foreign destination.

(3)(i) A transporter must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(ii)(A) A transporter must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(B) A transporter must determine whether any materials resulting from the release are hazardous wastes, and if so, the transporter must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(b) *Shipments from a consolidation point to a destination facility.* A transporter who transports shipments from a consolidation point to a destination facility must comply with 40 CFR part 263.

§ 273.13 Consolidation point requirements.

(a) *Storage.* (1) The owner or operator of a consolidation point may store a hazardous waste battery for no longer than one year from the date that the owner or operator receives it.

(2) The owner or operator of a consolidation point who stores hazardous waste batteries must be able to demonstrate that batteries are not stored for more than one year from the date they were received. The owner or operator may make this demonstration by:

(i) Placing the batteries in a container and marking or labeling the container with the earliest date that any battery in the container was received;

(ii) Marking or labeling an individual battery with the date that it was received;

(iii) Maintaining an inventory system that identifies the date any battery in storage was received;

(iv) Maintaining an inventory system that identifies the earliest date that any battery in a group of batteries was received;

(v) Placing the batteries in a specific storage area and identifying the earliest date that any battery in the storage area was received; or

(vi) Any other method approved in advance by the Regional Administrator or the State Director.

(b) *Prohibitions.* The owner or operator of a consolidation point managing hazardous waste batteries is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by removing electrolyte or responding to releases as provided in paragraphs (c)(1) and (c)(3) of this section; and

(3) Prohibited from sending or taking the hazardous waste batteries to a place other than another consolidation point, destination facility, or foreign destination.

(c) *Battery Management.* (1) The owner or operator of a consolidation point who removes electrolyte from hazardous waste batteries must determine whether the electrolyte exhibits a characteristic of hazardous waste identified in 40 CFR part 261, subpart C. If the electrolyte exhibits a characteristic of hazardous waste, the consolidation point owner/operator must manage it under all applicable requirements of 40 CFR parts 260 through 272.

(2) The owner or operator of a consolidation point must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(3)(i) The owner or operator of a consolidation point must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(ii) The consolidation point owner/operator must determine whether any materials resulting from the release are hazardous wastes, and if so, the owner/operator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(4) The consolidation point owner or operator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

(d) *Notification.* (1)(i) A consolidation point owner or operator who stores more than 20,000 kilograms of hazardous waste batteries at any time must submit written notification to the Regional Administrator, and receive an EPA Identification Number, before exceeding the 20,000 kilogram limit.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) The name and business telephone number of the person who should be contacted regarding the battery storage activity;

(C) The address or physical location of the battery storage activity;

(D) A statement indicating that the owner or operator expects to store more than 20,000 kilograms of hazardous waste batteries.

(2)(i) A consolidation point owner or operator who sends a shipment of hazardous waste batteries directly from the consolidation point to a destination facility, who is not required to notify under paragraph (d)(1) of this section, must submit written notification to the

Regional Administrator, and receive an EPA Identification Number, before initiating the shipment.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) A statement that the owner or operator intends to ship hazardous waste batteries to a destination facility;

(C) The name and business telephone number of the person who should be contacted regarding the battery storage activity; and

(D) The address or physical location of the battery storage activity.

(e) *Uniform Hazardous Waste Manifests.* The owner or operator of a consolidation point who sends a shipment of hazardous waste batteries directly to a destination facility must comply with subpart B of 40 CFR part 262 and 40 CFR 262.30 through 262.33, 262.40(a), 262.40(d), and 262.42 of this chapter when initiating a shipment.

§ 273.14 Destination facility requirements.

(a) Owners or operators of destination facilities that recycle, treat, store, or dispose of hazardous waste batteries must comply with all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under Section 3010 of RCRA.

(b) Owners and operators of destination facilities that recycle hazardous waste batteries without storing them before they are recycled must comply with 40 CFR 261.6(c)(2).

§ 273.15 Export requirements.

(a) A generator who sends hazardous waste batteries to a foreign destination, without first sending them to a consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(b) A transporter transporting a shipment of hazardous waste batteries to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) An owner or operator of a consolidation point who sends hazardous waste batteries to a foreign destination, without first sending them to another consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A destination facility sending hazardous waste batteries to a foreign destination must also comply with the generator requirements of part 262 of this chapter, and with 40 CFR 264.71(c) or 265.71(c) pertaining to initiating the manifest.

Subpart C—Suspended and/or Canceled Pesticides That are Recalled

§ 273.20 Applicability.

(a) *Covered Wastes.* (1) This subpart sets forth standards for managing hazardous waste pesticides meeting the following conditions:

(i) The hazardous waste pesticides are stocks of a suspended and canceled pesticide, other than those owned by a registrant, that are part of a voluntary or mandatory recall under FIFRA Section 19(b); or

(ii) The hazardous waste pesticides are stocks of a suspended and canceled pesticide owned by a registrant responsible for conducting a recall under FIFRA section 19(b); or

(iii) The hazardous waste pesticides are part of a recall conducted voluntarily by a registrant of a pesticide that has been suspended or canceled under FIFRA section 6.

(2) Hazardous waste pesticides that are not managed in compliance with the requirements of this part must be managed under the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

(3) Hazardous waste pesticides managed by farmers in compliance with 40 CFR 262.70 are not subject to the requirements of this part. 40 CFR 262.70 addresses only pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3).

(b) *Household and Conditionally Exempt Small Quantity Generator Waste Pesticides.* (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this subpart without changing the wastes' exempt status:

(i) Household hazardous waste pesticides that are exempt under 40 CFR 261.4(b)(1); and/or

(ii) Conditionally exempt small quantity generator hazardous waste pesticides that are exempt under 40 CFR 261.5.

(2) Persons who commingle household hazardous waste pesticides and/or conditionally exempt small quantity generator hazardous waste pesticides together with hazardous waste pesticides regulated under this subpart must manage the commingled pesticides under the requirements of this subpart.

§ 273.21 Generator requirements.

(a) *Generation of hazardous waste pesticides.* (1) A pesticide becomes a waste:

(i) On the date the generator decides to participate in a recall, if the person conducting the recall has already decided to dispose of the pesticide or burn the pesticide for energy recovery; or

(ii)(A) On the date the person conducting a FIFRA Section 19 recall decides to dispose of the pesticide or burn the pesticide for energy recovery, if the generator has already notified the recaller that he will participate in the recall; or

(B) On the date the person conducting a recall of a pesticide suspended or canceled under FIFRA section 6 decides to dispose of the pesticide or burn the pesticide for energy recovery, if the generator has already decided to participate in the recall.

(2) If the person conducting the recall has not yet made a decision on a management option, the pesticide is not yet defined as a "solid waste" under RCRA; thus, the pesticide is not yet a hazardous waste and is not subject to hazardous waste requirements. In addition, if the person conducting the recall selects a management option that, under 40 CFR 261.2, does not cause the pesticide to be a solid waste (i.e., the selected option is use or reuse—other than burning for energy recovery or use constituting disposal—or reclamation), the pesticide is not a hazardous waste and is not subject to hazardous waste

requirements. Although pesticides that are not solid wastes are not hazardous wastes and thus are not subject to the hazardous waste regulations, they remain subject to the requirements of FIFRA.

(3) A waste pesticide is a hazardous waste if it is listed in 40 CFR part 261, subpart D or if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(b) *Condition of pesticides.* A generator of hazardous waste pesticides may manage them under this subpart only if they are contained in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking closed container.

(3) Tanks that meet the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201.

(4) Non-leaking transport vehicles or vessels.

(c) *Storage.* (1) A generator may store hazardous waste pesticides for no longer than one year from the date the pesticides became wastes.

(2) A generator who stores hazardous waste pesticides must be able to demonstrate that the pesticides are not stored for more than one year from the date they became a waste. A generator may make this demonstration by:

(i) Marking or labeling the container or tank in which the pesticide is stored with the date the pesticide became a waste;

(ii) Maintaining an inventory system that identifies the date the pesticides in storage became wastes;

(iii) Placing the pesticides in a specific storage area and identifying the earliest date that any pesticide in the storage area became a waste; or

(iv) Any other method approved in advance by the Regional Administrator or the State Director.

(d) *Prohibitions.* A generator of hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them except under 40 CFR 262.70;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (e) of this section; and

(3) Prohibited from sending or taking the pesticides to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(e) *Pesticide Management.* (1) A generator must immediately contain all releases of hazardous waste pesticides.

(2) A generator must determine whether any materials resulting from the release are hazardous wastes, and if so, the generator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) A generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 273.22 Transporter requirements.

(a) *Condition of pesticides.* A transporter of hazardous waste pesticides must contain them in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking, closed container.

(3) Non-leaking transport vehicles or vessels.

(b) *Storage.* A transporter of hazardous waste pesticides may only store them at a transfer facility for ten days or less.

(c) *Prohibitions.* A transporter of hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (d) of this section; and

(3) Prohibited from transporting them to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(d) *Pesticide Management.* (1) A transporter must immediately contain all releases of hazardous waste pesticides.

(2) A transporter must determine whether any materials resulting from the release are hazardous wastes, and if so, the transporter must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

§ 273.23 Consolidation point requirements.

(a) *Condition of pesticides.* The owner or operator of a consolidation point managing hazardous waste pesticides must contain them in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking closed container.

(3) Tanks that meet the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201.

(4) Non-leaking transport vehicles or vessels.

(b) *Storage.* (1) The owner or operator of a consolidation point may store hazardous waste pesticides for no longer than one year from the date the owner or operator receives them.

(2) The owner or operator of a consolidation point who stores hazardous waste pesticides must be able to demonstrate that the pesticides are not stored for more than one year from the date they were received. The owner or operator may make this demonstration by:

(i) Marking or labeling the containers or tanks in which the pesticides are stored with the date the pesticides were received;

(ii) Maintaining an inventory system that identifies the date the pesticides in storage were received;

(iii) Placing the pesticides in a specific storage area and identifying the earliest date that any of the pesticides in the storage area were received; or

(iv) Any other method approved in advance by the Regional Administrator or the State Director.

(c) *Prohibitions.* The owner or operator of a consolidation point managing hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (d) of this section; and

(3) Prohibited from sending or taking them to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(d) *Pesticide Management.* (1) The owner or operator of the consolidation point must immediately contain all releases of hazardous waste pesticides.

(2) The consolidation point owner/operator must determine whether any materials resulting from the release are hazardous wastes, and if so, the owner/operator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) The consolidation point owner or operator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 273.24 Destination facility requirements.

(a) Owners or operators of destination facilities that recycle, treat, store, or dispose of hazardous waste pesticides must comply with all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under Section 3010 of RCRA.

(b) Owners and operators of destination facilities that recycle hazardous waste pesticides without storing them before they are recycled must comply with 40 CFR 261.6(c)(2).

§ 273.25 Export requirements.

(a) A generator who sends hazardous waste pesticides to a foreign destination, without first sending them to a consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in 40 CFR part 262 subpart E; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(b) A transporter transporting hazardous waste pesticides to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition, the transporter must ensure that:

(1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) An owner or operator of a consolidation point who sends hazardous waste pesticides to a foreign destination, without first sending them to another consolidation point or to a destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in 40 CFR part 262 subpart E; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A destination facility sending hazardous waste pesticides to a foreign destination must also comply with the generator requirements of part 262 of this chapter, and with 40 CFR 264.71(c) or 265.71(c) pertaining to initiating the manifest.

(e) Recalled pesticides that are exported to a foreign destination for use or reuse are not hazardous waste pesticides and are subject to the applicable export requirements of FIFRA.

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Part III

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone;
Labeling; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4557–1]

RIN 2060–AD47

Protection of Stratospheric Ozone; Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes labeling requirements for products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611 of the Clean Air Act, as amended. Specifically, the regulations require products that are manufactured with a process using a class I substance currently defined as chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, products containing a class I substance and containers of a class I or class II substance (hydrochlorofluorocarbons (HCFCs)) or mixture to bear a "clearly legible and conspicuous" warning statement. The substances affected by today's final rule are class I substances and class II substances, as defined in 40 CFR part 82, appendix A to subpart A and in any later rulemaking.

EFFECTIVE DATE: The final regulation is effective on March 15, 1993. The information collection requirements contained in 40 CFR 82.122 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. An announcement of the effective date of 40 CFR 82.122 will be published in the **Federal Register.**

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–91–60 in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kate Van Slyck, Stratospheric Ozone Protection Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6202–J), 401 M Street, SW., Washington, DC 20460. (202) 233–9742. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. Ozone Depletion
B. Montreal Protocol
C. Excise Tax
D. London Amendments to the Montreal Protocol
E. Clean Air Act Amendments of 1990, Title VI
F. Requirements of Section 611
II. The May 4, 1992 Notice of Proposed Rulemaking
III. Accelerated Phaseout
1. New Scientific Data Regarding Ozone Depletion
2. Copenhagen Revisions to the Montreal Protocol
3. The Proposed Accelerated Phaseout Regulation
4. Effect of Accelerated Phaseout on Labeling Regulation
IV. Summary of Public Participation
V. Response to Significant Comments
A. Definition of Interstate Commerce and Introduction into Interstate Commerce
B. Products Manufactured Before May 15, 1993
C. Products Manufactured With Controlled Substances
1. Changes to the Label Pass-Through Requirement
a. Resin Producers and the Use of One Label
2. Incidental Uses
3. Transformation
4. Destruction
5. Use Reduction Exemption for CFC–113 and Methyl Chloroform Used as Solvents
D. Products Containing and Containers Containing
1. Distinction Between "Products Containing" and "Containers Containing" and Label Requirement
2. Label Pass-through Requirement for "Products Containing" and "Containers Containing"
3. Containers of Recaptured Substances and Waste
4. Trace Quantities of Unintended Residues or Impurities
E. Use of Controlled Substances for Repairs and Used Products
F. Label Placement and Alternative Labeling Options
1. Label Placement
a. Clearly legible and conspicuous
2. Alternative Labeling Options
a. Alternative Labels
b. Supplemental Printed Material
c. Products not Viewed by the Purchaser Prior to or at the Same Time of Purchase
d. Competing Information.
e. Parallel to Existing Information
G. Products Manufactured for Export Only
H. Imports
I. Medical Products
J. Packaging
K. Research and Development
L. Warning Statement Text and Requirement
M. Recoverable Substances Label
N. Symbol
O. Petition Process
VI. Summary of the Final Rule and Changes from the Proposed Rule
VII. Effective Date
VIII. Summary of Supporting Analyses
A. Regulatory Impact Analysis
B. Regulatory Flexibility Analysis
C. Paperwork Reduction Act
IX. References

I. Background

A. Ozone Depletion

The stratospheric ozone layer protects the earth from ultraviolet (UV–B) radiation. Research begun in the 1970s indicated that when certain industrially produced halocarbons (including chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform) are released into the environment, they migrate into the stratosphere, where they contribute to the depletion of the ozone layer. To the extent depletion occurs, penetration of the atmosphere by UV–B radiation increases. Increased exposure to UV–B radiation produces health and environmental damage, including increased incidence of skin cancer and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. Montreal Protocol

In response to growing evidence that chlorine and bromine could destroy stratospheric ozone on a global basis and the discovery of the ozone hole over Antarctica, many members of the international community came to the conclusion that an international agreement to reduce global production of ozone-depleting substances was needed. Because releases of CFCs from all areas mix in the atmosphere to affect stratospheric ozone globally, efforts to reduce emissions from specific products by only a few nations could quickly be offset by increases in emissions from other nations, leaving the risks to the ozone layer unchanged. EPA evaluated the risks of ozone depletion in Assessing the Risks of Trace Gases That Can Modify the Stratosphere (1987) and concluded that an international approach was necessary to effectively safeguard the ozone layer.

EPA participated in negotiations organized by the United Nations Environment Programme (UNEP) to achieve an international agreement to protect the ozone layer. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. The 1987 Protocol called for a freeze in the production and

consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, –12, –113, –114, –115, and halon 1211, 1301 and 2402 at 1986 levels, and a phased reduction of the CFCs to 50 percent of 1986 levels by 1998. Currently, over 90 nations representing well over 90 percent of the world's consumption are parties to the Protocol.

In an August 12, 1988 final rulemaking (53 FR 30566) EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned these allowances to producers and importers of these "controlled substances" based on their 1986 levels. To monitor industry's compliance with the production and consumption limits, EPA required recordkeeping and quarterly reporting and conducted periodic compliance reviews and inspections.

C. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, Internal Revenue Code of Ozone-Depleting Substances, section 506A of Public Law 101–239, the United States Congress levied an excise tax on the sale of CFCs and other chemicals which deplete the ozone layer, with specific exemptions for exports and recycling. The tax went into effect on January 1, 1990, and increases annually. The original excise tax was amended by the Omnibus Budget Reconciliation Act of 1991 to include methyl chloroform, carbon tetrachloride and the other CFCs regulated by the amended Montreal Protocol and Title VI of the Clean Air Act, as amended in 1990. The Energy Policy Act of 1992, section 1931 of Public Law 102–486, revised and further increased the excise tax, effective January 1, 1993. By raising the cost of virgin controlled substances, the tax has created an additional incentive for industry to shift out of these substances and increase recycling activities, and it has encouraged the development of a market for alternative chemicals and processes.

D. London Amendments to the Montreal Protocol

Under Article 6 of the Montreal Protocol, the Parties are required to assess the science, economics and alternative technologies related to protection of the ozone layer every two years. In response to this requirement, the Parties issued their first scientific assessment in 1989 (Scientific Assessment of Ozone Depletion, which has been placed in the docket for this rulemaking.) During this assessment, scientists examined the data from land-based monitoring stations and the total ozone mapping spectometer (TOMS) satellite and found that there had been global ozone depletion over the northern hemisphere as well as over the southern hemisphere. The scientific assessment also reported that a three to five percent decrease in stratospheric ozone levels had occurred between 1969–1986 in the northern hemisphere in the winter months that could not be attributed to known natural processes.

At the Second Meeting of the Protocol Parties, held in London on June 29, 1990, the Parties responded to this new evidence by tightening the restrictions placed on these chemicals. The Parties to the Protocol passed amendments and adjustments which called for a full phaseout of the already regulated CFCs and halons by 2000, a phaseout of carbon tetrachloride and "other CFCs" by 2000 and a phaseout of methyl chloroform by 2004. The Parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than the fully halogenated CFCs, but still pose a significant threat to the ozone layer, (See 56 FR 2420 January 22, 1991 for more information on the relative effects of different ozone-depleting substances).

E. Clean Air Act Amendments of 1990, Title VI

On November 15, 1990, the Clean Air Act Amendments of 1990 were signed into law. The requirements in Title VI of the amended act include phaseout controls similar to those in the London Amendments, although the interim targets are more stringent and the phaseout date of methyl chloroform is earlier (section 604). Other Title VI provisions require EPA to promulgate additional controls pertaining to the protection of the stratospheric ozone. These provisions: (1) Restrict production and consumption of HCFCs (section 605); (2) restrict the uses of controlled ozone-depleting substances, including provisions to reduce emissions of controlled substances to the "lowest achievable level" in all use sectors (section 608); (3) require the recovery and recycling of refrigerant when servicing motor vehicle air conditioners (section 609); (4) ban nonessential products (section 610); (5) mandate warning labels (section 611); (6) establish a safe alternatives program (section 612); and (7) require revision of federal procurement policies to minimize government use of ozone-depleting substances. EPA has already promulgated regulations implementing the phaseout provisions contained in section 604 of the Act (57 FR 33754) and the section 610 ban on nonessential uses. EPA is currently in the process of promulgating regulations under several other sections of Title VI.

One of the provisions of the Act which complements the labeling requirement is the Significant New Alternatives Program (SNAP) established under section 612. The Advance Notice of Proposed Rulemaking for SNAP was published in the **Federal Register** on January 16, 1992 (57 FR 1984); the Notice of Proposed Rulemaking is currently being prepared for publication. The SNAP program has been established to evaluate the overall effects on human health and the environment of the potential substitutes for ozone-depleting substances. Rules promulgated under SNAP will render it unlawful to replace an ozone-depleting substance with a substitute chemical or technology that may present adverse effects to human health and the environment if the Administrator determines that some other alternative is commercially available and that this alternative poses a lower overall threat to human health and the environment. The SNAP program is a powerful tool for ensuring that "safe" alternatives are developed.

F. Requirements of Section 611

The rule being promulgated today implements section 611 which prohibits, effective May 15, 1993, the introduction into interstate commerce of any container containing class I and class II substances, product containing class I substances and product manufactured with class I substances, unless it bears a warning statement indicating that the product contains or is manufactured with ozone-depleting substance(s). The section extends the prohibition after May 15, 1993, and before January 1, 2015, to any products containing, or manufactured with class II substances if the Administrator determines that safe alternatives are available. Beginning January 1, 2015, all products containing or manufactured with class I or class II substances must also be labeled. While the label provisions have different effective dates for products containing and manufactured with class I substances, as compared to products containing and manufactured with class II substances, the requirements in the regulation are the same for products "manufactured with" and products "containing" such substances unless otherwise indicated. The term "controlled substance," defined in the regulation, will be used

to refer to both class I and class II substances where the labeling requirements apply to both substances.

II. The May 4, 1992 Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on May 4, 1992 (57 FR 19166), EPA proposed regulations to implement section 611. (It should be noted that EPA considers section 611 to be self-implementing except for those prohibitions that require an EPA determination to be triggered (see, e.g., section 611(c)(1)). Consequently, products covered by section 611 would have to be labeled even if EPA did not promulgate implementing regulations. Specifically, EPA proposed that effective May 15, 1993, labels be required on containers of class I and class II substances and products containing or manufactured with class I substances. The proposal also called for labels on all products containing or manufactured with class I or class II substances, beginning on January 1, 2015.

EPA proposed definitions for the terms "class I substance and class II substance," "container," "containing or contains," "incidental uses," "manufactured with," "potentially available," "principal display panel," "product," "recoverable substance," "supplemental printed information," "transform," "ultimate consumer," "type size," and "warning label." While many of the proposed definitions were consistent with definitions in regulations under other sections of Title VI, the definitions also included some that apply only to the regulations promulgated pursuant to section 611. In describing these definitions, EPA discussed the legal and policy aspects of the options considered in the proposal.

With respect to products "manufactured with" ozone-depleting substances, EPA proposed that a product is "manufactured with" a class I or class II substance if a class I or class II substance is used in the product's manufacturing process, including the manufacture of component parts, but the class I or class II substance is not contained in the product at the point of sale to the ultimate consumer. Examples of products "manufactured with" under the proposed definition included products cleaned with solvents, products with adhesives or coatings using solvents, open celled flexible foam products, and certain food and tobacco products. Excluded from the definition were incidental uses, those uses where no physical contact occurs between the product and the controlled substance. Examples of incidental uses provided in the proposal were are produce stored in a warehouse that is refrigerated by a CFC system, or clothes that are manufactured by machinery which requires routine maintenance with a controlled substance like methyl chloroform, but that the clothes do not come into contact with the substance directly. Also excluded from the proposed definition of "manufactured with" were products manufactured with ozone-depleting substances that are transformed into non-ozone-depleting substances during the manufacturing process and therefore do not pose a threat to the ozone layer. Appendix A of the proposal, parts 1 and 2, consisted of a partial list of products that were considered "manufactured with" and those considered "containing."

In the proposal, EPA indicated that it would not narrow its definition of "manufactured with" through establishment of a "de minimis" level because though many CFCs and other ozone-depleting substances were typically used in small quantities by individual users, the aggregate use of these substances over an entire market segment was large.

Under the proposal, EPA defined "product containing" ozone-depleting substances to be products that hold a controlled substance within their structure, or that are intended to be charged with a controlled substance, at the point of sale to the ultimate consumer, consistent with Appendix B of the Montreal Protocol on Substances That Deplete the Ozone Layer (UNEP Memo June 21, 1991). (In the Appendix, the Protocol Parties listed "products containing" controlled substances for purposes of a trade provision in Article 4 of the Protocol.) Examples cited were truck air conditioning units, domestic and commercial refrigeration equipment, aerosol products and fire extinguishers.

The proposal contained a discussion regarding the appropriate placement of labels on products. The definition section of the proposed rule contained definitions of "principal display panel" (PDP) and "supplemental printed information" which were relevant to the discussion of label placement. Since section 611 requires that a label be "clearly legible and conspicuous," EPA proposed that the label appear on the product or its container/packaging, whichever the ultimate consumer would view first when making the purchase. EPA proposed that placement of the label on the PDP would be one way in which to ensure that the label was "clearly legible and conspicuous," since it is generally large enough to accommodate a label and it is usually where the consumer is likely to look for product information. However, the proposal also stated that placement of the label on another display panel that is normally viewed by the consumer at the time of purchase could also be "clearly legible and conspicuous."

In addition to display panels, the proposal discussed alternative label placement for those products that are not normally viewed at the time of the purchase decision. It suggested that for such products, manufacturers include the warning statement in supplemental printed materials. For products that are normally viewed at the time of the purchase decision, but are irregularly shaped or small and cannot therefore accommodate a label on a display panel, the proposed rule indicated that hang tags, cards, stickers, tape and other options of label placement could be used for placement of the label.

EPA also proposed that a product be considered to have been introduced into interstate commerce either at the warehouse from which the manufacturer releases the product for distribution or sale, or at the site of U.S. Customs clearance for imported products. EPA proposed that the warning statement be passed through the stream of commerce to the ultimate consumer in order to inform the ultimate consumer of any controlled substances used and thereby maximize manufacturers' incentive to switch to substitutes. Specifically, EPA proposed that for products incorporating other products as components the label information on the final product include any information regarding use of controlled substance(s) in the manufacturing of the component products. EPA indicated that under such requirements, a manufacturer could rely on its reasonable belief that the purchased component products were not manufactured with controlled substances if a label did not accompany the product and that independent investigations through the stream of commerce were unnecessary. Manufacturers could also employ contractual specifications which would declare to their suppliers their unwillingness to purchase products manufactured with any controlled substance.

For manufacturers in need of temporary exemptions from the labeling requirement (under section 611(e)(5), effective January 1, 2015, that all products containing or manufactured with a controlled substance must bear a label), EPA proposed a petition process with specific format and data requirements. Those manufacturers that demonstrated, to the satisfaction of the

Administrator, that no alternative substitutes were currently or potentially available for their specific use of class I substances could obtain an exemption. The proposed petition process sought to implement section 611(e)(1), which allows persons to request EPA to apply the labeling requirements to a product containing or manufactured with a class II substance earlier than the statute otherwise provided. The Agency also proposed a petition process for persons to request an exemption for their products manufactured with a class I substance. The Agency would have 180 days to review such petitions.

Also proposed was the application of a permanent label on products containing class I substances indicating how to recover the substances. The intent of the additional label was to provide clarification to servicers of the products and recyclers of the substances contained in the product to facilitate appropriate handling. Under section 608, EPA is required to promulgate regulations to maximize the recycling of such substances and to reduce emissions of such substances to the lowest possible levels.

EPA also requested comments on whether a symbol should accompany the warning text as a means of more effectively communicating the intent of the warning statement. However, EPA was concerned that the cost of such a symbol would outweigh the benefits of using the symbol. EPA did not propose a symbol.

In developing the rule, the Agency received guidance from a Subcommittee on Labeling of the Stratospheric Ozone Protection Advisory Committee (STOPAC) in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. section 9(c). Additionally, small "use-sector" groups convened to discuss application of the labeling requirement throughout various sectors of industry. The Agency wishes to acknowledge their valuable technical expertise and assistance in the development of the proposal.

III. Accelerated Phaseout

Based on new scientific evidence developed since the passage of section 611 and development of the proposed implementing regulations, the international community, led by the United States, has agreed to further accelerate the phaseout of already regulated ozone-depleting substances and control such substances pursuant to this agreement. Virtually all class I substances will be phased out in less than three (3) years and some of those with the highest ozone depletion factors will be phased out in less than one year. EPA believes that its decisions in this rulemaking should take into account the significantly shortened life span of ozone-depleting substances and the correspondingly diminished impact labeling would be expected to have. The following section describes the most recent scientific and international developments regarding ozone depletion to provide the relevant context for EPA decisions regarding the labeling rule.

1. New Scientific Data Regarding Ozone Depletion

Significant scientific advances have occurred since the 1989 Protocol assessments. Several subsequent reports since that time have indicated a more rapid rate of ozone depletion than previously believed. The most recent Montreal Protocol Scientific Assessment, issued December 17, 1991, contains information from ground-based monitoring instruments, as well as from satellite instruments, from the years 1979–1991. The data indicate significant decreases in total-column ozone have occurred in winter, and for the first time several similar decreases in spring and summer, in both the northern and southern hemispheres at middle and high latitudes. The data further show no significant depletion has occurred in the tropics. TOMS data indicate that for the period 1979 to 1991, decreases in total ozone at 45 degrees south latitude ranged between 4.4 percent in the fall to as much as 6.2 percent in the summer, while depletion at 45 degrees north latitude ranged between 1.7 percent in the fall to 5.6 percent in the winter. Data from the ground-based Dobson network confirm these losses in total column ozone during the thirteen-year period. These findings show almost twice as much depletion as the average rate measured by the ground-based network over a twenty-year period. Based on this new data, scientists have concluded that the ozone in the stratosphere during the 1980s disappeared at a much faster rate than experienced in the previous decade.

The recent UNEP Science Assessment also includes new data on the estimated ozone depletion potentials (ODPs) of ozone-depleting substances. The assessment places the ODP of methyl bromide, a chemical previously thought to have an insignificant effect on stratospheric ozone, at 0.6, with a range of uncertainty between 0.44–0.69. The Executive Summary of the Assessment states that, "if the anthropogenic sources of methyl bromide are significant and their emissions can be reduced, then each ten percent reduction in methyl bromide would rapidly result in a decrease in stratospheric bromine of 1.5 pptv (parts per trillion by volume), which is equivalent to a reduction in chlorine of 0.045 to 0.18 ppbv (parts per billion by volume). This gain is comparable to that of a three-year acceleration of the scheduled phaseout of the CFCs." On November 25, 1992, the Parties to the Montreal Protocol agreed to assign methyl bromide with an ODP of 0.7 and freeze its production and consumption at 1991 levels. See subsection 4 below in this section for further information regarding this issue.

On February 3, 1992, NASA released preliminary data acquired by the ongoing Arctic Airborne Stratospheric Experiment–II (AASE–II), a series of high-altitude instrument-laden plane flights over the northern hemisphere (see Interim Findings: Second Airborne Arctic Stratospheric Expedition). Additional data were also obtained from the initial observations by NASA's Upper Atmosphere Research Satellite (UARS), launched in September 1991. The measurements show higher levels of chlorine monoxide (ClO) (the key agent responsible for stratospheric ozone depletion) over Canada and New England than were observed during any previous series of aircraft flights. In fact, the ClO levels over the United States and Canada and as far south as the Caribbean were many times greater than gas phase models had predicted. These levels are only partially explainable by enhanced aerosol surface reactions due to emissions from the volcanic eruptions of Mount Pinatubo. The expedition also found that the levels of hydrogen chloride (HCl), a chemical species that stores atmospheric chlorine, to be low, providing new evidence for the existence of chemical processes that convert stable forms of chlorine into ozone-destroying species. The Montreal Protocol Scientific Assessment document includes studies on the Antarctic ozone hole which implicate chlorine as the main cause of ozone depletion over the Antarctic, and link high chlorine concentrations to CFCs and other chlorinated and brominated compounds. The high ClO and bromine monoxide (BrO) levels observed in these studies indicate that human-induced rates of ozone destruction were as high as one to two percent per day for short periods of time beginning in late January.

In addition, the levels of nitrogen oxides (NO_x) were also observed to be low, providing evidence of reactions that take place on the surface of aerosols that diminish the ability of the atmosphere to control the buildup of chlorine radicals. New observations of

HCl and nitrogen oxide (NO) imply that chlorine and bromine are more effective in destroying ozone than previously believed.

The NASA findings indicate that in late January of 1992, the Arctic air was chemically "primed" for the potential formation of a springtime ozone "hole" similar to that formed each spring over Antarctica. These findings also are consistent with theories that ozone depletion may occur at an accelerated rate on aerosol surfaces in the stratosphere anywhere around the globe, and not only on polar stratospheric clouds as was previously believed.

After collecting more data, NASA released an April 30, 1992 "End of Mission Statement," which indicated that while a rise in stratospheric temperatures in late January apparently prevented severe ozone depletion from occurring in the Arctic this year, observed ozone levels were nonetheless lower than had previously been recorded for this time of year. This information has further increased the Agency's concern that significant ozone loss may occur over populated regions of the earth, thus exposing humans, plants and animals to harmful levels of UV–B radiation, and adds support to the need for further efforts to limit emissions of anthropogenic chlorine and bromine.

In response to these findings, President Bush announced on February 11, 1992, that the United States would unilaterally accelerate the phaseout schedule for ozone-depleting substances, and he called upon other nations to agree to an accelerated phaseout schedule as well. The President also asked U.S. producers to voluntarily reduce 1992 output of class I substances to half of the 1986 baseline levels. In addition, the President directed EPA to re-evaluate the phaseout schedule for HCFCs, and to consider the phaseout of methyl bromide.

The Agency has also received two petitions to accelerate the phaseout of these chemicals. One petition was submitted by three environmental groups, the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), and Friends of the Earth (FOE). This petition further requested that EPA add methyl bromide to the list of class I substances. The other petition was submitted by the Alliance for Responsible CFC Policy, an industry group of producers and users of the chemicals.

2. Copenhagen Revisions to the Montreal Protocol

On November 25, 1992, the Fourth Meeting of the Montreal Protocol was convened.

In this meeting, the Parties took a number of actions, including accelerating the phaseout schedule of CFCs, halons, carbon tetrachloride, and methyl chloroform and added HCFCs and methyl bromide to the list of chemicals to be controlled under the Montreal Protocol.

The following changes to the previously proposed phaseout schedules were reached at the Copenhagen meeting:

(1) Adjusting the phaseout schedule for CFCs (class I, group I substances) to a 75% reduction in production and consumption (production plus imports minus exports) from 1986 baseline levels for 1994 and 1995, and a complete phaseout by 1996;

(2) Adjusting the schedule for Halons (class I, group II substances) to a complete phaseout in production and consumption by 1994:

(3) Adjusting the phaseout schedule for other fully halogenated CFCs (class I, group III substances) to a reduction from 1989 levels, 75% in 1994 and 1995, and a complete phaseout of production and consumption by 1996;

(4) Phasing out of carbon tetrachloride (class I, group IV) by a reduction from 1989 levels of 85% in 1995, and a complete phaseout in 1996;

(5) Adjusting the phaseout schedule for methyl chloroform (class I, group V) by reducing the production and consumption of 1989 levels by 50% in 1994, and phasing out completely by 1996.

(6) Establishing criteria for identifying essential uses and a process for excepting limited production and consumption of the above chemicals following their phaseout (see below).

These adjustments go into effect in approximately six months. In addition, the Parties adopted the following amendments to the Protocol:

(1) Freezing consumption of HCFCs (class II substances) beginning in 1996 to a baseline ceiling of: 100% of 1989 the ozone depletion potential (ODP) weighted level of HCFC consumption plus 3.1% of the ODP weighted 1989 CFC 2004, 65% by 2010, 90% by 2015, and 99.5% by 2020; and completely phasing out consumption by 2030;

(2) Adding Hydrobromoflourocarbons (HBFCs) to the list of class II controlled substances, specifying their ozone depletion potential, and phasing their consumption out completely by 1996;

(3) Listing methyl bromide as a controlled substance with an ozone depletion potential of 0.7, and freezing consumption beginning in 1995 to 1991 consumption levels; (the calculated levels of consumption shall not include quarantine and preshipment uses);

(4) Establishing a procedure for the approval by the Parties for continued production and consumption after phaseout to meet essential use requirements; essential uses are defined as those necessary for health or safety, or critical to the functioning of society, and where there are no available alternatives or existing stocks of banked or recycled material;

(5) Establishing reporting requirements for HCFCs, HBFCs, and methyl bromide;

(6) Establishing reporting requirements for imports and exports of controlled substances to and from non-parties to the Protocol;

The Amendments will enter into force under the Protocol following their ratification by at least twenty Parties. This is projected to be accomplished by January 1, 1994.

The Parties also made a number of procedural and definitional changes that affect implementation of the Protocol and that are included in the proposed accelerated phaseout regulation. The changes include:

(1) The approval of destruction technologies and the requirement that Parties that plan to operate destruction facilities do so in accordance with Good Housekeeping Procedures developed by the Parties or their equivalent;

(2) Clarification of the definition of controlled substances to exclude insignificant quantities under defined circumstances, and to encourage Parties to minimize emissions of such substances;

(3) Clarification of the reporting requirements and treatment of international transshipment;

(4) Modification of definition of controlled substance to exclude import and export of recycled and used controlled substances from the calculation of consumption, but to require reporting of data concerning these imports and exports.

The Parties also adopted a procedure under which the Parties can approve the continued production and consumption of ozone-depleting substances after the phaseout to meet essential uses. Such uses are defined as necessary for health, safety, or critical to the functioning of society, but are to be permitted only in cases when no alternatives exist or when existing stocks of banked or recycled material are not available. The definition of "controlled substance" was also clarified to exclude insignificant

quantities resulting from inadvertent production and unreacted feedstock.

3. The Proposed Accelerated Phaseout Regulation

In July 1992, EPA issued its final rule and regulatory program implementing section 604 of the Clean Air Act Amendments. The section limits the production and consumption of ozone-depleting chemicals. EPA controls production and consumption by issuing allowances or permits that are expended in the production or importation of these chemicals. Trading of these allowances is permitted.

The regulation requires producers of class I substances to gradually reduce their production of these chemicals and to phase them out completely as of January 1, 2000 (2002 for methyl chloroform). In addition to the production limits, the rule requires a similar reduction in consumption.

In February 1992, the President requested that U.S. producers voluntarily reduce their production by half of the baseline year levels. He also announced that the U.S. would revisit the phaseout schedule for HCFCs and progress towards an accelerated phaseout of class I substances from 2000 to the end of 1995.

At the same time, EPA received a petition from the Natural Resources Defence Council (NRDC), the Environmental Defense Fund (EDF) and Friends of the Earth (FOE), requesting that EPA add methyl bromide to the list of class I substances. Another petition was submitted by the Alliance for Responsible CFC Policy. The Fourth Meeting of the Parties to the Protocol, discussed above, further supported the movement towards an agreed upon accelerated phaseout by the Parties.

Based on these new developments, EPA is proposing to accelerate the phaseout of CFCs, methyl chloroform, carbon tetrachloride, halons, HCFC–141b, HCFC–142b, and HCFC–22. The Agency is also proposing to add methyl bromide and HBFCs to the list of major class I substances. In addition to these new listings, the proposal implements various trade provisions required by the Montreal Protocol to encourage countries to join the Protocol by prohibiting the trade of bulk substances and products containing controlled substances with non-parties.

4. Effect of Accelerated Phaseout on the Labeling Regulation

The accelerated phaseout will have a significant impact upon manufacturing processes that use class I substances affected by today's rulemaking. The combined effects of the excise tax and the original phaseout schedule have already created strong economic incentives for industry to find substitutes for class I substances. In fact, according to EPA's database on producers of these chemicals, current U.S. production of CFCs are about 50 percent below the 1986 baseline levels set by the Montreal Protocol. The accelerated phaseout will significantly increase the economic incentives for all class I substance users to switch to alternatives. Consequently, even where a particular process that uses a class I substance is exempted from the labeling requirement through the petition process outlined below, the substance in question will rapidly become scarce and expensive, and industry will be encouraged to find alternative chemicals or processes.

When Congress passed the Clean Air Act Amendments of 1990, it required the production and consumption of class I substances to be phased out by the year 2000 (2002 for methyl chloroform (MCF)) and warning labels to be applied to containers containing class I and class II substances, and products containing and manufactured with class I substances beginning on May 15, 1993. The section 611 labeling provisions related to class I substances thus had six and a half years (eight and a half years for MCF) to have an effect on the use of class I substances before they were phased out. However, the decision to end production of class I substances by January 1, 1996 (January 1, 1994 in the case of halons) means that the labeling of products manufactured with class I substances per section 611(d) and products containing and containers containing class I substances per section 611(b) will be in effect for less than three years before the complete phaseout takes effect. As a result, EPA has streamlined some of the proposed requirements related to class I substances in recognition that manufacturers will be phasing out their uses of these substances at a much earlier date. This is further addressed below in the Response to Significant Comments section (V).

IV. Summary of Public Participation

A hearing on the proposed labeling rule was held on May 18, 1992. Nine groups presented oral comments to the proposed requirements and submitted written testimony to the Agency. A transcript of the testimony is contained in the public, No. A–91–60.

The Agency received a total of 162 comments on the proposed rule. Six commenters supported the proposal that labels supply ultimate consumers with information at the point of purchase decision. Other commenters recognized the impact that labeling will have as a market incentive for elimination of class I substances and in the development of alternative substances and processes that use such substances.

Many comments addressed EPA's proposal that manufacturers that do not manufacture with a process using a class I substance, but use component products which were manufactured using a class I substance, would have to label their products (the "pass-through requirement"). Commenters requested that EPA consider the significant financial and administrative burden on manufacturers who may have well over 1,500 suppliers of components. Many commenters also addressed the issue of products manufactured and stored in inventory prior to the effective date of the rule. Commenters stated that the burden of pulling back all such products from inventories, warehouses, distributors and retailers for purposes of applying a label would be an onerous task with little, if any, environmental benefit. The issue of products manufactured for export only was discussed by many commenters who were concerned that U.S. manufacturers would be at an economic disadvantage in a global market if American-made products for export were required to bear a warning statement, because other countries do not have similar requirements.

Other comments addressed the use of a symbol with the warning statement. Most commenters argued against the symbol, indicating that it could distract consumers from the warning statement itself, as well as from other important information on a product's label. Another issue raised frequently in comments concerned the recoverable substances label. Many commenters did not support the label since section 608 covers such products containing recoverable substances and promotes training for servicers handling and disposing of such substances. Many commenters requested clarification of the alternative label placement options. They indicated that there was no clear distinction among the proposed options. Finally, the Agency received numerous comments regarding the definition of incidental uses of class I substances and the need for a de minimis exemption.

EPA addresses the significant comments that it received in section V. below. EPA addresses other comments received in a separate Response to Comments document available in the docket.

V. Response to Significant Comments

A. Definition of Interstate Commerce and Introduction Into Interstate Commerce

Some of the commenters indicated that EPA should include a definition of interstate commerce in the final rule and specify at which point a product enters into interstate commerce. EPA defines interstate commerce as the distribution or transportation of any product or container between one state, territory, possession or the District of Columbia and another state, territory, possession, or the District of Columbia. It is further defined as the sale, use or manufacture of any product in more than one state, territory, possession or the District of Columbia. For a product or container in the United States to avoid coverage as being in intrastate commerce, an affected party must provide adequate documentation that the product not only was or will be manufactured, distributed, sold or used without ever crossing state lines, but that none of the components that went into, or will go into, the manufacture, distribution, sale or use of such product originated, or will originate, in another state.

A product is first introduced into interstate commerce either when it is released from the facility in which it was manufactured, when it enters the warehouse from which a domestic manufacturer releases the product or container for shipment, or for imported products, when they are at the site of U.S. Customs clearance. The inclusion of the facility in which a product was manufactured as a point of introduction responds to comments indicating that some manufacturers do not inventory their products, but sell them directly to separate warehouse facilities. In this case, the manufacturer of the product is required to apply the label before the product leaves its facility. A manufacturer that stores its product in its own warehouse introduces that product into interstate commerce when the product enters its warehouse. The manufacturer in this case is required to apply the label prior to or contemporaneous with, the product's entrance into the warehouse. This provision differs from the proposal in that the introduction of a product into interstate commerce occurs when the product enters the warehouse, not when the product leaves the warehouse. As discussed below in part V.B., several commenters stated that manufacturers often store products at warehouses for extended periods of time before the products finally leave the warehouse. This change to the regulation will ease enforcement by requiring that all products that are stored in warehouses be labeled by the time they enter storage. This revision also allows manufacturers to avoid having to label products manufactured prior to May 15, 1993 but still in inventory on that date.

Containers containing ozone-depleting substances become subject to these regulations at the time they are charged with an ozone-depleting substance. At the point of charge, they are defined as containers containing ozone-depleting substances which have been introduced into interstate commerce. Application of a warning statement therefore would be required upon completion of the charging activity.

B. Products Manufactured Before May 15, 1993

Many commenters addressed the impact of the labeling rule on products in inventory and in production up until the effective date. The commenters all expressed concern that requiring a label on products that were manufactured before the effective date, but are still in the manufacturer's inventory as of the effective date, would impose significant economic and logistic burdens on the affected manufacturers, distributors, wholesalers and retailers. Consequently, the commenters argued that EPA should not require a label on products manufactured before May 15, 1993, even if the products have not left the warehouse from where the manufacturer releases the product for distribution or sale. Some comments indicated that EPA should allow a grace period for those products that are manufactured and warehoused prior to the effective date, if an exemption of such products from labeling altogether is not possible.

EPA agrees with these commenters that requiring a label on products already manufactured prior to the effective date would adversely affect a number of businesses without providing any appreciable environmental benefits. There are many manufacturers that maintain large stocks of products to support high or conditional consumer demand. If EPA were to apply these regulations to such products, manufacturers would be required to retain those products, remove their packaging in order to label them appropriately, and resume normal commercial distribution. An additional problem for some products is that the stream of commerce for such products is strictly regulated (e.g., limited shelf life of metered dose inhalers) in which case any deviation from a product's regulated commercial mobility would require regulatory complications and delays in the distribution of such products. Other manufacturers may have products stored in warehouses across the United States and on foreign territory, in which case labeling such products according to the proposed requirements would require significant time and expense. One major electronics company indicated that it currently has approximately 2,500 suppliers worldwide and purchases about 70,000 component products from these suppliers. For this company, labeling all of its inventoried products prior to the effective date would involve tremendous costs and time. In addition, manufacturing processes for many products manufactured with class I substances prior to May 15, 1993 would have already released the substance during manufacture except for those processes where recovery and recycling occur. Therefore, the final product poses no further threat to the stratospheric ozone layer when it is inventoried or later sold.

EPA believes that its clarification of the term "introduction into interstate commerce" (see section V.A.) should ease most of the concern of commenters on this point. If a product has been introduced into interstate commerce before May 15, 1993, then it is not subject to these regulations. Only a small number of products will have been manufactured before May 15, 1993 but will not have left the facility of manufacture or have entered the manufacturer's warehouse by the effective date. Therefore, for the vast majority of products manufactured before May 15, 1993, the rulemaking is inapplicable on its face, given EPA's definition of the term "introduction into interstate commerce."

For those small number of products that are manufactured before May 15, 1993, but which have not left the place of manufacture or have not entered the manufacturer's warehouse before May 15, 1993, or that are manufactured in foreign countries before May 15, 1993, EPA is allowing such products to be "grandfathered." EPA believes that requiring manufacturers to label these products would adversely affect numerous businesses, because the labeling process for many manufacturers occurs during the actual manufacturing process. Thus, if EPA did not grandfather these products, manufacturers would have to undergo a onetime cost to retrieve and label products already manufactured but not yet introduced into interstate commerce before May 15, 1993. EPA believes that little if any appreciable environmental benefits would be gained from requiring such products to be labeled.

EPA believes that sufficient precedent exists for this decision. The United States Court of Appeals for the District of Columbia Circuit has established a four-part test to judge the appropriateness of Agency grandfathering (*see Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983)). This test involves balancing the result of four analyses, including whether the new rule represents an abrupt departure from previously established practice, the extent to which a party relied on the previous rule, the degree of burden that application of the new rule would impose on the regulated parties, and the statutory interest in applying the new rule immediately.

EPA believes that the labeling requirements represent an abrupt departure from previous practice. Prior to the effective date of the labeling requirements, manufacturers in general were not required to provide any labeling information regarding whether controlled substances were contained in, or used in the manufacture of, a product; moreover, until today's publication of these regulations, manufacturers could not know for certain the specific labeling provisions that they would be required to implement. As discussed above, requiring labeling on products manufactured before May 15, 1993 would impose an unreasonable burden on numerous affected parties while providing no significant environmental benefits. For these reasons, EPA believes that its grandfathering of products manufactured before May 15, 1993 is consistent with the requirements of *Sierra Club* v. *EPA*.

Today's final rule also provides for grandfathering products containing class I or class II substances. Such products face problems like these described above for products "manufactured with," in that they can be stored for distribution throughout the world. To require them to be labeled before distribution in order to apply the warning statement would result in significant costs with little or no environmental benefit.

Therefore, given the large onetime cost to label inventoried products, and limited environmental benefit of labeling these products, this regulation provides that all products manufactured before May 15, 1993 are not subject to the requirements of section 611(d). This decision is also based on the fact that industry will have significantly less time to implement the labeling requirement than the statute envisioned because the Agency did not promulgate implementing regulations within eighteen months following enactment of the Act's amendments, as required by the statute. Had EPA promulgated such regulation at the proper time, manufacturers would have had one year from the time of publication of the regulation to the law's effective date to comply. Because of these delays, manufacturers have substantially less time to comply after the promulgation of these regulations. Therefore, EPA acknowledges the difficulty that manufacturers with inventories of products would have without such a "grandfathering" exemption.

EPA is requiring that for products manufactured before the effective date to be exempt from the labeling requirement, manufacturers must be able to show within twenty-four (24) hours of receiving a request by EPA that such products were manufactured prior to May 15, 1993. Although EPA is not requiring new recordkeeping requirements or specific tracking systems today, manufacturers must have an accountable system in place on site so that EPA can verify that unlabeled products were manufactured or containers were filled prior to the effective date. The burden thus falls upon the manufacturer to show that unlabeled products are exempt from the labeling provision. If a manufacturer is unable to verify such information, then that person will be deemed out of compliance and subject to penalties, pursuant to Title I, section 113 of the Clean Air Act. Importers of products that can show at the site of U.S. Customs (Customs) clearance that such products were manufactured prior to the effective date are also exempted from the labeling requirement. In the absence of such proof, products containing or manufactured with a class I substance will need to bear the appropriate label, regardless of the manufacture date.

C. Products Manufactured With Controlled Substances[1]

1. Changes to the Label Pass-Through Requirement

In the proposed rule, EPA required that products manufactured with and containing controlled substances be labeled throughout the stream of commerce. Its definition of "manufactured with" exempted transformation and non-contact uses of controlled substances. The proposal indicated that by allowing these exemptions, the requirements would not result in universal labeling. Additionally, EPA indicated that the labeling requirements should apply across all use sectors since Congress did not restrict applicability of the law.

EPA further proposed that in order to inform the ultimate consumer that a controlled substance had been used in the manufacture of any part of a finished product, any manufacturer that incorporates a labeled component into its product, would be required to label its product, even if no ozone-depleting substances are used by the manufacturer in the subsequent manufacturing process. EPA stated in the proposal that manufacturers could rely on the label information they received from their suppliers, as long as they reasonably believed that the information was accurate. EPA suggested that manufacturers could show reasonable belief by using contract provisions requiring accurate labeling by their suppliers.

One commenter supported EPA's definition of "manufactured with," stating that it would not necessarily culminate in universal labeling, and that EPA's proposal to pass the label through the stream of commerce to the ultimate consumer is fair and appropriate, as long as there are clear penalties to discourage noncompliance. However, many responded that EPA's proposed definition of "manufactured with" was extremely broad, covering a significant number of products, including component products, and that such a requirement would in fact result in universal labeling with an onerous and expensive tracking burden. These commenters argued that tracking components was unavoidable and that all products would have to be labeled. Such universal labeling, it was argued, would reduce the effectiveness of the requirement, with little environmental benefit and possible confusion for consumers. Other comments expressed doubt as to whether the proposal reflected congressional intent.

Several also commented that the proposal would disadvantage downstream manufacturers that do not use controlled substances in their own manufacturing processes, but that depend upon a multitude of suppliers who may use controlled substances in their manufacturing processes.

According to these commenters some manufacturers may have more than 1,500 suppliers for a given manufacturing process. As a result, tracking the source of supply, determining whether that source used a controlled substance, and determining

[1] This labeling regulation applies to products manufactured with class I and class II substances. However, it should be noted that products manufactured with class II substances are not regulated by this regulation until January 1, 2015, or until the Administrator finds, after notice and opportunity for comment, that for a particular product substitute products or processes are potentially or currently available.

whether that source's component was used in a specific final product, could be extremely difficult and prohibitively costly to implement. As discussed below, the commenters also stated that manufacturers cannot use contract provisions to ensure accurate labeling for all their components.

The difficulties in tracking the use of controlled substances throughout the stream of commerce are illustrated by the case of a major electronics manufacturer. This firm purchases about 70,000 component products from about 2,500 domestic and foreign suppliers. The company has phased out completely its use of class I substances in its own manufacturing processes, but because it buys from suppliers it must determine and track their use of class I substances. To do so, it has undertaken an outreach program to learn the extent to which class I substances are being used throughout its supply chain. The company contends, however, that surveys, letters, follow-up letters, data entry of the information received, data analysis and subsequent outreach to those vendors using class I substances are time-consuming and cannot assume the degree of certainty required by the approach outlined in the proposal.

Tracking is made more difficult by the fact that many products, especially electronic products, are comprised of thousands of components that may come into contact with ozone-depleting substances. Therefore, a manufacturer would have to label its products unless it has a reasonable belief that all of its component products in a final product were not manufactured with ozone-depleting substances. Moreover, as the proposed warning statement would have to list every controlled substance used by any manufacturer's suppliers, a manufacturer would have to have a reasonable belief regarding the uses of controlled substances by any of its suppliers. The company discussed above learned that tracking by their suppliers of their uses of class I substances was very poor overall. Of its 2,500 world-wide suppliers, only one was found to have an outreach program that targeted more than one level of suppliers. Therefore, it would be extremely difficult for this manufacturer to be reasonably confident that the products it purchases are free of ozone-depleting substances, because the vendors throughout its supply chain lack the necessary information about their own products, as well as the components that they purchase from their suppliers. In addition, regulations vary among countries and tracking of class I substance use abroad is poor. Thus, many commenters stated that it would be impossible to be reasonably confident that a purchased product does not require a warning statement. According to commenters, this would lead to universal labeling of all final products in several industries, especially the electronics industry. Universal labeling, these commenters agreed, would not fulfill the intent of the law, since ultimate consumers would be unable to distinguish among any of these products on the basis of controlled substance use.

While the proposed rule did not require a company to conduct independent investigations throughout its stream of commerce in order to form a reasonable belief, subsequent to the proposal, many manufacturers and their suppliers initiated such investigations in order to be assured that their final products did not require the warning statement. Several commenters stated that a manufacturer must perform investigations in order to satisfy the reasonable belief requirement that their suppliers are accurately labeling. They explained that EPA's suggestion that contract provisions be used to establish a reasonable belief was not practical. As discussed above, many products rely on numerous parts manufactured by many suppliers and that revisions of all the contracts involved, where they exist, would be an enormous undertaking. These commenters indicated that many of the components incorporated into their products are purchased without contracts. Such products are either purchased "off the shelf" or from various suppliers at different times, depending on one's inventory and the market situation. These commenters stated that they cannot control the manufacturing processes of these products through contract specification provisions. Thus, aside from using independent investigations, manufacturers have no way of ensuring that component manufacturers are not using ozone-depleting substances or are accurately labeling their products.

Commenters further explain that the problem is further exacerbated by the fact that many components are purchased with little lead time between purchase and incorporation into a new product. As a result, the packaging information for the final product, including any labeling information, is often completed before the components are purchased. Under such circumstances it is impossible for manufacturers to know whether to label the package. If EPA requires labeling of a product based on a component manufacturer's use of ozone-depleting substances, then the manufacturer of the final product may have to expend significant costs to restructure its packaging and labeling processes in order to account for incorporation of last minute information.

It is evident to EPA that given the difficulty of tracking the use of controlled substances throughout the stream of commerce, the "reasonable belief" provision as proposed was too vague to define or determine liability and was therefore unworkable.

For products manufactured with controlled substances, EPA has given considerable thought to the concerns raised in the comments on passing labels through the stream of commerce. As a result, EPA is revising its definition of "manufactured with" to state that a product is "manufactured with" an ozone-depleting substance if the manufacturer of the product itself used an ozone-depleting substance in manufacturing that product. Thus, the inclusion of component products manufactured using controlled substances in the manufacture of another product, that does not otherwise involve the use of controlled substances does not constitute "manufacturing with an ozone-depleting substance." Each item manufactured and introduced into interstate commerce is considered a product, necessitating a label if manufactured with a controlled substance. The incorporation of that product into another, however, does not necessitate a label.

EPA believes that the revision to the label pass-through requirement for products "manufactured with" ozone-depleting substances is consistent with the statute. EPA believes that the phrase "manufactured with a process that uses" an ozone-depleting substance can reasonably be interpreted to refer only to the manufacturing process of the company that introduces the product into commerce and not also to the manufacturing of any component parts made by another company. Thus, a product "manufactured with a process that uses" an ozone-depleting substance means only a product that was manufactured using such substances by the company that introduces the product into commerce (i.e., the manufacturer of the final product). To illustrate, a television would be a product manufactured with a process using ozone-depleting substances only if the manufacturer of the final product used such substances in *its* manufacturing process. Use of component parts made by a supplier using ozone-depleting substances would not constitute "manufacturing with a process" using those substances. Thus, the television would have to be labeled only if that company that introduces it

into commerce itself used ozone-depleting substances to make the television. The component parts, on the other hand, would be products "manufactured with a process using ozone-depleting substances" since their supplier made them using ozone-depleting substances in *its* manufacturing process. The labeling requirement would accordingly apply to the component parts, but the label would not have to be incorporated by the manufacturer of the final product.

Section 611 does not define "products manufactured with a process that uses" ozone-depleting substances. EPA believes that the approach it implicitly took to the phrase in its proposed rule is consistent with, but not compelled by, the statute. As a conceptual matter, it would advance the purpose of the labeling provision to require that any product be labeled through the stream of commerce so long as any part of it, no matter how small a fraction of the whole, was made using ozone-depleting substances. However, to the extent that such a requirement proved unworkable and resulted in inaccurate information, it could actually undermine the integrity and thus the effectiveness of the labeling program.

The purpose of the labeling provision is also served if the buyer of any product is made aware of whether the product's maker itself used ozone-depleting substances. Under the definition described above, wherever in the stream of commerce class I or class II substances are used, the buyer at the next point in the stream of commerce would be made aware of their use. While this approach would result in many labels reaching only other manufacturers, EPA believes that many manufacturers can be expected to have an incentive at least as great as that of downstream consumers to respond to the warning statement. Manufacturers that rely on component parts made by other companies can ill afford to rely on suppliers to use alternative substances or find other suppliers that do. Thus, labels attached to products as defined above would promote the switch to substitutes that Congress sought to encourage through the labeling provision.

While labeling products through the stream of commerce could add to the incentive effect of the program, EPA is persuaded by the comments summarized above that the proposed pass-through requirement is impracticable and would probably not result in accurate information reaching the retail consumers. The proposed "reasonable belief" standard for determining whether to label would also be difficult to enforce.

In addition, the recent decision of the Protocol Parties to significantly accelerate the phaseout of the listed ozone-depleting substances (a decision which EPA must implement under section 606(a)(3) of the CAA) reduces the importance of the labeling program. Congress enacted section 611 when class I substances were expected to be phased out by the year 2000. The labeling requirement thus provided an incentive for manufacturers to move away from their use of such substances before 2000 in order to avoid the negative market reaction. With the acceleration of the phaseout to 1996 for most class I substances (and 1994 for others), requiring products to be labeled is unlikely to significantly add to manufacturers' incentive to switch to alternative substances.

In light of the substantial burden and questionable effectiveness of the proposed pass-through requirement, EPA is not requiring it in today's rule for products manufactured with controlled substances. The Agency is instead adopting the definition of "products manufactured using" ozone-depleting substances described above so that a manufacturer need only label its product if the manufacturer itself used ozone-depleting substances in producing it.

For the purpose of applying the definition described above, divisions of a company, wholly-owned subsidiaries and parent corporations are considered to be a single manufacturer. Therefore, where one division of a company, for example, incorporates a component manufactured with an ozone-depleting substance and that component was manufactured by another division of the same company, the final product must contain a warning statement upon its introduction into interstate commerce, even where the product may be finished by other divisions without the use of ozone-depleting substances. If a manufacturing process of a product takes place in more than one facility, the label information must accompany the product, but not necessarily in the form of a label. Upon the final point of manufacture, a label must then be applied. EPA believes that this will facilitate the labeling process and reduce the burden in the overall manufacturing process of a product where the process involves more than one site of operation.

EPA believes that the tracking problems associated with the pass-through requirement are to a great extent eliminated if manufacturers are only required to track the use of ozone-depleting substances by the divisions within a subsidiary of the same company.

In contrast to manufacturers that use a component manufactured with a controlled substance, the rule promulgated today prohibits distributors, wholesalers and retailers that receive a product with a label indicating that it was manufactured with a process that uses a controlled substance from removing the label. They must leave the label on a product they purchase or distribute, including products they re-package,[2] and are subject to penalties. Since the purpose of the labeling program would obviously be frustrated if labels could be removed by downstream sellers, EPA is exercising its authority under section 301 of the CAA to establish the prohibitions described above.

Rules governing labeling by importers also differ from the general rules described above. Importers must have a "reasonable belief" that a "product manufactured" or "product containing" does not require a label at the time it enters the site of U.S. Customs clearance, or its introduction into interstate commerce. With no similar labeling requirements abroad, foreign manufacturers will not likely impart the information required of domestic products without an inquiry made by the U.S. importer of record. It is therefore the responsibility of the importer to investigate at least one step back into the manufacturing process of the product to determine whether it is manufactured with a class I substance. An importer may use specifications in its contracts with its suppliers under which the suppliers are required to certify whether the product being exported to the United States was or was not manufactured using a controlled substance, in order to show that the importer has a reasonable belief that the product was not manufactured using controlled substances. Importers are not required to investigate whether a component incorporated into the product they are importing was manufactured with a class I substance.

a. Resin producers and the use of one label. One commenter, noting the difficulty and cost of determining which class I substances are used in the manufacturing process of a product, stated that resin producers who

[2] EPA considers the assembly of component products to be a manufacturing process only when the assembly creates an entirely new product. Manufacturers, distributors, wholesalers and retailers that simply repackage a product and/or do not substantially change it, are not manufacturing a product and must pass the warning statement through the stream of commerce.

purchase one or more pigments manufactured with class I substances would have great difficulty in determining which and how many class I substances were used in the manufacturing process of the pigments. The commenter noted that several different labels for the same type of products would be required as a result. It suggested that EPA's final regulation enable resin producers to forego labeling since they do not use the class I substances themselves and would be unable to determine how many and which ones were used in the manufacturing of the pigments.

Under the definition of product "manufactured with" being adopted today, EPA would not require resin producers to label if they, in fact, do not use a controlled substance in their manufacturing process. If they do use such substances, they would be required to label their products. The label would have to list substances used in the producer's own manufacturing process. One label listing the substances by their standard chemical names could be used instead of multiple labels for a single product. EPA believes that by dropping the pass-through requirement for products manufactured with controlled substances, it is addressing the issue of liability for all manufacturers concerned with products they purchase upstream.

2. Incidental Uses

Many commenters supported EPA's determination in the proposed rulemaking that incidental uses of controlled substances should not trigger the labeling requirement. However, commenters argued that EPA's definition of incidental use was too narrow and should include "contact" incidental use as well. Some of the uses of controlled substances that commenters sought exemptions for as an "incidental use" were the following: use as reactive atoms that are not integral to the manufacturing process; use in making food packaging; use as incidental additives such as those found in the manufacturing of spices which are then added to other foods; use as cleaners of plates used to print product information and labels; use to clean reaction vessels in the manufacture of silicone products; use as degreasers in the production of industrial diamonds; and use as mold release agents used to prevent the adhesion of products to a mold. Other commenters recommended that EPA include "non-routine" and "unintentional physical contact" situations as incidental uses.

In the final rule, EPA expands incidental uses to include "contact" uses in which a class I or class II substance is used intermittently, on a non-routine basis, and not as an integral part of the manufacturing process of the product. Some examples would be an intermittent application of a controlled substance, such as methyl chloroform as a spot cleaner for textiles, or an occasional cleaning of an ink plate with a solvent as part of routine maintenance, as long as the use is not a part of the manufacturing process itself. Another example would be the infrequent performance of leak detection tests on a cooling system and condenser, using CFCs or substances containing CFCs. EPA believes that such incidental "contact" uses, though they potentially could involve a brief initial physical contact between the controlled substance and the product, occur so infrequently (e.g., typically as part of the maintenance process), that labeling would not be appropriate. This exemption would also likely cover most situations where a physical contact occurred unintentionally.

In contrast, mold release agents that are applied on a regular and systematic basis in a manufacture process would not be considered an incidental use of a class I substance. Further, the defluxing of printed circuit boards during a continuous production process would not be considered an incidental use. EPA also cannot exempt food processing applications in which a spice, for example, is manufactured with a controlled substance. However, where foods are prepared with such spices, such foods are not required to bear a label, based on the definition of a product "manufactured with" discussed above. Again, products that incorporate other products which were manufactured with controlled substances are not required to pass through the label unless both sets of products were manufactured by the same company.

One commenter argued that plasma etching in the manufacturing process of semiconductors is an incidental use of controlled substances. (Plasma etching uses controlled substances in a sealed chamber in which radio frequency energy is applied to excite the chemicals and break them down to create an "ion-plasma." The plasma is used to etch certain parts of a silicon wafer upon which semiconductors are created.) The manufacturer states that the use of a controlled substance to supply ions to the plasma is terminated once the chemicals are "broken down" in the sealed chamber. Another commenter indicated that a direct contact use that is closed-loop (the controlled substance is not emitted and/or destroyed) or employs recovery and recycling systems should be considered an incidental use. Finally, another commented that use of methyl chloroform as a solvent carrier which eventually evaporates (except for trace quantities) should be considered as an incidental use.

EPA does not consider the use of controlled substances in the process of plasma etching an incidental use since the controlled substances are integral to that process. However, as plasma etching falls under the transformation exemption discussed below, products involving this use would be exempt from the labeling requirements. The use of closed-loop or recovery and recycling systems as part of a process does not qualify that use as an incidental use. Finally, a process in which methyl chloroform serves as a solvent carrier cannot be considered incidental. The evaporated methyl chloroform could be emitted into the atmosphere, thus contributing to the destruction of the ozone layer.

3. Transformation

In the Notice of Proposed Rulemaking, EPA proposed exempting products that are manufactured with a process using a controlled substance in which that substance is not emitted but instead transformed (i.e., completely consumed into a non-ozone-depleting substance during the manufacturing process) and therefore no longer poses a threat to the ozone layer. EPA reasoned that since Congress exempted transformed controlled substances from the definition of production for purposes of the phaseout provisions, it would not have intended to require labels on products manufactured using a process that transforms controlled substances. Under the statute definition of production, after all, transformed controlled substances are treated as though they never existed. The definition of transformation, for purposes of section 611, was proposed to be "to use and entirely consume a controlled substance by changing it into one or more substances that are not subject to this subpart in the manufacturing process of a product or chemical" (57 FR 19166, 19198).

Several comments addressed the need for a clearer definition of transformation, especially one that took into account of the physical law that chemical reactions are never 100% efficient and thus leave "trace quantities" of controlled unreacted substances. One commenter requested that EPA exempt certain transformation processes, such as plasma etching (described above) from the labeling requirement.

EPA has promulgated regulations for the phaseout of production and consumption of class I substances by 2000 (57 FR 33754, July 30, 1992). Those regulations define, transformation as "to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes." That definition reflects that transformation results in "trace quantities." Today, EPA adopts that definition for the labeling rule. The trace quantities exception acknowledges that transformation unavoidably leaves insignificant amounts of controlled substances that are not intended for commercial use. Plasma etching is considered a process that entails transformation, and thus products manufactured using plasma etching need not be labeled, unless they are otherwise subject to the regulations.

Several commenters urged that methyl chloroform (MCF) used as a source of chlorine molecules in an oxidation process of semiconductor manufacturing should be considered to be transformed during such manufacture, because the MCF breaks down to provide a source of chlorine and therefore does not contribute to ozone depletion. One large manufacturer indicated that at high temperatures and where there is an excess of oxygen, no MCF will remain or be emitted. If in the oxidation process of semiconductor manufacturing, MCF is transformed, except for trace quantities, EPA would not require that resulting product to be labeled.

One commenter suggested that a process in which a class I substance has been generated as a coincidental, unavoidable by-product (CUBP) be considered transformed and consequently exempted from the requirement[3]. EPA agrees that use of such a process should not require the resulting product to be labeled, but for different reasons than the comments give. CUBP does not entail the use of a controlled substance, rather it involves the unavoidable production of such a substance. Since a process that results in CUBP does not use controlled substances, it does not fall under the definition of "manufactured with a process using" ozone-depleting substances for purposes of triggering the labeling requirements. Since CUBP is unavoidable, moreover, little purpose would be served by requiring manufacturers using such a process to label their products. EPA therefore finds that the labeling requirements do not apply to products manufactured using a process EPA has determined meets the CUBP exemptions criteria under the regulations implementing section 604 (57 FR 33754–33765, July 30, 1992). Additionally, EPA addresses trace quantities of unintended residues or impurities below in section D.3.

It is important to note that the destruction of a controlled substance in a manufacturing process other than the process in which the product itself is manufactured is not regarded as transformation. For example, if in a production process a company uses a controlled substance and then removes it from the process for incineration in a separate destruction process within the same facility, that substance is not transformed; it is destroyed. Even though the destruction of the substance will prevent the risk of release into the stratosphere, it is not transformation and will not be dealt as such for the purposes of this rule.

4. Destruction

At the Fourth Meeting of the Parties to the Montreal Protocol (the Parties), which took place November 23–25, 1992 in Copenhagen, the Parties approved five destruction technologies to be used for destroying class I substances. Under the existing Protocol, "production" of controlled substances is defined as "the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties." These approved five destruction technologies (liquid injection incineration, reactor cracking, gaseous/fume oxidation, rotary kiln incinerators, and cement kilns), enable the Parties to subtract from the definition of production that amount of ozone-depleting substance(s) which is destroyed by these means. EPA is currently revising its draft proposal of the regulation accelerating the phaseout of class I and class II substances to address this issue among others raised in Copenhagen.

EPA seeks comment on whether it could and should provide an exemption from the labeling requirements for the use of controlled substances that are destroyed using one of the above-mentioned approved technologies. The destruction technology procedures would have to be consistent with regulations under the Resource Conservation and Recovery Act and other applicable acts, and meet, at a minimum, standards set forth in Table 5–1 of the United Nations Environmental Programme (UNEP) report entitled, Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies, and the code of Good Housekeeping Procedures for destruction setforth in section 5.5 of the UNEP Report. Destruction technologies would also have to be operated, at a minimum, in accordance with the UNEP report.

Since the ultimate goal of Title VI is to minimize depletion of stratospheric ozone, such an exemption that would recognize, and provide an incentive for, the elimination of emissions of controlled substances through the use of approved destruction technologies is one method of reducing risks of ozone depletion.

5. Use Reduction Exemption for CFC–113 and Methyl Chloroform Used as Solvents

In the proposed rulemaking, EPA did not propose excluding a "de minimis level" of use of a controlled substance from its definition of products "manufactured using," but requested comments on how a "de minimis" exemption could be implemented. EPA's rationale against such an exemption was that though an individual use of a controlled substance may be small, such uses in the aggregate over an entire use sector could pose a significant threat to the ozone in the upper atmosphere.

EPA received many comments regarding the Agency's decision not to propose a "de minimis" level, particularly in the case of products manufactured with class I substances. One commenter stated that EPA's proposed determination that aggregate use levels over an entire market segment can be large and thus pose a threat to the ozone layer should not preclude granting exemptions from the labeling requirement in cases where a company can show that its use of a class I substance is nonetheless de minimis. Many commenters provided options for an aggregate "de minimis" level. Some suggested that where a firm has achieved a 90% to 95% reduction in the use of class I substances from a specified baseline level, that EPA should find that manufacturer's remaining uses of class I substances to be "de minimis." Other commenters suggested defining a de minimis level as a specified amount of a class I substance that could be used per product on an annual basis. However, in evaluating this particular approach, the Agency has concluded that it cannot possibly investigate use of class I substances in the manufacture of all individual products.

Some commenters suggested a de minimis exemption for specific

[3] A CUBP is a coincidental unavoidable by-product of a manufacturing process that is immediately contained and destroyed by the producer, using a maximum available control technology with a destruction efficiency of 99.99%.

applications using "small quantities" of class I substances, including degreasers for steel products. Another proposal was simply to set a de minimis level for carbon tetrachloride (CCL4) at 0.1% by weight, or 1,000 ppm in a final product.

EPA does not find any of the proposals suggested above to be practical or lawful. However, EPA does recognize that manufacturers who are attempting to eliminate the use of ozone-depleting substances may be unable at this time to completely eliminate such use, because potential substitutes may not be available for all uses. The Clean Air Act provides exemptions from the labeling requirement for products manufactured with class I substances, if the "Administrator determines that there are no substitute products or manufacturing processes that: (a) Do not rely on the use of such class I substance, (b) reduce the overall risk to human health and the environment, and (c) are currently or potentially available." Given the wide range of uses of class I substances, EPA will not be able to assess the availability of substitutes for all substances and uses in all manufacturing processes in the short amount of time before the labeling regulation takes effect. The petition process, discussed in section V.P below, accommodates requests for specific exemptions, but exclusive reliance on this process would be administratively impractical in view of the relevant timeframe and EPA's limited resources.

The United Nations Environment Programme (UNEP) "Report of the Solvents, Coatings and Adhesives Technical Options Subcommittee, 1991 Assessment," states that potential substitutes other than HCFCs may not be available for approximately 2% to 8% of the current uses of class I substances as solvents in the solvent-cleaning, adhesives, coatings and inks end-use sectors across industry[4]. The class I substances used in these solvent sectors are CFC–113 and methyl chloroform (MCF). The specific HCFC alternatives are problematic because they are either relatively high in ozone depletion potential, less technologically feasible for the specific uses required, or not economically viable for many of these uses. EPA believes that those products "manufactured with" the uses of CFC–113 and MCF for which no long term adequate substitutes currently appear to be technologically or economically feasible would be eligible for the exemption described above. While the statute conditions the availability on a determination of a potentially available substitute, EPA notes that it must base its determination on currently available evidence. If current evidence indicates that potential substitutes are not technologically and economically feasible, EPA believes it should make the required determination and provide an exemption.

However, it is administratively impossible for EPA to identify and describe all uses or types of uses of CFC–113 and MCF in the solvent-cleaning, adhesives and coatings sector which may warrant an exemption. The UNEP report speaks to broad applications of CFC–113 and MCF in the solvent sector and does not attempt to identify the specific uses for which there are no technologically, environmentally and economically viable alternatives. Although it is possible to describe certain applications where it has been difficult to find substitutes, a comprehensive list of such applications would be extremely difficult to compile due to the many diverse and specialized uses for these ozone-depleting solvents.

One gains a better understanding of the difficulty of listing all the applications for CFC–113 and methyl chloroform by comparing some of their solvent uses to uses of CFCs as refrigerants. In refrigeration, an application is defined by the refrigerant (e.g., CFC–11 or CFC–12) and the equipment (e.g., centrifugal building chiller or household refrigerator). In contrast, solvent use itself is broken down into multiple use categories ranging from large uses such as solvent cleaning or aerosols to much smaller uses such as lubricant carriers or book preservation. Each of these use categories is then further defined by a variety of factors. Use of solvents as cleaning agents alone is defined by:

—Equipment—Cleaning equipment can vary in size and throughput capacity from a vapor degreasing system designed to clean airplane wings to a small spray can used for cleaning electrical locks

—Chemical—CFC–113 or methyl chloroform

—Geometry of the part—Part configurations range from high-performance instrumentation such as accelerometers and medical pacemakers to parts as simple as nuts and bolts

—Substrate—Parts can be made from materials varying from basic carbon steel to magnesium to ceramic to plastics for contact lenses

—Cleanliness—Even for the same part, cleanliness standards vary greatly so that, for instance, a transmitter in a fighter aircraft is cleaned to a different standard than one in a child's walkie-talkie.

These parameters turn the listing of substitutes for each application into a complex undertaking. If one of the variables changes even slightly, the substitute must change, too. For example, gyroscopes (instruments designed to detect movement) with silicon fill fluids are cleaned with different substitutes than those filled with fluorinated compounds.

Generating a list of all solvent applications for which substitution is difficult would involve splitting out innumerable sub-applications within the solvent use sector. While the Agency is aware that certain applications may have few satisfactory substitutes, it cannot in the time available compile a comprehensive list of solvent uses of CFC–113 and MCF for which no potential substitutions exist; nor can the Agency make such a determination for individual solvent uses without the data that it expects to receive under the petition process.

Under these circumstances, EPA believes that manufacturers who use CFC–113 or MCF as solvents should not be required to label their products where such manufacturers have made good faith efforts to eliminate their uses of such substances, but have been unable to completely eliminate them due to the remaining small uses for which substitution is particularly difficult. The Agency believes that it is therefore appropriate to exempt products "manufactured with" CFC–113 or MCF from the labeling provisions where the products' manufacturer can show that it has reduced its use to that percentage for which the UNEP report estimates substitutes are not available. Therefore, taking the mid-point of the UNEP estimate, or 5%, EPA believes that it is appropriate and consistent with the provisions of section 611(d)(2) to exempt a company from the labeling requirements if the company is able to prove that it has reduced its use of CFC–113 and MCF as solvents to 5% of its 1990 use.

This exemption applies only to products "manufactured with" CFC–113 and MCF used as solvents. The uses of these and other class I substances in products containing or in containers of such substances would not be covered by this provision. These categories constitute a much more limited number of applications and therefore do not entail the administrative burdens of

[4] In contrast, the UNEP reports covering other end-use sectors, such as refrigerated appliances, halon extinguishers, air conditioners and foams, do not indicate a similar difficulty in finding long-term substitutes.

evaluating the availability of substitutes across a wide array of small uses.

By allowing this exemption, EPA recognizes that where a company has reduced its use of CFC–113 and MCF as solvents for its products by 95% or greater since 1990, the remaining use of such substances is likely due to the lack of technologically and economically feasible long-term substitutes for such use as discussed in the 1991 UNEP Report. EPA is using 1990 as a baseline because it is the first full year of control on CFCs under the Montreal Protocol and the year in which the Clean Air Act Amendments were enacted. As a result, many companies began maintaining adequate records on their overall use levels of these compounds at that time.

EPA recognizes that this approach cannot exactly duplicate the usage results that would have occurred had EPA been able to make individual determinations as to which uses had no currently or potentially available alternatives and thus which specific uses should be exempt. This exemption may benefit certain manufacturers that would not have otherwise been able to take advantage of an exemption, and may not adequately cover those manufacturers who still require greater than 5% of their 1990 use for applications where there are no potentially available substitutes. These manufacturers can, however, still use the petition process to request an exemption for such uses. Nevertheless, EPA believes that given the extreme administrative difficulty of evaluating exemption requests for the many small uses of CFC–113 and MCF as solvents, and the likelihood that remaining solvent uses will require further research and development before satisfactory substitutes can be brought to market, its approach is an appropriate and workable surrogate. Such a provision will allow companies to focus their efforts on the search for substitutes, rather than face the burden of documenting their use and of petitioning EPA for such exemptions.

EPA believes that this approach will also encourage early reductions of class I substances by users seeking to reach the 95% level to avoid the labeling requirement. Such reductions could lead to significant early environmental benefits which would outweigh any environmental damage that may result from providing an exemption for products manufactured with the remaining 5%, for the limited period prior to the January 1, 1996 production phaseout. EPA believes that without this use reduction exemption, in some instances manufacturers would have less of an incentive to reduce their use of CFC–113 and MCF as solvents prior to the required production phaseout. Without this exemption, if a product is manufactured using any amount of CFC–113 or MCF as a solvent, it would have to be labeled. If the manufacturer is required to label its product because of a single remaining use in its manufacturing process, it would be less likely to reduce any other uses of CFC–113 or MCF because the product would still require a warning statement. However, if a manufacturer can avoid the labeling requirement by reducing its use by 95%, the manufacturer will be more likely to make such a reduction in order to avoid the labeling requirements.

To utilize this reduced use exemption, a company must certify in writing to EPA that it (including its divisions, branches or facilities) has achieved a reduction in its total use of CFC–113 and MCF as solvents by 95% or greater from its calendar year 1990 use of such substances as solvents. The company must show that it has reduced its use from its 1990 levels by 95% during a twelve-month period which can be calculated either as the twelve-month period ending within sixty (60) days of the date the certification was received, or as the most recent calendar year.

The Agency is limiting this exemption to those companies that can certify their reduction by May 15, 1994 in order to encourage early reductions of such substances. There would be negligible environmental benefit to allowing certification beyond May 15, 1994, given the January 1996 phaseout date. Companies unable to meet this deadline may still petition EPA for an individual exemption, although the petition process is likely to be time-consuming. Once a company has received an exemption from labeling, the exemption from labeling is assured beyond May 15, 1994; however, if at any time a company increases its use of CFC–113 or MCF as solvents such that its use is greater over a twelve-month period than 5% of its 1990 usage, it must notify the EPA within thirty (30) days and must begin labeling.

In calculating the baseline, a company may subtract from both the baseline and total use calculations uses of CFC–113 or MCF where the chemicals were transformed, because such uses are themselves the basis for an exemption (described above). If purchase orders of MCF or CFC–113 are used as the basis for calculating the baseline or reduction levels, adjustments for changes in inventories must be made to reflect actual use.

Records (or legible copies) supporting a company's assertion that it has reduced its use must be maintained at a single facility within the company. The certification to EPA must specify the facility where the records supporting a company's reduction are located. The certification must include a description of the records (purchase orders, inventoried stock records) maintained at that location, and the type of system used to track company-wide use. All certifications must provide the name of a contact person, address and telephone number for that contact person. Certifications should be sent to the Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, 6202–J, 401 M Street, SW., Washington, DC 20460. One copy should be submitted to the Agency and one must be retained by the company.

During a field inspection, EPA may require verification of a company's use in 1990 of CFC–113 and MCF as solvents that year and of its 95% reduced use during a subsequent twelve month period. A company must therefore make the appropriate adjustments to its records to account for the use of inventoried CFC–113 and MCF solvents in 1990 and in the subsequent twelve month period showing the 95% reduced use. If a company subtracts use associated with transformation in its formulation, data showing a clear association of quantities of use with provable transformation must also be accessible with the above records upon request by EPA.

The Agency understands that many companies have available the information outlined above for tracking company-wide use of CFC–113 and MCF, as well as its use of other class I substances. The pending acceleration of the phaseout and the Clean Air Act regulations have prompted many companies to track their uses of class I substances in their efforts to comply and to anticipate elimination of the substances. Other companies may have to upgrade their tracking systems in order to utilize the reduced use exemption provision.

Companies seeking to qualify for this exemption by the time the labeling regulations take effect on May 15, 1993, must certify to EPA by May 15, 1993 that they have met the reduction requirements outlined above, in order for the Agency to review such certifications. Companies seeking to qualify for this exemption following the effective date of the labeling requirement must certify to EPA their total reduced use of CFC–113 and MCF

as solvents for a twelve month period ending within sixty (60) days of the date the certification was received, or the last calendar year. A company may then cease to label its products fourteen (14) days following the Agency's receipt of the certification. If a company decides not to label its products manufactured with CFC–113 or MCF based on this reduced use exemption, the burden of proof is on the company to show, upon request by EPA, adequate data outlined above demonstrating that it is legally eligible to use this provision.

D. "Products Containing" and "Containers Containing"

1. Distinction Between "Products Containing" and "Containers Containing" and Label Requirement

In the proposed rule, EPA defined containers of class I or class II substances as "the immediate vessel of any size in which that substance is stored or transported." EPA further stated that this definition included cans, drums, trucks and isotanks of class I or class II substances alone or in mixtures" (57 FR 19166–19167).

One commenter inquired whether containers such as degreasing units or large empty tanks, which may be used to hold such substances, should be labeled at the time of manufacture. Another commenter stated that confusion existed between when a product was a controlled substance contained in a container and when it was a product containing a controlled substance.

To further clarify the distinction between a controlled substance in a container and a product containing a controlled substance, EPA is incorporating in its final rule today a further elaboration of what would be covered by the requirement to label containers of class I or class II substances. This clarification is drawn from EPA's existing definition of bulk controlled substance in its current phaseout regulations (July 30, 1992, 57 FR 33754, 33788). This definition states that, "If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize the intended use, the listed substances or mixture is a controlled substance."

Drawing from this definition of what constitutes a "bulk" controlled substance, EPA is revising the definition of "container containing" for section 611 to limit the phrase to containers holding a controlled substance: "If a class I or class II substance that is intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use. If the controlled substance is used in a container, vessel or piece of equipment without being transferred, then that container would be deemed a "product containing" and would be labeled accordingly.

For example, CFCs in a small can sold to recharge refrigeration equipment would be used only after being transferred to an air conditioning system. The can would thus be labeled as a "container containing." A large tank of halon attached to a total flooding fire protection system on the other hand, would be labeled as a "product containing," because the halon is used directly from the tank itself.

In the case of a tank holding a solvent which is used as degreasing equipment, the equipment itself is typically sold without the controlled substance and therefore would not qualify as either a container or a product containing for purposes of this rule. This would hold true even though, at a later point in time, a class I or class II substance was contained in the tank during the use of this equipment. Thus, for equipment from which a controlled substance is used without being transferred, the applicable criteria is whether the equipment contains the controlled substance at the time of sale. It would not be logical to require labeling after the point of sale when consumer decisions are made. At the same time, to require labeling of all products that could be "used with" a controlled substance would be overly broad and discourage the sale of equipment that could be used with either a controlled substance or an alternative. However, for containers containing controlled substances, the container must be labeled whenever it contains a controlled substance, whether or not it contained a controlled substance at the time it was originally purchased.

2. Label Pass-Through Requirement for "Products Containing" and "Containers Containing"

As discussed in section V.C. above, if a component product that was "manufactured with" a controlled substance is incorporated into another product, these regulations do not require the manufacturer of the final product to pass the labeling information accompanying the component product through the stream of commerce. However, EPA is requiring that a warning statement for products and containers containing controlled substances be passed through the stream of commerce. There are several significant distinctions between "products and containers containing" and "products manufactured with" that indicate that the pass-through requirement should be retained for "products and containers containing." First, whereas a manufacturing process can be reasonably defined as not including the manufacture of components, the term "product containing" cannot be read to exclude components that are themselves contained within the structure of the product. If a component part contains controlled substances, the final product still contains the controlled substance at the point of sale.

Moreover, unlike products manufactured with controlled substances, it is much less onerous for a manufacturer to determine whether or not a product or container purchased from a supplier contains an ozone-depleting substance since the substance is held within the product's physical structure. Also, because the controlled substance is held within a product or container's structure, the release of the controlled substance into the atmosphere has not yet occurred. The consumer will generally release the substance through the use of the product, since the substance is likely an active ingredient of the product itself or a propellant. Informed by a label that indicates the controlled substances' effect on the ozone layer, the consumer may, in many cases where possible, take precautions to minimize or avoid the release of the substance into the environment. A manufacturer that purchases products without a label must have a reasonable belief that the product does not in fact contain a controlled substance before incorporating it into its final product. Manufacturers must also have a reasonable belief that a "container containing" is accurately labeled. Finally, importers must have a reasonable belief that information about "products containing" or "containers containing" is accurate, as the importer is required to ensure proper labeling at the site of U.S. Customs clearance.

3. Containers of Recaptured Substances and Waste

One commenter suggested that EPA should not require a label on containers for storing and transporting recaptured class I and class II substances, since such containers are reused and may contain a number of different substances at different times. In addition, the commenter stated that a label on such containers has no legitimate role in that it does not assist consumers in making purchase decisions.

EPA disagrees with this comment; a person handling such containers would benefit from the specific chemical

information on the label and the label would, in such case, act as a precaution for handling procedures. Though the label does not specifically address handling practices of such substances, it would inform those handling these containers of the chemicals contained in them and would encourage them to dispose of them or recycle them correctly.

Another commenter indicated that containers of class I or class II substance waste or waste containing trace amounts of such substances, intended for incineration, should not require a label since the substances will be destroyed. EPA believes that such containers require a label, since the waste contains a class I or class II substance which will require handling and proper precautions prior to its incineration, and since the waste enters into interstate commerce. Further, EPA believes that containers of class I or class II substances to be recycled or reclaimed must bear the warning statement, to ensure that the technician of a reclamation facility is aware of the substances contained in order to exercise the proper caution. Reclaimed substances are also resold by the reclaimer, and thus should be labeled upon introduction into interstate commerce.

Some commenters suggested that containers that once contained an ozone-depleting substance but are later recycled through melt down or scrapping and incorporated into another product, should not require a label. EPA agrees that if the new product no longer contains a class I or class II substance, it does not require a label.

One commenter argued that for containers in which military products "manufactured with" or "containing" class I or class II substances are transported and then returned empty to the originator, the label should be permitted to be "covered" by the originator of the products so that the container may be reused for other purposes. EPA accepts that at the point of their return, as long as the containers are emptied of their contents of the class I or class II substances, the label may be covered or removed. If such container subsequently is charged with a class I or class II substance, a label would be required at that time. EPA also would not require that a container or vessel for transport of a "product containing" or "container containing" be labeled; only the immediate container that holds the ozone-depleting substance must be labeled.

4. Trace Quantities of Unintended Residues or Impurities

One commenter raised the issue whether any chlorination process in which carbon tetrachloride (CCL4) is inadvertently produced would require a label under the proposed rulemaking, including such processes as the chlorination of drinking water. The comment is based on the fact that EPA made no exception in the proposed rulemaking for products containing unintended residual amounts of trace quantities of a controlled substance. Such trace quantities are not introduced intentionally into the manufacturing process; they are the result of a chemical reaction by which impurities are produced and retained in the final product. They may also be the remainder of a controlled substance that has been added and then removed, either, for example, as a solvent or explosion suppressant. Another commenter offered the example of the production of chlorine. Water and brine are combined in the process in which the hydrocarbons contained in the water are chlorinated during the chlorine production process. As a result, trace quantities of CCL4 are created. Most of these trace quantities remain in the chlorine, which is then used in the production of other products.

Upon reviewing numerous comments on this issue and discussions with various segments of industry, EPA has determined that products with trace quantities of unintended residues or impurities resulting from a chemical reaction in its manufacturing process, are exempt from coverage under this rule. In these cases, the residual controlled substance is neither intended nor serves a function in the final product itself, and therefore EPA does not consider the product to be a product "containing" a class I substance. Therefore, the product falls outside these labeling requirements for "products containing."

This position is further supported by the recent Fourth Meeting of the Montreal Protocol Parties in Copenhagen. The Parties approved a decision stating that insignificant quantities of controlled substances derived from inadvertent production in a manufacturing process or from an unreacted feedstock, or used as a process agent, such as an explosion suppressant, which is present in a substance as trace residues or impurities, may be excluded from the definition of "controlled substance" under the Protocol. EPA will soon be proposing to modify its regulations for the phaseout of class I and class II substances to reflect this clarification of the definition of controlled substances.

In the 2000 phaseout rule implementing section 604 (57 FR 33754), the Agency determined that where CCL4 of a controlled substance is produced as a coincidental unintended by-product (CUBP) of a manufacturing process and then immediately contained or destroyed, that process need not be considered "product" of a controlled substance. The Agency exempted CUBP production of controlled substances listed in Groups IV and V from the production restrictions. Because the Protocol's proposed change to the definition of controlled substance adopted in Copenhagen encompasses situations also covered by the CUBP, EPA will soon be proposing to eliminate this provision from its existing regulations. The adoption of the Protocol's recent interpretation of controlled substance further supports the exemption from the labeling requirements outlined in the trace quantities exemption in the paragraph above. Those products containing insignificant quantities, or trace quantities, of controlled substances present as unreacted feedstock, from incidental or inadvertent production, or used as a process agent, are exempted from the labeling provision.

Despite some comments on exemption of specific uses of CCL4, the Agency believes that a product containing a controlled substance cannot be exempt from the labeling rule where the controlled substance is essential to the manufacture of that product, such as with CCL4 as an explosion prevention measure in the manufacture of chlorine. Where such substance is intentionally introduced to the manufacturing process, it is not inadvertent and uncontrollable. Only those trace quantities associated with the inadvertent production or unintended residues are exempted from today's rule. However, the use of CCL4 as an explosion prevention measure does not result in the product "containing" the controlled substance, rather it is considered by EPA to be a product "manufactured with" a controlled substance and would require a warning statement. Furthermore, evaporation of a controlled substance is an emission and cannot therefore be exempt from the requirement.

E. Use of Controlled Substances for Repairs and Used Products

In the proposed rulemaking, EPA did not discuss the use of class I substances in the repair of products or in the reuse of products. Comments regarding these uses indicated that class I substances

may be used as solvents in the repair of a product. EPA believes that a product undergoing repair is not being introduced into interstate commerce. The ultimate consumer already owns the product and therefore, the warning statement is unwarranted.

In a similar manner, products that are resold for reuse are products that have already been introduced into interstate commerce. Subsequent use or sale is not covered by today's rulemaking (except for the prohibition on the removal of labels by distributors, wholesalers and retailers, discussed earlier) and therefore the labeling requirements do not apply. In contrast, products "manufactured with" or "containing" controlled substances that are used by service technicians for repair or recycling purposes should be labeled according to the label requirements applicable to their manufacture. Such products or containers may be manufactured solely for use in repair or recycling applications, but are required to be labeled pursuant to section 611.

However, EPA believes that recycled or reclaimed products containing controlled substances, such as some solvent-cleaning and adhesive products, are introduced into interstate commerce as new products when they are recycled or reclaimed. Such products must be labeled accordingly. On the other hand, EPA is aware that some recycled products, such as packaging materials or chemicals may inadvertently come into physical contact with a controlled substance in which it is possible for trace quantities to remain in the products themselves. Consistent with the exemption in today's final rule for unintended trace quantities of residues or impurities, EPA does not require such products where the manufacturers are not intentionally introducing a controlled substance into a recycling or reclamation process to be labeled.

F. Label Placement and Alternative Labeling Options

1. Label Placement

a. *Clearly legible and conspicuous.* In the Notice of Proposed Rulemaking, EPA proposed to require that the warning statement be placed on any display panel on the product's surface or packaging where the label will be "clearly legible and conspicuous." EPA did not propose that the label appear on a product's principle display panel (PDP), though EPA did request comments regarding whether such a requirement would be appropriate. EPA also proposed to allow alternative placement of the warning label (for example, on hang tags, cards, or stickers) where placement on a display panel is not feasible. One commenter supported EPA's proposed use of hang tags, cards or stickers as alternative labeling options. Two commenters stated that the warning statement should appear on the product's display panel when available and, in particular, on the PDP, where one exists, because the PDP is conspicuous to the ultimate consumer. One of these commenters indicated that this approach would promote equality among companies in label placement and would satisfy the requirement that the label be "clearly legible and conspicuous." In contrast, several commenters indicated that the Congress did not mandate that the label be applied to the product's PDP and that EPA should therefore not specify the meaning of "clearly legible and conspicuous" in terms of prescribed label placement. Another commenter contended that the back and side panels of a container or product could satisfy the requirement. One commenter requested clarification on what EPA meant by its suggestion that the label be placed where "normally" viewed by the consumer, as opposed to where the label is "easily or readily viewed."

After considering the comments received on label placement, EPA has decided that the warning statement may appear on a display panel other than the PDP as long as that label can be readily seen and understood by the consumer at the time of purchase. Although requiring all labels to appear on the PDP would promote uniformity among manufacturers' labeling practices, uniformity would come at the expense of the manufacturers' flexibility. In view of the broad diversity of products, potentially affected by the labeling requirements, EPA believes manufacturers will need some latitude as to where to place the labels. If a manufacturer includes the warning statement on a product's PDP, this would satisfy the requirement that the label be "clearly legible and conspicuous," but placement in this manner is not required. The label may be placed on any display panel as long as it is conspicuous and clearly legible. A display panel may include any side of a product, package or container, excluding any location where the warning label would not be "conspicuous and clearly legible." A display panel may include the bottom side of a product package or container where the bottom side is normally used to convey consumer information and is likely to be viewed by the consumer at the time of purchase. For example, a label on the bottom of a refrigerator or its shipping carton would not be readily available to the ultimate consumer; however, a label on the bottom of a portable radio would be appropriately placed because a purchaser is likely to examine the whole product prior to buying the product and additional information regarding the radio telephone would normally be found on its underside. Products that are sold in containers should be labeled directly on the container or display, rather than on the product itself, such as an electronic game. Finally, EPA is also permitting a number of alternative labeling options as discussed below.

2. Alternative labeling options

a. *Alternative labels.* The proposed rule indicated that for products that are irregularly shaped or small, alternative labeling, such as hang tags, tape, cards, stickers or similar overlabeling could be used so long as the label or warning statement was securely attached to the container, product, outer packaging or display case. These alternatives are included in the final rule. An alternative label must be clearly legible and conspicuous. As long as the warning statement is at least as conspicuous on an alternative label as it would be on a product itself, the manufacturer has the discretion as to which of these labeling methods is used for irregularly shaped or small products. Such alternative labels must themselves be clearly legible and conspicuous.

b. *Supplemental printed material.* While EPA prefers that manufacturers place the warning label on a display panel on the product or its outer packaging, or use overlabeling where alternative labeling is necessary, labeling using supplemental printed material could also satisfy the section 611 requirement. EPA defines supplemental printed material as information which accompanies a product and which the consumer is likely to read at the time of purchase. (Supplemental printed material that is only available to the consumer after the time of purchase of the product would not satisfy the labeling requirements.) Examples of these options include, but are not limited to, warnings included on invoices, bills of lading, package inserts and Material Safety Data Sheets (MSDS), so long as they are likely to be read before the purchase is completed. Supplemental printed material would be most appropriate if a product has no PDP or display panel area, or if the warning statement would be as conspicuous to the consumer on such printed material as it would be on the product. It would also be appropriate to include a warning statement on

supplemental printed material such as an invoice, for a shipment of products sold in large quantities (e.g., nuts and bolts), rather than labeling individual items. Where supplemental printed material is used, the warning statement would have to be clearly legible and conspicuous to the consumer at the time of purchase.

Two commenters asked EPA to clarify that additional labeling (on a product or in advertising about the product) is not required when the label appears on supplemental printed material. In response, EPA confirms that should a manufacturer choose to implement the labeling requirement using supplemental printed information, additional labeling is not required. Again, the governing principle is that the purchaser be able to read and understand the label at the time of purchase.

Another example of where supplemental printed material would be appropriate is in the case of medical devices that are purchased directly by a hospital or clinic and not by the patient. For example, EPA realizes that some medical products are administered directly by hospital or clinic personnel to a patient, without necessarily informing that patient of whether the medication or medical device was made with a controlled substance. The patient is less likely to be adequately informed about the product or to make a choice regarding the product due to hospital procedures and the circumstances under which the patient receives treatment. In such cases, EPA believes that the ultimate consumer is the person making the immediate purchasing decision of that product on behalf of and for the use by a patient. Supplemental information must accompany the products to the point at which the purchaser accepts the products and need not be communicated directly to the patient.

Labeling of supplemental printed material may also be appropriate for prescription drug products containing controlled substances that are deemed "essential" by the Food and Drug Administration (FDA), such as metered dose inhalers. (See discussion on medical products in section V.I. below.)

While supplemental printed material may be a label placement option for most products, containers of class I or class II substances that are smaller than 55 gallon drums must be labeled directly on their PDPs or display panel areas. Containers of controlled substances that are larger than 55 gallon drums may apply the warning statement on supplemental printed information to convey the warning statement, as long as it is clearly legible and conspicuous to the purchaser either at the time of purchase or time of delivery provided the purchase is not complete until delivery is accepted. EPA believes that containers larger than 55 gallon drums, such as railcars, trucks and aircraft need not bear a label directly on them since they carry other containers and products as well, and information regarding the contents is usually viewed in supplemental information by the consumer upon delivery.

c. *Products not viewed by the purchaser prior to or at the same time of purchase.* Several commenters stated that some products are typically sold over the phone or through the mail, so that labeling the product itself would not provide the information to the purchaser until after the point of purchase.

In the NPRM, EPA discussed the use of supplemental printed material as an alternative to placing the labels directly on the a product, its display or packaging. Supplemental printed material was defined in terms of printed or graphic informational or promotional material. In order to address the issues described above, EPA has distinguished between supplemental and promotional printed material in the rule promulgated today. Supplemental material accompanies the product and is available for the consumer to read at the time of purchase. Promotional printed material, by contrast, does not accompany a product and is available prior to the point of purchase by appearing in or on newspapers, journals, catalogues and displays, for example.

Congress' purpose in requiring products to be labeled was to provide consumers with information regarding the use of ozone-depleting substances so that they can use the information in making their purchasing decisions. To accomplish this purpose in the case of products normally purchased sight-unseen, manufacturers or sellers may use either of two approaches. First, promotional printed material may be used to inform consumers of the use of ozone-depleting substances. The required information must appear on the promotional printed material in a clearly legible and conspicuous manner.

Second, a company may place the label on a product or its packaging, or use alternative labeling as described above, so that the requisite information is clearly legible and conspicuous to the purchaser at the time of product delivery. However, this option requires that either the purchase not be completed until delivery is accepted (e.g., COD orders) or the purchaser be permitted to return the product following its delivery. For the labeling requirement to serve Congress' purpose, where information is not made available when the purchase order is placed, customers must at least be allowed to refuse delivery or to return the product after that information is made available.

d. *Competing information.* Several commenters argued that the label would compete with other labeling information on restricted package space and that overcrowding the existing PDP would make the information difficult to read and inhibit the consumer from reading it. EPA does not agree, especially given EPA's acceptance of alternative label placement options which provide manufacturers with flexibility to address circumstances where applying a label directly on a product may not be appropriate or viable. In addition, EPA is not directing companies to increase the size of their products' packaging to accommodate the label bearing the warning statement, as some commenters inferred. In any case, section 611 specifically requires that the label be "clearly legible and conspicuous."

e. *Parallel to existing information.* EPA proposed that the warning statement must appear parallel to any base on which the product or container is being displayed. Some commenters recommended that EPA instead prescribe that the label be parallel and aligned with all other labeling information on the product. EPA agrees with this recommendation. Further, if the warning statement is on supplemental printed material, the statement must also be parallel and aligned with other labeling information in the printed material.

G. Products Manufactured for Export Only

The proposed rule did not specifically address the issue of whether labeling is required for products manufactured for export only. Several commenters urged EPA not to require that products manufactured for export meet the labeling requirements. Commenters indicated that a requirement for labels bearing the warning statement on exports would put products manufactured in the United States at a competitive disadvantage in the world marketplace, compared to products manufactured in countries where labeling is not required. Moreover, commenters noted that EPA could not enforce the labeling requirement beyond U.S. boundaries; therefore, labels on exported products could be removed after they leave United States territory but before they reach consumers.

EPA does not believe that products manufactured for export only should be

subject to section 611's labeling requirements. Section 611 applies to products that are "introduced into interstate commerce," but makes no reference to foreign commerce. The Clean Air Act does not define "interstate commerce." However, EPA believes that section 611's use of interstate commerce does not include "foreign commerce" (*i.e.* commerce outside the United States). *See Border Pipe Line* v. *Federal Power Commission*, 171 F.2d 149 (D.C. Cir. 1948) (interstate commerce does not generally include foreign commerce); *Distrigas Corporation* v. *Federal Power Commission*, 495 F.2d 1057 (D.C. Cir. 1974). See, also *e.g.*, 18 U.S.C. 10, which defines interstate commerce and foreign commerce separately.

Exports primarily affect foreign commerce. Although it may be argued that exports are introduced into interstate commerce when they are transported from the manufacturer within the United States to the place of export, EPA does not believe that products manufactured for export only should be covered by section 611. EPA has considerable discretion in determining the scope of the term "introduced into interstate commerce" for purposes of these regulations. As the Supreme Court noted, the term "interstate commerce" cannot be subjected to any single definition for every federal statute regulating commerce.[5] Court decisions have not been uniform regarding the point at which a product destined for foreign commerce should be considered as being in "foreign commerce" when it is traveling to port.[6] Courts have looked to the essential purpose of statutory provisions in determining the scope of the term "interstate commerce."[7] EPA therefore believes that its determination of whether exports should be included within the scope of the labeling requirement should be based on the intent of section 611 and EPA's ability to pursue its enforcement responsibilities under section 611. Based on this analysis, EPA does not believe that the term "introduced into interstate commerce" should be extended to include products manufactured for export only.

As discussed above, the labeling requirements are designed to alert consumers to the fact that ozone-depleting substances are contained in a product or were used to manufacture it. However, during the period that the exports are traveling to port, they can have no effect on the purchasing decisions of consumers, as no consumers will see the product until after it has left the United States. Moreover, as the labels will be in English, many of the products that are labeled will be sent to countries where the labels will not be understood. In addition, once a product has left the United States, EPA cannot prevent labels from being removed from the product. Therefore, EPA cannot ensure that products exported from the United States will be labeled when they are viewed by the consumer, which would defeat the purpose of the labeling requirement.

Unlike products sold in the United States, products produced and sold abroad do not have to meet the labeling requirements of section 611. EPA recognizes the competitive disadvantage that U.S. manufacturers would have in the foreign marketplace as a result of having to label. Consumers in the foreign marketplace, when faced with two otherwise identical products, one which is labeled and the other which is not, would likely choose the unlabeled product even though the unlabeled product may also contain or be manufactured with ozone-depleting substances. If U.S. regulations were to require domestic products manufactured only for export to be labeled while products manufactured and sold in other countries were not, U.S. products would be placed at an unfair disadvantage in the foreign marketplace with no compensating benefit to consumer choice, since foreign consumers would incorrectly infer that non-U.S. products did not contain or involve the use of ozone-depleting substances.

Agencies have excluded exports from similar requirements on other occasions. For example, the Consumer Product Safety Commission has exempted products from requirements of the Consumer Product Safety Act, 15 U.S.C. 2015 *et. seq.*, where the products are never distributed in commerce for use in the United States, and exempted from the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et. seq.*, where the products are never sold or offered in domestic commerce. See 16 CFR 1010.1 (b).

To avoid application of this rule, products manufactured solely for export may not be sold within the United States. EPA is requiring that products and containers manufactured for export be clearly identified as such at the warehouse or facility from where the export will be transported and that any additional documentation for such products or containers be readily available on site. This is to enable Federal enforcers to distinguish between products or containers for domestic sale, which require labels, and those intended only for export, which do not.

H. Imports

EPA proposed that imports be covered by the labeling requirements and regarded imports as having entered interstate commerce at the site of U.S. Customs (Customs) clearance.

Several commenters asked whether the Agency plans to inform Customs of the new labeling requirements. EPA has agreements with Customs under other existing regulations to inspect imports and will work further with Customs to ensure that products and containers entering the U.S. meet the requirements of section 611.

The definition of "import" in today's final rule is consistent with the definition promulgated under regulations implementing section 604 of the Act (57 FR 33754, 33788, July 30, 1992). There are two situations described in the section 604 rule that are excluded from the definition of "import" also adopted here. One pertains to the off-loading of class I or class II substances from ships during servicing. EPA believes that temporary

[5] *McLeod* v. *Threlkeld*, 319 U.S. 491, 495, 63 S. Ct. 1248, 1250 (1943); *see also United States* v. *Auguello*, 452 F.2d 1135, 1141 (2d Cir. 1971) (in determining the scope of the term interstate commerce in a criminal statute, the court noted that cases from other areas of the law are an unreliable guide to the interpretation of the statute at issue).

[6] *See, e.g., Japan line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 437, 99 S. Ct. 1813, 1815 (containers are found to be instrumentalities of foreign commerce where they "engage in no intrastate or interstate transportation except as continuations of international voyages"); *Connell Rice & Sugar Co.* v. *County of Yalo*, 569 F.2d 514 (9th Cir. 1978) (products in storage that were bound for export were subject to local taxation because they had not actually entered the export stream); *Southern Pacific Transportation Co.* v. *I.C.C.*, 565 F.2d 625 (9th Cir. 1978)(whether transportation is interstate or intrastate "is determined by the essential character of the commerce, manifested by the shipper's fixed and persisting transportation intent at the time of shipment"); *Carson Petroleum* v. *Vial*, 279 U.S. 95, 107, 49 S.Ct. 292, 295 (1020) (the essential character of the commerce, not the various steps in its transportation, should determine whether it is interstate, intrastate, or foreign); *Wentz* v. *U.S.*, 244 F.2d 172, 176 (9th Cir. 1957) (court found that where telegram from California to Mexico was initially transmitted to Texas and then retransmitted to Mexico, the initial transmittal was in interstate commerce).

[7] See *United States* v. *Castro*, 837 F.2d 441 (11th Cir. 1988) (failure of Congress to specifically include imports in statute does not mean that imports are excluded where legislative history and essential purpose of the statute indicate that imports should be included); *Distrigas Corporation* v. *Federal Power Commission*, 495 F.2d 1057, 1064 (D.C. Cir. 1974) (legislative history of Natural Gas Act indicates that imports and exports were meant to be excluded; nonetheless, the court would include imports and exports within the scope if exclusion would be contrary to the purpose of the statute).

off-loading containers or products containing or manufactured with controlled substances should not be considered importation since the products are not being introduced into interstate commerce. Therefore, they should not fall under the labeling provision.

The other case involves products or containers introduced in bond at the Mexico border. Under the Maquiladora Agreement, the United States and Mexico established a free-trade zone along a segment of the U.S./Mexico border. Essentially, products are permitted to be transported across that zone without any U.S. Customs restrictions being imposed. Products manufactured with or containing controlled substances or containers charged with controlled substances within this zone established by the Maquiladora Agreement are not considered to be imported products. At the same time, such products or containers are being introduced into United States interstate commerce, and are therefore subject to the labeling requirements.

Some commenters argued that if they purchase foreign products manufactured with a class I substance from other companies and incorporate them into their own products, their final products should be exempt from the labeling requirement. As discussed above, the final rule eliminates the requirement that a manufacturer must label its product if a component product was manufactured with a controlled substance. Thus, if a manufacturer incorporates a component product manufactured with a controlled substance into its product without using a controlled substance in its own manufacturing process, under today's rule, its product is not required to bear a warning statement. Manufacturers incorporating component products into their products need not investigate whether such products were manufactured with a controlled substance. However, U.S. parent companies that purchase products manufactured with controlled substances from their foreign subsidiaries would be required to label their subsequent products in the same manner required of any U.S. company using components from a domestic subsidiary.

Importers of foreign products are still obligated to label foreign products if the manufacturer of that product used a controlled substance in its manufacturing process. If importers were not so obligated, then imported products would have an unfair competitive advantage over domestic products. However, consistent with EPA's decision to eliminate the label "pass-through" provision, an importer need only investigate whether the final product being imported was manufactured with a controlled substance in determining whether a warning statement is required. The importer is not required to investigate whether component parts of the final product were manufactured with controlled substances.

All imported products containing and containers containing controlled substances must be labeled at the site of U.S. Customs clearance and must remain labeled throughout the stream of commerce. As discussed above, manufacturers of "products and containers containing" controlled substances are not exempt from the requirements to pass information through the stream of commerce indicating that the product or container contains an ozone-depleting substance.

I. Medical Products

Several commenters argued that certain prescription products, such as some metered dose inhalers (MDIs), should be exempt from the labeling requirements because they are essential to the health of patients. These commenters feared that the warning statement could result in patients not using medication despite the advice of their physicians, because the patients would be concerned about damage to the ozone layer or would be alarmed by the inclusion of the words "warning" and "harms public health and environment" in the warning statement. These commenters, which included the Food and Drug Administration, voiced concern about the possible ill effects on the health of asthma patients if such patients discontinued the use of MDIs as a result of the warning statement. The commenters argued that the label should not appear on prescription drugs, since the decision to buy the drug is based on the physician's advice and, therefore, the physician should be considered the "ultimate consumer" in this case. Other commenters noted that pharmacists often receive medical products in bulk packaging and repackage the products for consumer purchase. In these cases, the patient would not see the package prior to purchase, negating the purpose of the label.

EPA understands the importance of medical products like MDIs to many patients' health and believes it appropriate to tailor the labeling requirement to avoid unduly alarming patients. At the same time, section 611 does not provide the Agency with authority to exempt any products containing class I substances from the labeling requirement, even if such products are considered essential. That section specifically provides that no product containing a class I or class II substance may be introduced into interstate commerce after the effective date without the warning statement. Congress clearly gave EPA authority to exempt production of class I substances needed for medical products from the phaseout requirements of section 604 of the Act and authority to exempt certain products "manufactured with" class I substances from the labeling requirements of section 611 if appropriate substitutes are available. By contrast, Congress gave the EPA no similar authority to exempt medical products containing class I substances from the labeling rule.

Contrary to the assertion of some commenters, there is no basis for believing that section 611 does not apply to medical products subject to FDA labeling rules. FDA's labeling regulations were in effect when the Clean Air Act Amendments were enacted, and Congress could have indicated that the labeling provisions of section 611 do not apply to the products covered by FDA regulations. It did not do so, however, and since section 611 was passed after FDA's rules and statute authorizing them, section 611 would govern in the case of any conflicts.

Within these legal constraints, however, EPA wishes to avoid any adverse impact labels might have. As detailed above, a number of commenters voiced concern that patients might not use medical products essential to their health if confronted by the required labeling information. The commenters presented no evidence supporting their concerns, however. EPA considers it highly unlikely that patients would not use a medical product vital to their health because it bore a label notifying them of the products' use of ozone-depleting substances. Patients would more likely react, if at all, by asking their physician or pharmacist what they should do in view of the label's information. Such inquiries could help create the kind of market pressure Congress sought as a means of prodding industry to find and use alternatives.

However, as discussed earlier, EPA does allow the warning statement to appear on supplemental printed material. In the case of prescription products deemed essential by FDA, such as MDIs, EPA believes that, given the concerns expressed by commenters, it is appropriate for the statutory warning statement to appear on supplemental printed material intended

for the prescribing physician, rather than for the patient, as long as the supplementary printed material intended for the patient contains language that informs the patient that the product contains an ozone-depleting substance. EPA agrees with commenters that the inclusion of the words "warning" and "harms public health" on the information provided to the patient might cause undue alarm. Therefore, if the statutory warning statement appears on the printed material intended for the physician, then the product or printed material intended for the patient need only state the following: "This product contains [name of substance], a substance which harms the environment by depleting ozone in the upper atmosphere." Manufacturers could supplement this information, if they wish, with instructions for the patient to consult with his or her physician before discontinuing use of the product. EPA expects that FDA will provide at a later date such additional language in the **Federal Register**.

EPA believes these provisions address the concerns regarding potential adverse health effects in a manner consistent with section 611(c), since the full warning statement will be provided to the prescribing physician and the information that the product contains an ozone-depleting substance will be provided to the patient. To the extent this approach represents a partial exemption from the statutory requirement, EPA may grant it as an exercise of the type of administrative authority described in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The change to the statutory language is minimal and the environmental consequence is probably non-existent. Removing the words "warning" and "harms public health," however, avoids unduly and perhaps dangerously alarming patients.

EPA received other comments noting the impact of FDA's labeling regulations on the time needed for compliance with today's rulemaking. Based on discussions with FDA, there appear to be three ways to implement the changes in labeling for FDA-regulated medical products (21 CFR 314.70) manufactured with or containing class I substances in time to meet the statutory deadline of May 15, 1993: (1) Notify FDA through the company's annual report of the changes made to the label—such changes would be considered "minor or editorial;" (2) partake in a supplemental process that FDA uses to grant pre-approval for such modifications to the existing labeling; or, (3) through "supplemental changes being effected" or changes that may be made prior to FDA approval, make the necessary changes and inform FDA afterwards. FDA has informed EPA that companies should, to the extent possible, implement section 611 labeling changes using the third option, "supplemental changes being effected" (21 CFR 314.70 (c)2(i)). EPA believes that it is FDA's intention to provide at a later date specific additional language to accompany the warning statement for drug products containing class I substances, such as MDIs, which would inform the patient to further consult with his or her physician when considering the implications on their overall health of the section 611 warning statement.

One commenter also indicated that contact lenses that are manufactured with class I substances would be difficult to label, because consumers generally purchase contact lenses without packaging and the label obviously cannot be placed directly on the lenses themselves. Manufacturers of ophthalmic devices, such as contact lenses, may include the warning statement on supplemental information, as long as the label appears on information that the ultimate consumer receives by the time of purchase. In this context, FDA indicated that it may be notified of such changes to a company's existing labeling information through a manufacturer's annual report, thus requiring no pre-approval.

J. Packaging

Some commenters indicated that it would be misleading for the warning statement to appear on a wrapper or packaging that itself contains or is manufactured with controlled substances, when the product inside does not contain or was not manufactured with such substances. Packaging materials may be used for transportation or display purposes for products that do not contain or were not manufactured with a controlled substance. The commenters inquired as to whether this packaging would necessitate a label. Such labeling, the commenters argue, could mislead consumers into believing that the contents are themselves ozone-depleters.

In the final rule, EPA is requiring that packaging materials manufactured with a controlled substance be labeled to inform purchasers of such materials of the use of controlled substances in the manufacturing of those materials. EPA believes that packaging materials when sold as such are products in and of themselves and should therefore be subject to the labeling requirements. However, consistent with the pass-through discussion in V.C.1 above, purchasers of such packaging materials are not required to subsequently label their product based on the labeling information pertaining to the packaging materials.

Manufacturers that manufacture their own packaging materials using controlled substances, or that use controlled substances to attach the packaging to its contents, must label their product, even if the package contents were not made with ozone-depleting substances. In this case, the packaging is part of the product, and if the packaging is made with controlled substances, it must be labeled. Otherwise the anomalous result would be that all uses of ozone-depleting substances would require labeling except packaging. So long as the company introduces the product into commerce using ozone-depleting substances to make any aspect of it—including packaging—it must label the product.

K. Research and Development

In the proposed rulemaking, EPA did not specifically address whether research and development (R&D) activities, including R&D to find alternative substances for class I or class II substances, should be subject to the labeling requirements. A few commenters stated that R&D activities should be exempt from the labeling requirement since the products being developed are not being introduced into the stream of commerce. EPA agrees that a product undergoing research is not introduced into interstate commerce and, therefore, need not be labeled. Upon conclusion of R&D activities, any product containing or manufactured with a controlled substance will require a warning statement upon its introduction into interstate commerce.

L. Warning Statement Text and Requirement

Some commenters supported the text of the warning statement, bearing the standard chemical name. However, several commented that there was little environmental benefit to naming the specific chemicals used in a manufacturing process. Suggested alternatives to the chemical name included the terms "class I substances" and "CFCs and other substances." A commenter indicated that the Clean Air Act's reference to "class I," should be sufficient for the label. These commenters did not believe that stating the specific substances used on the label was valuable to consumers, who do not tend to differentiate between ozone-

depleting chemicals. Therefore, according to the commenters, simply the statement that an "ozone-depleting substance" was used in the manufacture of a product would be sufficient for purposes of informing consumers. Other commenters argued that the label would detract from other important warning hazard labels and requested that the Agency remove the word "WARNING" from the statement.

When Congress mandated the use of labels under section 611, it specified the exact language that should be used. This language includes the name of the substance that is subject to the labeling requirement and contained in or used to manufacture a product. EPA does not believe that the use of terms such as "class I substance" or "CFCs and other such substances" would be adequate to meet the requirements of section 611. Furthermore, such terms would not provide consumers with the ability to distinguish the ozone-depleting potential of one substance relative to another, which can vary by a factor of ten among class I substances. The ability to distinguish allows consumers to differentiate in making their purchasing decisions between substances with significantly different ozone depletion potentials. As an additional benefit, labels containing specific chemical names facilitate efforts related to handling, disposal, recovery and recycling under sections 608 and 609 of the Act. Such information is potentially beneficial to service technicians. Therefore, EPA is not amending its requirement that the exact name of the ozone-depleting substance be used in the warning statement.

Additionally, the final regulations continue to require that the word "warning" be used to begin the warning statement. EPA is not authorized to remove the word "warning" from the text of the statement, since that wording is prescribed by Congress in section 611. EPA also disagrees with the comment that the warning statement will discourage consumers from reading a product's PDP or other display panel area, especially given the options available for label placement.

Some commenters indicated that labeling relative to human health hazards and product use and handling should be regarded as more important and suggested eliminating the requirement for the section 611 label in the case of these products. The Clean Air Act mandates the warning statement and provides no such exceptions. EPA has an obligation to implement the law and to ensure compliance among the regulated community.

M. Recoverable Substances Label

Comments received stated that labels indicating that ozone-depleting substances are recoverable and not mandated under section 611 and that section 608 (recovery and recycling) does not itself require such labels. Some comments affirmed that many products containing class I and class II substances already have permanent labels identifying the relevant substances they contain. They claim that labeling for recovery purposes would add little value to current information provided on existing labels.

After consideration of the comments received, EPA believes that recycling and recovery of class I substances are sufficiently addressed under sections 608 and 609. Therefore, EPA is not requiring a separate labeling requirement under section 611 for recoverable substances; the warning statement as specified in that section will be the only required label for products and containers, as outlined in today's rulemaking.

N. Symbol

In the proposal, EPA stated that it was considering, but not proposing, the requirement of a symbol to accompany the warning statement. EPA requested comments on the appropriateness of such a symbol. One commenter strongly favored the use of a symbol as discussed in EPA's proposal. However, EPA also received numerous comments that indicated that warning statements without corresponding symbols have been as effective as those with symbols. These commenters further stated that symbols can be misleading to the consumer at times. Several commented that symbols do not provide consumers with any information in addition to what is communicated in the warning statement. Other commenters implied that a symbol can distract consumers from reading other important labels on a product or container.

Some commenters indicated that incorporating the graphic symbol would be costly, given inherent limitations in existing printing equipment. For example, some small businesses that print labels and supplemental information may be unable to replicate the graphic using existing equipment. Such businesses would be forced to invest in new printing equipment in order to comply. Other commenters indicated that to add the symbol would result in altering the colors used on existing labels on products. This could cause problems in the existing arrangement of other printed information on the products, therefore requiring the manufacturer to relabel all of its products. The subsequent cost could be up to $1,000 per product label. In addition to these economic concerns, commenters indicated that it made little sense to make such changes and investment for substances that will be phased out shortly.

EPA has decided to forego the use of a symbol. The Agency believes that the 1996 phaseout of class I substances (1994 for halons) diminishes the overall utility of a symbol thus substantially reducing the potential benefits from the use of a symbol without reducing costs. The Agency also agrees with commenters that the warning text would significantly increase the cost of labeling, with little or no environmental benefit.

O. Petition Process

Four commenters supported the petition process as described in the proposed rulemaking, citing that a process is necessary to exempt from the labeling requirement those products for which alternative substances and manufacturing processes are not available. Others supported EPA's proposed provision allowing "class action" petitions, claiming that petitions allowing one petition for multiple manufacturers of the same product or for similar products, would simplify the process for companies with the same end-uses of a class I substance.

Several commenters indicated that the rulemaking should shift the statutory prescription and exempt all products manufactured with class I substances *unless* the Agency makes a determination that substitutes are currently or potentially available. They argued that because of the accelerated phaseout date of 1996; EPA could determine now that substitutes are not currently available, they would also not be potentially available, since the timeframe from the effective date of this rule to the phaseout is considerably shorter than what it was at the time the law was written.

The language of section 611 clearly does not allow EPA to exempt products manufactured with class I substances from the labeling requirements unless EPA makes an affirmative determination. The law explicitly states that products manufactured with class I substances must be labeled, unless the Administrator makes an affirmative determination that no substitute chemicals or processes exist that do not rely on a class I substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available. EPA continues to believe that the most appropriate way to

provide exemptions for specific products manufactured with class I substances is through case-by-case evaluation of specific products or manufacturing processes through the petition process described in the proposed rulemaking. This process allows EPA to make a sound decision whether to exempt a product or process from labeling based upon the specific facts provided by the petitioner. However, to avoid being overwhelmed with individual petitions reflecting the myriad MCF and CFC–113 used as solvents, EPA has adopted the "reduced use exemption" described above. This exemption does not, however, prevent any firm from applying for a specific exemption for a product, regardless of reductions in use made by that firm, if the criteria for an exemption contained in the regulations are satisfied.

One commenter stated that the Agency should grant temporary exemptions to those manufacturers that petition the Administrator until a determination on the petition has been made. However, EPA does not believe such an exemption is appropriate, because it would enable manufacturers who wanted to avoid or postpone complying with the labeling requirements to initiate the petition process with little or no likelihood of success on the merits of the petition. EPA wants to avoid creating such an incentive and, therefore, is requiring that products be labeled pending the Agency's decision on a petition.

Another commenter indicated that the EPA should expedite the review process for petitions whenever possible. EPA agrees and will make every possible effort to expedite the review process. The reduced use exemption, as well as the revised pass-through requirement and other provisions of this rule, should dramatically reduce the number of petitions received by EPA.

One commenter inquired about the treatment of confidential business information (CBI) included in a petition and inquired about the Agency's ability to guarantee confidentiality. Under the Clean Air Act, anyone submitting information for which CBI status is requested must assert a claim of confidentiality at the time of submission. Failure to assert a claim of confidentiality at the time of submission may result in the disclosure of the information by the Agency without further notice. Further, it should be noted that information which is publicly available (e.g., in journals, trade magazines, product literature, etc.) cannot be claimed as CBI. EPA will treat all claims of business confidentiality in a manner consistent with 40 CFR part 2, subpart B. These procedures offer petitioners significant protection from disclosure of CBI. Though the Agency cannot guarantee that it will be able in all circumstances to justify granting or denying a petition without public disclosure of confidential information, EPA will endeavor not to use confidential information in the public participation process wherever possible. There are situations in which the Agency has contractors "cleared" for handling confidential information. Before the Agency uses such contractors, it will notify any petitioner of the potential use of such a contractor in the petition review.

One commenter indicated that EPA's description of a substance as "currently available" did not indicate that the substitute is widely available. The commenter urged that a substance be considered currently available when it is marketed in "commercial quantities." EPA agrees with this point if commercial quantities means that they are available, but not necessarily in market-wide quantities, and affordable. An example of such a circumstance would be where a single company is producing and marketing an alternative for more than one end-use; because the product is not manufactured by more than one company, the product may not be considered "widely available." EPA, however, believes that substitutes that are commercially available are currently available.

One commenter indicated that the definition of potentially available should convey that a substitute is technologically feasible, environmentally acceptable, and economically viable "for a particular application," rather than for a sector-wide or end-use-wide application. EPA agrees that for the purpose of section 611, companies will be submitting petitions for their individual class I substance use and that its evaluation should, to the extent possible, be directed at that use and not at a sector-wide review.

VI. Summary of the Final Rule and Changes from the Proposed Rule

This section briefly describes the amendments to the proposed rule. Any changes made to the rule language as a result of the public comments are conveyed. A new section has been added to reflect that position adopted today regarding companies using, or importers introducing, products manufactured with a process using class I substances. Various changes to the final rule that have been made for purposes of clarification are also described herein. Labeling provisions discussed in the proposed rule that are not addressed or amended in today's final rule remain unchanged and are thus applicable in the final rulemaking.

A. Authority

The authority citation has been revised to reflect the most recent authority citation adopted by EPA for 40 CFR part 82.

B. Purpose (Section 82.100)

This section states that the purpose of the rulemaking is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances.

C. Applicability (Section 82.102)

This section defines those products that are subject to the labeling requirements of 40 CFR part 82. Paragraph (c) of this section, pertaining to the recoverable substances label, is deleted to reflect the Agency's determination that the handling of recoverable and recyclable substances is sufficiently covered in sections 608 and 609 of the Act. Products and containers using such substances, however, are required to bear the warning statement under paragraph (a) or (b) of this section.

Paragraph (a) of this section has been revised to indicate that for substances added to the lists of controlled substances after the publication of this rulemaking, the labeling regulations shall apply to the listed products and containers one year after such addition or earlier, if indicated in the rulemaking for such listing. A new paragraph (c) is added to this section to indicate that "products manufactured with" and "products containing" class I substances that are products manufactured prior to May 15, 1993 do not need to be labeled.

D. Definitions (Section 82.104)

This section in the proposed rulemaking contains the definitions of the terms "class I substance," "class II substance," "container," "containing or contains," "controlled substance," "manufactured with," "potentially available," "principal display panel," "product," "recoverable substance," "supplemental printed material," "transform," "type size," "ultimate consumer," and "warning label." The final rule includes new definitions for "consumer," "containers containing," "distributor," "export," "import," "importer," "interstate commerce," "product containing," "promotional printed material," "retailer," and "wholesaler" in an effort to incorporate

the relevant comments into today's final rulemaking.

The definitions for a class I substance and class II substance remain unchanged. The definition of container also remains unchanged, but EPA duly notes a comment regarding the word "immediate" in the definition. A comment indicated that the proposed definition of container could imply that the label should be applied to the container before the introduction of a class I or class II substance. EPA requires that upon the point of filling a container with such a substance, the manufacturer in charge of filling the container must label the container, and not the manufacturer of the container itself.

The definition of "containing or contains" has been deleted; "containing or contains" is covered now in the new definitions of "product containing" and "container containing."

The term "controlled substance" is retained and refers to "class I" and "class II" substances. As discussed above, it is important to note that the effective date of specific provisions in today's rule varies between class I and class II substances.

The definition of "manufactured with" is amended to require manufacturers of products manufactured with controlled substances to label according to their direct manufacturing processes and not those related to products purchased upstream. Given this determination, EPA considers each manufactured good a product. EPA also changes the definition of "manufactured with" by expanding incidental uses to include contact use, a class I or class II substance is used intermittently in a manufacturing process; and by adding the exception for trace quantities in the definition of transformation. The expanded incidental use exemption was incorporated as a result of the several comments that explained numerous situations in which a class I or class II substance is applied for intermittent maintenance purposes and not routinely with the production of each product.

The definition for "potentially available" remains unchanged. The definition for "principal display panel" is amended to delete the guidance for determining the proper type size for the warning statement on a PDP. Placement of the warning statement on the PDP would clearly meet the requirements of section 611, but there are alternative options for label placement discussed below in part VI.F. (Section 82.108).

The definition of "product" is expanded to include products that incorporate component products. The term "recoverable substance" is deleted because EPA no longer is requiring a recoverable substances label on containers or products containing such substances. The "supplemental printed material" definition is amended to include "invoices" as a means for label placement. The revised definition also excludes the terms "written advertisements, brochures, circulars". Such terms are categorized as "promotional printed material" later in this section, defined as informational material that does not accompany a product to the consumer.

The definition of "transform" is amended to incorporate the phrase "except for trace quantities." The Agency received several comments that argued that the definition of transformation should remain consistent with that in the rule (57 FR 33754) implementing section 604 of the Act. The EPA agrees with those comments.

The definition of "type size" remains unchanged. "Ultimate consumer" remains unchanged. The definition of "warning label" is modified to exclude the reference to the symbol in 82.106 of the regulation.

The final rule adds the following definitions to this section: "consumer," "container containing," "distributor," "export," "import," "importer," "interstate commerce," "product containing," "promotional printed material," "retailer" and "wholesaler."

The definition for consumer is differentiated from "ultimate consumer," in that "consumer" merely means a purchaser of a product that has been introduced into interstate commerce. The definition of "container containing" is added to this final rule. As discussed in V.D.1 above, a "container containing" is a container that holds a controlled substance until the substance can be transferred into the "container, vessel, or piece of equipment" from which the use of the controlled substance will be realized. Examples of such "containers, vessels or pieces of equipment" are degreasing machines. These "containers, vessels, or pieces of equipment" are defined to be products containing as discussed earlier.

In addition, the definition of "container containing" does not reference the time of purchase by the consumer, because containers containing controlled substances must be labeled whenever they contain such substances, regardless of whether they contained such substances at the time of their original purchase.

The definitions for "export," "exporter" and "import" are consistent with the definitions in the regulations promulgated to implement section 604 (57 FR 33754, 33788, July 30, 1992). The term "import" excludes two situations. First, where ships temporarily off-load containers and products that would otherwise be subject to this rule, no import is considered to have occurred. Containers containing class I or class II substances that originate from the United States, are temporarily held in Mexico in bond and are returned to the United States are also not included in the definition of import. The term "importer" is consistent with the definition in the proposed rule for the accelerated phaseout of controlled substances, pursuant to section 606 of the Act, which is being published concurrently with this rulemaking. "Interstate commerce" is defined as the distribution, or transportation of any product between one state, territory, possession, territory or the District of Columbia and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or the District of Columbia. The entry points into interstate commerce for products that are in interstate commerce or will enter into interstate commerce have been revised to include the manufacturer's facility (where a manufacturer has no warehouse) from which a product is released for distribution, sale or use. The definition is also revised to specify that the entry of a product into the warehouse owned by the manufacturer of that product is an "introduction into interstate commerce." EPA received extensive comments regarding the economic and logistical burden of labeling all products in inventory made prior to this date. EPA has revised its definition of "introduction into interstate commerce," for "products manufactured with" and "products containing" controlled substances, EPA defines "introduction into interstate commerce" to be either the entry of such products into the warehouse from which a domestic manufacturer releases the product for shipment, the release of such products or containers by the manufacturer from its manufacturing facility where the manufacturer does not own a warehouse, and in the case of imports, at the site of U.S. Customs clearance. This change in the definition of "introduction into interstate commerce" should significantly lessen the need to label products in inventory as of May 15, 1993. The reasons and justifications for this "grandfather" provision are discussed in section V.B above. Paragraph (a) of this section has

been revised to reflect the "grandfathering" of these products.

The definitions for "distributor," "wholesaler" and "retailer" below convey those commercial entities required to pass a warning statement on all such labeled products through the stream of commerce to the ultimate consumer. The proposed rule did not define these entities; however, they are covered under the regulation. The definition of "distributor" is consistent with the definition promulgated in regulations implementing section 610 of the Act. The definitions for "retailer" and "wholesaler" have been defined in order to clarify the entities responsible for compliance with the regulations promulgated in this rulemaking.

The term "product containing" has been added to the regulation to mean a product, which includes containers, vessels, and pieces of equipment, that physically holds a class I substance at the point of sale to the ultimate consumer remains within the product for its intended use.

As discussed above, EPA has defined a second category of printed information on products in addition to "supplemental printed material." The second category is "promotional printed materials," and includes brochures, flyers, written advertisements, catalogues, circulars, desk references, fact sheets, and similar materials. These materials typically do not accompany the product through to the sale to the consumer or ultimate consumer. Supplemental printed material was revised to exclude promotional printed materials from its definition; supplemental information is information that accompanies a product at the time of purchase. Promotional printed material is suggested as a final option in the case where the alternative labeling placement options discussed earlier are not appropriate because a product is available through ordering systems only. The options for placement in these circumstances are discussed further in § 82.108 of the regulation.

E. Warning Statement Requirements (Section 82.106)

This section contains the warning statement, which by law, must be applied to those products or containers identified in § 82.102 (a) or (b) of the regulation. It also emphasizes that the label must not detract from, interfere with or mar existing labels required on a product's PDP. This section is amended to exempt from the labeling requirements: (1) Products containing trace quantities of unintended residues or impurities of controlled substances; (2) products covered by the use reduction exemption; (3) products manufactured for export only; (4) products undergoing repair; and, (5) products or processes undergoing research and development.

F. Placement of Warning Statement (Section 82.108)

This section describes the various locations where the label may appear in order to satisfy the requirement. The options for labeling and label placement in the proposed rulemaking were unclear to many commenters. It is EPA's intention today to clarify the options for label placement. The overriding requirement is for the warning statement to be "conspicuous and clearly legible" by consumers at the time of purchase. A manufacturer may clearly comply with the requirement by placing the label on its product's principle display panel (PDP). Other means of complying would be to label the outer packaging of the product if the consumer could clearly view the label on such packaging. Alternative placement options such as alternative labels (hang tags, cards, tape, etc.) and supplemental printed materials (invoices, bills of lading, MSDS', etc.) may also fulfill the requirements. When a product is not viewed at the time of purchase, such as a product purchased through mail or telephone orders, use of promotional printed materials is another option. An alternative to using promotional printed information for products which are not viewed at the time of purchase is the direct labeling of a product or its accompanying printed information, defined as supplemental printed information above, so that the consumer views the warning statement at the time of product delivery. This alternative is only available where a product can be returned after delivery or if the purchase is not complete until the time of delivery.

In paragraph (a) of this section, EPA defines the PDP as a placement option that meets the requirements of the law; however, a company may choose to label the packaging on any display panel so long as the label is clearly legible and conspicuous at the time of purchase; to apply the label on outer packaging under paragraph (b) of this section; or to use the alternative labeling options indicated in paragraph (c) of this section. In paragraph (b) "Outer packaging" of this section, the regulatory text is amended to include "warning statement" rather than "warning label," due to the fact that some manufacturers may choose to have the warning text printed directly on the packaging rather than on a label.

Paragraph (c) "Alternative placement" of this section, is amended to include the term "supplemental printed material," which is information that accompanies the product and that the consumer, or ultimate consumer views at the time of purchase. The text is amended to read "warning statement" rather than "warning label," in recognition that manufacturers may choose to include the warning text in the product's literature with the other product information instead of applying an actual label. The addition of the phrase "or accompanies the product or container" enables companies to meet the requirements without having to attach the label to the product when options discussed in paragraph (c) of this section are used. Containers larger than 55 gallon drums are given the option of using supplemental printed material for label placement, since consumers usually view supplemental information rather than the actual vessel itself, at the time of purchase.

Finally, paragraph (d) of this section cites two new methods that companies may use if they are unable to meet the labeling requirements in the other paragraphs of § 82.108, because they distribute or sell their products through a phone or mail ordering system. Under the first option, a company may include the warning statement on promotional printed material. Under the second option, a company may place the warning statement such that it is conspicuous and clearly legible at the time of product delivery as long as the product may be returned after delivery or the purchase is not completed until delivery is accepted (e.g., COD orders). Under this option, the company may meet the requirement that the warning statement be conspicuous and clearly legible by placing the statement on a display panel, or outer packaging or by using the options for alternative placement as described in paragraphs (a), (b), or (c). This paragraph replaces the paragraph on "supplemental printed material," indicated in the proposed rulemaking.

G. Form of Label Bearing the Warning Statement (Section 82.110)

This section indicates the criteria by which a label is judged to be "clearly legible." EPA retains paragraphs (a)(1) and (a)(2) as they appeared in the proposed rulemaking. They specify the typography, layout, and color combination guidelines. Paragraph (b) "Name of Substance," remains unchanged. Paragraph (c) "Combined statement for multiple class I substances," also remains unchanged in this section.

In paragraph (d) "Format," the reference to the symbol, which was not proposed, is deleted. Also in this section, the appearance of the label text is amended so that the text appears parallel to the surrounding text on the product's PDP, display panel, or in the supplemental or promotional printed material, or on other alternative placements rather than parallel to the base on which the product rests. The remainder of this section is unchanged.

The proposed rulemaking defined, in Table 1, the type sizes in relation to the area of the PDP. In paragraph (f)(1) of this section, a minor change is made to include the display panel as the source upon which type size is based, which would include the PDP, rather than apply solely to the PDP.

H. Removal of Label Bearing the Warning Statement (Section 82.112)

Section 82.112 of the proposal prohibited the removal of a label bearing the warning statement except by the ultimate consumer. The proposed section required that the label follow a product through the stream of commerce and not be removed, unless a manufacturer incorporated the name of a substance from a label on a component product into the label for the manufacturer's final product. Paragraph (a) of this section remains unchanged except that it now references a new paragraph (c) in this section. Paragraph (b) is amended to clarify that a warning statement on a product that is being incorporated into another product may be removed by the purchasing manufacturer if that information is then incorporated into the warning statement accompanying the subsequent product or if the exemption under paragraph (c) applies. In a new paragraph (c) of this section, an exemption is permitted for a manufacturer who incorporates into its own product a labeled product manufactured by another company using controlled substances. If the manufacturer uses a controlled substance in the manufacturing of its final product or in the manufacturing of component parts it makes, a label must accompany the product reflecting those substances it used.

I. Compliance by Manufacturers and Importers With Requirements for Labeling of Containers of Controlled Substances, or Products Containing Controlled Substances (Section 82.114)

This section is added to the final rule to distinguish the revised pass-through requirement applicable to "products containing" controlled substances and "containers containing" controlled substances from that applicable to products manufactured with such substances. The proposed rule did not make a distinction because the warning statement was required to be passed through the stream of commerce to the ultimate consumer for all products manufactured with controlled substances, products containing controlled substances, or containers containing controlled substances. Labels on a product being incorporated into an final product were required to be incorporated into the new label accompanying the product to the ultimate consumer.

In today's final rule, this section requires that for all products containing controlled substances and containers containing controlled substances, a label must still be passed through the stream of commerce to the ultimate consumer. If a "product containing" a controlled substance is incorporated into another product, the final product must bear a new warning statement incorporating the information on the incorporated products' warning statement. Paragraph (b), "Reliance on Reasonable Belief," is changed to clarify the responsibilities of importers that import products that are incorporated into their own products. Importers that introduce foreign products into interstate commerce must have a reasonable belief that the import is properly labeled or does not require a warning statement at the site of Customs clearance. Under no circumstances may an importer remove a label from a container of a controlled substance or a product containing controlled substances, unless the container or product is incorporated into a new container or product and the label information accompanying the first container or product is then incorporated into a new label on the final product. Paragraph (c), "Contractual obligations," states that importers may use contractual obligations to show evidence of reasonable belief in determining whether the products manufactured abroad are accurately labeled.

J. Compliance by Manufacturers of Products Manufactured With Controlled Substances (Section 82.116)

This section has been changed to describe the revised pass-through requirement for products manufactured with controlled substances as discussed earlier. It also clarifies the treatment of imports. Any importer that introduces foreign products into interstate commerce must ensure that the product is properly labeled, unless the importer has a reasonable belief that the import does not require a warning statement pursuant to § 82.102 of the regulation at the site of Customs clearance. Products of foreign incorporated companies manufacturing products "manufactured with" controlled substances are subject to the requirements of this subpart if they are imported as defined above. Paragraph (c), "Contractual obligations," states that importers may use contractual obligations to show evidence of reasonable belief that the products manufactured by foreign manufacturers and suppliers are properly labeled.

K. Compliance by Wholesalers, Distributors and Retailers (Section 82.118)

This section describes the responsibilities of distributors, wholesalers and retailers who must pass the label through from their suppliers of products or containers containing or products manufactured with controlled substances to the ultimate consumer. The section remains unchanged.

L. Recoverable Substances Label (Section 82.120)

This section is deleted.

M. Petitions (Section 82.120)

This new § 82.120 describes in detail the process by which a petitioner may submit a petition to exempt a product manufactured with a class I substance from the labeling requirements, or to apply the labeling requirements to a product containing or manufactured with a class II substance. It also explains the procedures by which the Agency will review and evaluate the petitions and the criteria upon which the Agency will base its final determinations. The section remains unchanged.

N. Certification, Recordkeeping and Notice Requirements (Section 82.122)

This section has been added to indicate what procedures are required for persons wishing to claim an exemption from labeling of products manufactured with CFC–113 and methyl chloroform based on the "reduced use exemption," as provided in § 82.106(b)(2).

O. Prohibitions (Section 82.124)

Paragraph (a)(1)(i) of this section states that, effective May 15, 1993, no product or container identified in § 82.102(a) may enter into interstate commerce unless it bears a warning statement that is consistent with § 82.106, or unless the product is temporarily exempted from the labeling requirements as having no potential substitutes pursuant to § 82.120. Paragraph (a)(1)(i) has been amended to note that the following products or

containers do not require labeling: products manufactured before May 15, 1993, which are "grandfathered" under § 82.102(c); products containing only trace quantities of a controlled substance, which are exempted from the labeling requirements under § 82.106(b)(1); products that fall under the reduced use exemption of § 82.106(b)(2); products intended for export only, which are exempted under § 82.106(b)(3); products that are under repair, which are exempted under § 82.106(b)(4); products undergoing research and development, which are exempted under § 82.106(b)(5). This section has also been amended to indicate: (1) That manufacturers who incorporate products purchased from other manufacturers, where such incorporated products have been manufactured with controlled substances, are exempt from the prohibition on removal of the warning statement, under § 82.112(c); and (2) that manufacturers and importers are not required to pass through and incorporate the information that accompanies the incorporated products, pursuant to § 82.116(a).

The placement of the label for products identified in § 82.102(a) must comply with § 82.108, unless the product is temporarily exempted pursuant to § 82.120. Paragraph (a)(2)(1) has been amended to indicate the exclusions under §§ 82.102(c), 82.106(b), 82.112(c), and 82.116(a) discussed above. Such products must bear the warning statement pursuant to § 82.110, unless the label is temporarily exempted pursuant to § 82.120. Paragraph (a)(3)(i) has been amended to indicate that such labeling is not required if the product is not required to bear a label pursuant to §§ 82.102(c), 82.106(b), 82.112(c) or 82.116(a).

Similar provisions apply to products manufactured with or containing class II substances, as indicated in § 82.102(b), except that the effective date of the rules as they apply to such products is January 1, 2015, or at any time after May 15, 1993 that the Administrator finds for a certain product that substitute products or processes are potentially available. Also, the exclusions discussed above under §§ 82.102(c), 82.106(b)(2) and 82.120 are inapplicable to such products.

A new paragraph (a)(5) has been added to this section to indicate the effective date of these prohibitions for effected "products manufactured with" and "products and containers containing" newly listed substances.

Paragraph (b), which referred to the recoverable substances label, is deleted from this section, as that label is no longer required.

VII. Effective Date

The effective date for the labeling requirements in the final rule remains unchanged; section 611 of the Clean Air Act specifically states that the labeling requirements for products manufactured with class I substances, products containing class I substances, and containers containing class I or class II substances are effective 30 months following the enactment of the law, or May 15, 1993. The labeling of products "manufactured with" and "containing" class II substances is required beginning January 1, 2015. (Labeling of particular products manufactured with or containing class II substances may be required before January 1, 2015, if the Administrator determines, after notice and opportunity for comment, that adequate substitutes are available. This rulemaking does not include any such determinations.) EPA does not have the authority under section 611 to revise the effective dates.

EPA recognizes the practical problems the regulated community will have in meeting the May 15, 1993 deadline for labeling of products and containers containing class I substances, products manufactured with class I substances and containers of class II substances, given the late publication of this rule. The Agency recognizes that Congress intended in section 611 that there be one year between promulgation of these regulations and the effective date of the labeling requirements, and that these final regulations have been promulgated over eight months later than Congress intended. The Agency also realizes, based on the comments it has received and its own information relating to the complexity of implementing these labeling requirements, that most manufacturers will need as long as nine months after the date of publication of this rule to comply with these requirements. As a result of these concerns, it is the Agency's policy to take no enforcement action for matters occurring during the first nine months following the publication of these regulations.

The applicability section of the regulations also provides that the effective date of the labeling requirements as they apply to substances listed as class I or class II substances after the promulgation of the regulation will be as provided in the final rule listing the substances, but will in no case be longer than one year after listing. EPA believes that manufacturers will need some amount of lead time after a substance is newly listed before it can comply with the labeling regulations. However, section 611 appears to indicate that the labeling requirements must become applicable one year after listing, at the latest.

Section 611 does not, on its face, address the treatment of newly listed substances. However, its provision for one year of lead time between the date of promulgation of these regulations and the effective date of the labeling requirements, and in the case of products manufactured subject to the labeling requirements through the petition process indicates that Congress intended manufacturers to have some lead time before the requirements took effect. EPA will therefore determine the appropriate effective date for newly listed substances upon listing them.

VIII. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA has instead prepared a detailed background economic analysis which estimates and compares the costs and benefits of the regulation, using the accelerated phaseout as a baseline. There is also a discussion of the latest developments of the Montreal Protocol based on the Fourth Meeting of the Parties in Copenhagen in November 1992.

Based on many revisions to the proposed rule, labeling costs have significantly been reduced, such as the revised label pass-through requirement, which greatly affects the solvent-cleaning sector, a broadening of label placement options, exemptions for expanded incidental uses of ozone-depleting substances and a 95% reduced use exemption provision.

In the background economic analysis document, the Agency provides estimates of the potential costs and benefits in monetary terms; however,

these may not represent all of the potential costs and benefits of the labeling regulation. The costs and benefits are expected to correspond relative to one another; in other words, the higher the benefits, the higher the costs. For example, if consumers choose not to purchase products with warning statements, there could be a corresponding decrease in the use of ozone-depleting substances. If manufacturers anticipate a significant decline in profits due to labeling, they may choose to reformulate or redesign their products in order to eliminate their use of ozone-depleting substances in their manufacturing processes. They would therefore avoid having to label their products. In this case, costs associated with reformulation or redesigning will increase, while costs of labeling will decrease. If manufacturers decide to label their products, only the costs of labeling will be incurred. Benefits will occur when companies reformulate their products or manufacturing processes to avoid labeling due to the reduction in use of ozone-depleting substances.

The Agency estimates that the total cost of labeling products to be $179.3 million per year (see docket, "Regulatory Impact Analysis of the Rule Requiring Labeling of Products Containing or Manufactured with Ozone-Depleting Substances," Chapter 5, "Comparison of Costs and Benefits"), based on 1992 dollars. It further estimated that the costs of reformulation or redesigning will total $292.8 million at a 7% discount rate, and $351.7 million at a 2% discount rate. The total costs in 1992 dollars, applying both discount rates, would be $472.1 million and $531 million respectively.

The total annualized costs at the 7% discount rate would total $180 million over three years and, $184 million at the 2% discount rate.

The benefits for labeling are based on a per kilogram value of $1.00 per year through the year 2075, as established in the Phaseout RIA for the regulation implementing section 604 of the Act (57 FR 33788, July 31, 1992). The benefits of reducing the emissions of methyl chloroform attributed to product reformulations are estimated to entail a value range of $27.2 million to $180.9 million, at a 7% discount rate, and $190.5 million to $720.2 million at a 2% discount rate. The annualized benefits associated with the reduced emissions of ozone-depleting substances as a result of decreased sales of labeled products are estimated, using both discount rates, at $41.55 million and $273.8 million respectively.

The total annualized benefits are estimated therefore to range from $5 million to $11 million over about 75 years at a 7% discount rate, and $12 million to $25 million over the same period of time at a 2% discount rate.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever the Agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial Regulatory Flexibility Analysis (RFA). Such an analysis is not required if the head of an Agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that the regulation will not have a significant impact on a substantial number of small entities and has concluded, as a result, that a formal RFA is not necessary. Instead, EPA has prepared an informal analysis of the impact on small entities in the background economic document (see docket). The Agency considered an across-the-board exemption for small entities, but made the final determination that section 611 does not authorize an exemption since Congress made no indication of such. In addition, the Agency considered an extension of one year for small entities; however, the final determination was made that Congress prescribed an effective date of May 15, 1993 which is inflexible to extensions. Nevertheless, despite these decisions, EPA believes that all businesses will find the costs of the rule minimized due to several key amendments to the labeling requirements described above. The "grandfather" provision for inventory, the revised label pass-through requirement for products manufactured with class I substances, and several exemptions related to ozone-depleting substance use are some of the key changes to the proposed rule which will reduce the tracking, time and cost burdens associated with the proposal that small businesses would otherwise face.

EPA concludes that these changes to the labeling requirements do not warrant a formal regulatory flexibility analysis for the final rule. Similar to the draft RIA for the NPRM, this document analyzes the impacts on companies based on their size of annual sales.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register.

Public reporting burden for this collection of information is estimated to vary from 5 to 12 hours per response with an average of 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223Y, US EPA, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The Agency will respond to any OMB or public comments on the information collection request.

IX. References

Federal Trade Commission. Staff Report on the Cigarette Advertising Investigation (1981)

Rudd, Joel. "Aiding Consumer Nutrition Decisions with the Simple Graphic Label Format." Home Economics Research Journal (March, 1986).

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United Nations Environmental Programme. Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies.

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United Nations Environmental Programme. Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (November 25, 1992).

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Ozone Layer: UNEP/OzL.Pro.3/L.4/Add.4 (Nairobi, 19–21 June, 1991).

United States Department of Commerce, National Bureau of Standards. The Development of Effective Symbol Signs (1982).

United States Department of Health and Human Service, Food and Drug Administration. Compliance Costs of Food Labeling Regulations (1991).

United States Environmental Protection Agency. Manual of Practices to Reduce and Eliminate CFC–113 Use in the Electronics Industry (March, 1990).

List of Subjects in 40 CFR Part 82 Administrative practice and procedure

Air pollution control, Chemicals, Chloroflourocarbons, Exports, Imports, Interstate commerce, Pass-through requirement, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1.The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q).

2.A new subpart E is added to read as follows:

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

Sec.

82.100 Purpose.
82.102 Applicability.
82.104 Definitions.
82.106 Warning statement requirements.
82.108 Placement of warning statement.
82.110 Form of label bearing warning statement.
82.112 Removal of label bearing warning statement.
82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing, controlled substances.
82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.
82.118 Compliance by wholesalers, distributors and retailers.
82.120 Petitions.
82.122 Certification, recordkeeping, and notice requirements.
82.124 Prohibitions.

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

§ 82.100 Purpose.

The purpose of this subpart is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances, pursuant to section 611 of the Clean Air Act, as amended.

§ 82.102 Applicability.

(a) In the case of substances designated as class I or class II substances as of February 11, 1993, the requirements in this paragraph are applicable beginning on May 15, 1993. In the case of any substance designated as a class I or class II substance after February 11, 1993, the requirements in this paragraph of this section are applicable beginning either one year after the effective date of such designation or the date provided in the rulemaking designating such substance as a class I or class II substance, whichever comes first. On the applicability date indicated above, the requirements of this subpart shall apply to the following containers and products except as exempted under paragraph (c) of this section:

(1) All containers in which a class I or class II substance is stored or transported.

(2) All products containing a class I substance.

(3) All products directly manufactured with a process that uses a class I substance, unless otherwise exempted by this subpart or, unless the Administrator determines for a particular product that there are no substitute products or manufacturing processes for such product that do not rely on the use of a class I substance, that reduce overall risk to human health and the environment, and that are currently or potentially available. If the Administrator makes such a determination for a particular product, then the requirements of this subpart are applicable for such product no later than January 1, 2015.

(b) Beginning on January 1, 2015 in any case, or one year after any determination between May 15, 1993 and January 1, 2015, by the Administrator for a particular product that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, the requirements of this subpart shall apply to the following:

(1) All products containing a class II substance.

(2) All products manufactured with a process that uses a class II substance.

(c) The requirements of this subpart shall not apply to products manufactured prior to May 15, 1993, provided that the manufacturer submits documentation to EPA upon request showing that the product was manufactured prior to that date.

§ 82.104 Definitions.

(a) *Class I substance* means any substance designated as class I in 40 CFR part 82, appendix A to subpart A, including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by the Agency at a later date.

(b) *Class II substance* means any substance designated as class II in 40 CFR part 82, appendix A to subpart A, including hydrochlorofluorocarbons and any other substance so designated by the Agency at a later date.

(c) *Consumer* means a commercial or non-commercial purchaser of a product or container that has been introduced into interstate commerce.

(d) *Container* means the immediate vessel in which a controlled substance is stored or transported.

(e) *Container containing* means a container that physically holds a controlled substance within its structure that is intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use.

(f) *Controlled substance* means a class I or class II ozone-depleting substance.

(g) *Distributor* means a person to whom a product is delivered or sold for purposes of subsequent resale, delivery or export.

(h) *Export* means the transport of virgin, used, or recycled class I or class II substances or products manufactured or containing class I or class II substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(i) *Exporter* means the person who contracts to sell class I or class II substances or products manufactured with or containing class I or class II substances for export or transfers such substances or products to his affiliate in another country.

(j) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exceptions:

(1) Temporary off-loading of products manufactured with or containers containing class I or class II substances

from a ship are used for servicing of that ship, and

(2) Bringing containers of class I or class II substances or products containing or manufactured with class I or class II substances into the U.S. from Mexico where the class I or class II substance or container or product had been admitted into Mexico in bond and is of U.S. origin.

(k) *Importer* means any person who imports a controlled substance, a product containing a controlled substance, or any other chemical substance (including a chemical substance shipped as part of a mixture or article), into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee,

(2) The importer of record listed on U.S. Customs Service forms for the import,

(3) The actual owner if an actual owner's declaration and superseding bond has been filed; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

(l) *Interstate commerce* means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

(m) *Manufactured with a controlled substance* means that the manufacturer of the product itself used a controlled substance directly in the product's manufacturing, but the product itself does not contain the controlled substance at the point of introduction into interstate commerce. The following situations are excluded from the meaning of the phrase "manufactured with" a controlled substance:

(1) Where a product has not had physical contact with the controlled substance; or

(2) Where the manufacturing equipment has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process; or

(3) Where the controlled substance has been transformed, except for trace quantities.

(n) *Potentially available* means that adequate information exists to make a determination that the substitute is technologically feasible, environmentally acceptable and economically viable.

(o) *Principal display panel (PDP)* means the entire portion of the surface of a product, container or its outer packaging that is most likely to be displayed, shown, presented, or examined under customary conditions of retail sale. The area of the PDP is not limited to the portion of the surface covered with existing labeling; rather it includes the entire surface, excluding flanges, shoulders, handles, or necks.

(p) *Product* means an item or category of items manufactured from raw or recycled materials, or other products, which is used to perform a function or task.

(q) *Product containing* means a product including, but not limited to, containers, vessels, or pieces of equipment, that physically holds a controlled substance at the point of sale to the ultimate consumer which remains within the product.

(r) *Promotional printed material* means any informational or advertising material (including, but not limited to, written advertisements, brochures, circulars, desk references and fact sheets) that is prepared by the manufacturer for display or promotion concerning a product or container, and that does not accompany the product to the consumer.

(s) *Retailer* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to consumers who buy such product for purposes other than resale.

(t) *Supplemental printed material* means any informational material (including, but not limited to, package inserts, fact sheets, invoices, material safety data sheets, procurement and specification sheets, or other material) which accompanies a product or container to the consumer at the time of purchase.

(u) *Transform* means to use and entirely consume a class I or class II substance, except for trace quantities, by changing it into one or more substances not subject to this subpart in the manufacturing process of a product or chemical.

(v) *Type size* means the actual height of the printed image of each capital letter as it appears on a label.

(w) *Ultimate consumer* means the first commercial or non-commercial purchaser of a container or product that is not intended for re-introduction into interstate commerce as a final product or as part of another product.

(x) *Warning label* means the warning statement required by section 611 of the Act. The term warning statement shall be synonymous with warning label for purposes of this subpart.

(y) *Wholesaler* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution to retailers who buy such product for purposes of resale.

§ 82.106 Warning statement requirements.

(a) *Required warning statements.* Unless otherwise exempted by this subpart, each container or product identified in § 82.102(a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(b) *Exemptions from warning label requirement.* The following products need not bear a warning label:

(1) Products in which trace quantities of a controlled substance remain as a residue or impurity due to a chemical reaction, and where the controlled substance serves no useful purpose in or for the product itself.

(2) Products manufactured using methyl chloroform or CFC–113 by persons who can demonstrate and certify a 95% reduction in overall usage from their 1990 calendar year usage of methyl chloroform or CFC–113 as solvents during a twelve (12) month period ending within sixty (60) days of such certification or during the most recently completed calendar year. In calculating such reduction, persons may subtract from quantities used those quantities for which they possess accessible data that establishes the amount of methyl chloroform or CFC–113 transformed. Such subtraction must be performed for both the applicable twelve month period and the 1990 calendar year. If at any time future usage exceeds the 95% reduction, all products manufactured with methyl chloroform or CFC–113 as solvents by that person must be labeled immediately. No person may qualify for this exemption after May 15, 1994.

(3) Products intended only for export outside of the United States shall not be considered "products introduced into interstate commerce" provided such

products are clearly designated as intended for export only.

(4) Products that are otherwise not subject to the requirements of this subpart that are being repaired, using a process that uses a controlled substance.

(5) Products, processes, or substitute chemicals undergoing research and development, by which a controlled substance is used. Such products must be labeled when they are introduced into interstate commerce.

(c) *Interference with other required labeling information.* The warning statement shall not interfere with, detract from, or mar any labeling information required on the labeling by federal or state law.

§ 82.108 Placement of warning statement.

The warning statement shall be placed so as to satisfy the requirement of the Act that the warning statement be "clearly legible and conspicuous." The warning statement is clearly legible and conspicuous if it appears with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase. Such placement includes, but is not limited to, the following:

(a) *Display panel placement.* For any affected product or container that has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement described in § 82.106 may appear on any such display panel of the affected product or container such that it is "clearly legible and conspicuous" at the time of the purchase. If the warning statement appears on the principal display panel or outer packaging of any such affected product or container, the warning statement shall qualify as "clearly legible and conspicuous," as long as the label also fulfills all other requirements of this subpart and is not obscured by any outer packaging, as required by paragraph (b) of this section. The warning statement need not appear on such display panel if either:

(1) The warning statement appears on the outer packaging of the product or container, consistent with paragraph (b) of this section, and is clearly legible and conspicuous; or

(2) The warning statement is placed in a manner consistent with paragraph (c) of this section.

(b) *Outer packaging.* If the product or container is normally packaged, wrapped, or otherwise covered when viewed by the purchaser at the time of the purchase the warning statement described in § 82.106 shall appear on any outer packaging, wrapping or other covering used in the retail display of the product or container, such that the warning statement is clearly legible and conspicuous at the time of the purchase. If the outer packaging has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement shall appear on such display panel. If the warning statement so appears on such product's or container's outer packaging, it need not appear on the surface of the product or container, as long as the statement also fulfills all other requirements of this subpart. The warning statement need not appear on such outer packaging if either:

(1) The warning statement appears on the surface of the product or container, consistent with paragraph (a) of this section, and is clearly legible and conspicuous through any outer packaging, wrapping or other covering used in display; or

(2) The warning statement is placed in a manner consistent with paragraph (c) of this section.

(c) *Alternative placement.* The warning statement may be placed on a hang tag, tape, card, sticker, invoice, bill of lading, supplemental printed material, or similar overlabeling that is securely attached to the container, product, outer packaging or display case, or accompanies the product containing or manufactured with a controlled substance or a container containing class I or class II substances larger than a 55 gallon drum through its sale to the consumer or ultimate consumer. For prescription medical products that have been found to be essential for patient health by the Food and Drug Administration, the warning statement may be placed in supplemental printed material intended to be read by the prescribing physician, as long as the following statement is placed on the product, its packaging, or supplemental printed material intended to be read by the patient: "This product contains [insert name of substance], a substance which harms the environment by depleting ozone in the upper atmosphere." In any case, the warning statement must be clearly legible and conspicuous at the time of the purchase.

(d) *Products not viewed by the purchaser at the time of purchase.* Where the purchaser of a product cannot view a product, its packaging or alternative labeling such that the warning statement is clearly legible and conspicuous at the time of purchase, as specified under paragraphs (a), (b), or (c) of this section, the warning statement may be placed in the following manner:

(1) Where promotional printed material is prepared for display or distribution, the warning statement may be placed on such promotional printed material such that it is clearly legible and conspicuous at the time of purchase; or

(2) The warning statement may be placed on the product, on its outer packaging, or on alternative labeling, consistent with paragraphs (a), (b), or (c) of this section, such that the warning statement is clearly legible and conspicuous at the time of product delivery, if the product may be returned by the purchaser at or after the time of delivery or if the purchase is not complete until the time of delivery (e.g., products delivered C.O.D.).

§ 82.110 Form of label bearing warning statement.

(a) *Conspicuousness and contrast.* (1) The warning statement shall appear in conspicuous and legible type by typography, layout, and color with other printed matter on the label. (2) The warning statement shall appear in sharp contrast to any background upon which it appears. Examples of combinations of colors which may not satisfy the proposed requirement for sharp contrast are: black letters on a dark blue or dark green background, dark red letters on a light red background, light red letters on a reflective silver background, and white letters on a light gray or tan background.

(b) *Name of substance.* The name of the class I or class II substance to be inserted into the warning statement shall be the standard chemical name of the substance as listed in 40 CFR part 82, appendix A to subpart A, except that:

(1) The acronym "CFC" may be substituted for "chlorofluorocarbon."

(2) The acronym "HCFC" may be substituted for "hydrochlorofluorocarbon."

(3) The term "1,1,1-trichloroethane" may be substituted for "methyl chloroform."

(c) *Combined statement for multiple class I substances.* If a container containing or a product contains or is manufactured with, more than one class I or class II substance, the warning statement may include the names of all of the substances in a single warning statement, provided that the combined statement clearly distinguishes which substances the container or product contains and which were used in the manufacturing process.

(d) *Format.* (1) The warning statement shall be blocked within a square or rectangular area, with or without a border.

(2) The warning statement shall appear in lines that are parallel to the surrounding text on the product's PDP,

display panel, supplemental printed material or promotional printed material.

(e) *Type style.* (1) The ratio of the height of a capital letter to its width shall be such that the height of the letter is no more than 3 times its width.

(2) The signal word "WARNING" shall appear in all capital letters.

(f) *Type size.* The warning statement shall appear at least as large as the type sizes prescribed by this paragraph. The type size refers to the height of the capital letters. A larger type size materially enhances the legibility of the statement and is desirable.

(1) Display panel or outer packaging. Minimum type size requirements for the warning statement are given in Table 1 and are based upon the area of the display panel of the product or container. Where the statement is on outer packaging, as well as the display panel area, the statement shall appear in the same minimum type size as on the display panel.

TABLE 1

Area of display panel (sq.in.)	0–2	>2–5	>5–10	>10–15	>15–30	>30
Type size (in.)[1]:						
Signal word	3/64	1/16	3/32	7/64	1/8	5/32
Statement	3/64	3/64	1/16	3/32	3/32	7/64

> means greater than
[1] minimum height of printed image of letters

(2) Alternative placement. The minimum type size for the warning statement on any alternative placement which meets the requirements of § 82.108(c) is 3/32 inches for the signal word and 1/16 of an inch for the statement.

(3) Promotional printed material. The minimum type size for the warning statement on promotional printed material is 3/32 inches for the signal word and 1/16 of an inch for the statement, or the type size of any surrounding text, whichever is larger.

§ 82.112 Removal of label bearing warning statement.

(a) *Prohibition on removal.* Except as described in paragraph (b) or (c) of this section, any warning statement that accompanies a product or container introduced into interstate commerce, as required by this subpart, must remain with the product or container and any product incorporating such product or container, up to and including the point of sale to the ultimate consumer.

(b) *Incorporation of warning statement by subsequent manufacturers.* A manufacturer of a product that incorporates a product that is accompanied by a label bearing the warning statement may remove such label from the incorporated product if the information on such label is incorporated into a warning statement accompanying the manufacturer's product, or if, pursuant to paragraph (c) of this section, the manufacturer of the product is not required to pass through the information contained on or incorporated in the product's label.

(c) *Manufacturers that incorporate products manufactured with controlled substances.* A manufacturer that incorporates into its own product a component product that:

(1) Was purchased from another manufacturer;

(2) Was manufactured with a process that uses a controlled substance(s); but

(3) Does not contain such substance(s), may remove such label from the incorporated product and need not apply a warning statement to its own product, if the manufacturer does not use a controlled substance in its own manufacturing process.

A manufacturer that uses controlled substances in its own manufacturing process, and is otherwise subject to the regulations of this subpart, must label pursuant to § 82.106, but need not include information regrading the incorporated product on the required label.

§ 82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.

(a) *Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.* Each manufacturer of a product incorporating another product or container containing a controlled substance, to which § 82.102 (a)(1), or, (a)(2) or (b)(1) applies, that is purchased or obtained from another manufacturer or supplier, is required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement accompanying the manufacturer's finished product. Each importer of a product, or container containing a controlled substance, to which § 82.102 (a)(1), (a)(2), or (b)(1) applies, including a component product or container incorporated into the product, that is purchased from a foreign manufacturer or supplier, is required to apply a label, or to ensure that a label has been properly applied, at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The manufacturer or importer of a product that incorporates another product containing from another manufacturer or supplier may rely on the labeling information (or lack thereof) that it receives with the product, and is not required to independently investigate whether the requirements of this subpart are applicable to such purchased product or container, as long as the manufacturer reasonably believes that the supplier or foreign manufacturer is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A manufacturer's or importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products containing a controlled substance or containers of a controlled substance that are supplied to the manufacturer or importer, is evidence of reasonable belief.

§ 82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.

(a) *Compliance by manufacturers or importers incorporating products manufactured with controlled substances, or importing products manufactured with controlled substances.* Each manufacturer or importer of a product incorporating another product to which § 82.102 (a)(3), or, (b)(2) applies, that is purchased from another manufacturer or supplier, is not required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement

accompanying the manufacturer's or importer's finished product. Importers of products to which § 82.102 (a)(3) or (b)(2) applies are required to apply a label, or to ensure that a label has been properly applied at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The importer of a product purchased or obtained from a foreign manufacturer or supplier, which product may have been manufactured with a controlled substance, may rely on the information that it receives with the purchased product, and is not required to independently investigate whether the requirements of this subpart are applicable to the purchased or obtained product, as long as the importer reasonably believes that there was no use of controlled substances by the final manufacturer of the product being imported.

(c) *Contractual obligations.* An importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the importer, or to certify to the importer whether a product was or was not manufactured with a controlled substance is evidence of reasonable belief.

§ 82.118 Compliance by wholesalers, distributors and retailers.

(a) *Requirement of compliance by wholesalers, distributors and retailers.* All wholesalers, distributors and retailers of products or containers to which this subpart applies are required to pass through the labeling information that accompanies the product.

(b) *Reliance on reasonable belief.* The wholesaler, distributor or retailer of a product may rely on the labeling information that it receives with the product or container, and is not required to independently investigate whether the requirements of this subpart are applicable to the product or container, as long as the wholesaler, distributor or retailer reasonably believes that the supplier of the product or container is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A wholesaler, distributor or retailer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the wholesaler, distributor or retailer is evidence of reasonable belief.

§ 82.120 Petitions.

(a) *Requirements for procedure and timing.* Persons seeking to apply the requirements of this regulation to a product containing a class II substance or a product manufactured with a class I or a class II substance which is not otherwise subject to the requirements, or to temporarily exempt a product manufactured with a class I substance, based on a showing of a lack of currently or potentially available alternatives, from the requirements of this regulation may submit petitions to: Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, 6202–J, 401 M Street, SW., Washington, DC 20460. Such persons must label their products while such petitions are under review by the Agency.

(b) *Requirement for adequate data.* Any petition submitted under paragraph (a) of this section shall be accompanied by adequate data, as defined in § 82.120(c). If adequate data are not included by the petitioner, the Agency may return the petition and request specific additional information.

(c) *Adequate data.* A petition shall be considered by the Agency to be supported by adequate data if it includes all of the following:

(1) A part clearly labeled "Section I.A." which contains the petitioner's full name, company or organization name, address and telephone number, the product that is the subject of the petition, and, in the case of a petition to temporarily exempt a product manufactured with a class I substance from the labeling requirement, the manufacturer or manufacturers of that product.

(2) For petitions to temporarily exempt a product manufactured with a class I substance only, a part clearly labeled "Section I.A.T." which states the length of time for which an exemption is requested.

(3) A part clearly labeled "Section I.B." which includes the following statement, signed by the petitioner or an authorized representative:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

(4) A part clearly labeled "Section I.C." which fully explains the basis for the petitioner's request that EPA add the labeling requirements to or remove them from the product which is the subject of the petition, based specifically upon the technical facility or laboratory tests, literature, or economic analysis described in paragraphs (c)(5), (6) and (7) of this section.

(5) A part clearly labeled "Section II.A." which fully describes any technical facility or laboratory tests used to support the petitioner's claim.

(6) A part clearly labeled "Section II.B." which fully explains any values taken from literature or estimated on the basis of known information that are used to support the petitioner's claim.

(7) A part clearly labeled "Section II.C." which fully explains any economic analysis used to support the petitioner's claim.

(d) *Criteria for evaluating petitions.* Adequate data in support of any petition to the Agency to add a product to the labeling requirement or temporarily remove a product from the labeling requirement will be evaluated based upon a showing of sufficient quality and scope by the petitioner of whether there are or are not substitute products or manufacturing processes for such product:

(1) That do not rely on the use of such class I or class II substance;

(2) That reduce the overall risk to human health and the environment; and

(3) That are currently or potentially available.

(e) *Procedure for acceptance or denial of petition.* (1) If a petition submitted under this section contains adequate data, as defined under paragraph (c) of this section, the Agency shall within 180 days after receiving the complete petition either accept the petition or deny the petition.

(2) If the Agency makes a decision to accept a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish a proposed rule in the **Federal Register** to apply the labeling requirements to the product.

(3) If the Agency makes a decision to deny a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish an explanation of the petition denial in the **Federal Register.**

(4) If the Agency makes a decision to accept a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and publish a proposed rule in the **Federal Register** to temporarily exempt the product from the labeling

requirements. Upon notification by the Agency, such manufacturer may immediately cease its labeling process for such exempted products.

(5) If the Agency makes a decision to deny a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and may, in appropriate circumstances, publish an explanation of the petition denial in the Federal Register.

§ 82.122 Certification, recordkeeping, and notice requirements.

(a) *Certification.* (1) Persons claiming the exemption provided in § 82.106 (b)(2) must submit a written certification to the following address:

Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, 6202–J, 401 M Street, SW., Washington, DC 20460

(2) The certification must contain the following information:

(i) The exact location of documents verifying calendar year 1990 usage and the 95% reduced usage during a twelve month period;

(ii) A description of the records maintained at that location;

(iii) A description of the type of system used to track usage;

(iv) An indication of which 12 month period reflects the 95% reduced usage; and

(v) Name, address, and telephone number of a contact person.

(3) Persons who submit certifications postmarked on or before May 15, 1993, need not place warning labels on their products manufactured using CFC–113 or methyl chloroform as a solvent. Persons who submit certifications postmarked after May 15, 1993, must label their products manufactured using CFC–113 or methyl chloroform as a solvent for 14 days following such submittal of the certification.

(4) Persons certifying must also include a statement that indicates that their future annual use will not at no time exceed 95% of their 1990 usage.

(5) Certifications must be signed by the owner or a responsible corporate officer.

(6) If the Administrator determines that a person's certification is incomplete or that information supporting the exemption is inadequate, then products manufactured using CFC–113 or methyl chloroform as a solvent by such person must be labeled pursuant to § 82.106(a).

(b) *Recordkeeping.* Persons claiming the exemption under § 82.106(b)(2) must retain supporting documentation at one of their facilities.

(c) Notice Requirements. Persons who claim an exemption under § 82.106(b)(2) must submit a notice to the address in paragraph (a)(1) of this section within 30 days of the end of any 12 month period in which their usage of CFC–113 or methyl chloroform used as a solvent exceeds the 95% reduction from calendar year 1990.

§ 82.124 Prohibitions.

(a) *Warning statement.* (1) *Absence or presence of warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106(a) of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106 of this subpart, unless such labeling is not required under § 82.106(b), § 82.112(c) or § 82.116(a).

(2) *Placement of warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.106(b), § 82.112 (c), or § 82.116 (a).

(3) *Form of label bearing warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110 of this subpart, unless such labeling is not required pursuant to § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Agency determines for a particular product manufactured with or containing a class II substance, that there are substitute products or manufacturing processes that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110 of this subpart, unless such labeling is not required pursuant to § 82.106(b), § 82.112(c), or § 82.116(a).

(4) On or after May 15, 1993, no person may modify, remove or interfere with any warning statement required by this subpart, except as described in § 82.112 of this subpart.

(5) In the case of any substance designated as a class I or class II substance after [insert date of publication], the prohibitions in paragraphs (a)(1)(i), (a)(2)(i), and (a)(3)(i) of this section shall be applicable beginning one year after the effective date of designation of such substance as a class I or class II substance or shall be applicable beginning on the date provided in the rulemaking designating such substance as a class I or class II substance, whichever comes first.

[FR Doc. 93–2704 Filed 2–10–93; 8:45 am]

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Thursday
February 11, 1993

Part IV

Environmental Protection Agency

40 CFR Parts 232 and 233
Clean Water Act; Section 404 Tribal Regulations; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 232 and 233

[FRL–4121–2]

RIN 2040–AB69

Clean Water Act; Section 404 Tribal Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the Section 404 State Program Regulations by adding the procedures by which an Indian Tribe may qualify for treatment as a State in order to be eligible to subsequently apply for assumption of the dredge and fill permit program under section 404 of the Clean Water Act, and the Clean Water Act Section 404 Program Definitions and Permit Exemptions by adding new definitions for "Federal Indian reservation", "Indian Tribe", and "States". This regulation satisfies the statutory provisions in section 518 of the Clean Water Act with respect to the 404 program and, in part, sections 308 of 309 of the Clean Water Act.

EFFECTIVE DATE: The rule shall be effective March 15, 1993.

ADDRESSES: The administrative record for this rule may be inspected at 499 South Capitol Street, SW., room 711, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lori Williams, Wetlands Division (A104F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–260–5043.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

A. Background
B. Response to Public Comments
1. Treatment of Tribes as States
2. Other Comments
C. Changes in the Proposed Rule
D. State 404 Permit Program Approval Requirements
E. Regulatory Impact Analysis
F. Simplification of EPA Process for Implementing Statutory Authority to Treat Tribes as States
G. Paperwork Reduction Act
H. Regulatory Flexibility Act

A. Background

The over-all objective of the Clean Water Act (CWA) as amended is to restore and maintain the chemical, physical and biological integrity of the Nation's water. The two national goals the Act established in 1972 include: (1) Eliminating the discharge of pollutants into navigable waters and (2) achieving an interim water quality level that would protect fish, shellfish, and wildlife while providing for recreation in and on the water wherever attainable.

Since 1972, section 101(b) of the CWA makes it national policy to recognize and preserve the States' primary responsibility to meet these goals. Over the past 20 years, the Agency has focused on developing standard operating relationships with the States and localities.

In 1972, Congress established the 404 permit program to regulate discharges of dredged or fill material into waters of the United States. Congress, in the 1977 Amendments to the Federal Water Pollution Control Act (the Clean Water Act), gave States the option of assuming the 404 permit program in certain waters of the State, subject to EPA approval. If a State assumes this responsibility, its jurisdiction includes all waters within its border except: (1) Those which are subject to the ebb and flow of the tide plus adjacent wetlands and (2) waters which are presently used or may be susceptible to use (through reasonable improvement) to transport interstate or foreign commerce plus adjacent wetlands. The Corps of Engineers retains jurisdiction over all waters which States cannot assume.

The Act prescribes minimum requirements which States must meet before exercising their option to assume the program and assigned program approval and oversight responsibility to EPA. On May 19, 1980, EPA promulgated regulations to establish procedures and criteria for approval/disapproval of 404 State programs and for monitoring a State program after program approval. In response to State concerns about rigid mandatory requirements, excessive paperwork burdens, intrusive Federal oversight, and general lack of flexibility, EPA promulgated revised regulations on June 6, 1988. These revisions provide the States more flexibility in program design and administration while still meeting the requirements and objectives of the Act. Once a Tribe is determined to be qualified to be treated as a State, the Tribe must meet the requirements for an approvable program specified in 40 CFR Part 233.

Congress, through amendments to both CWA in 1987 and the Safe Drinking Water Act (SDWA) in 1986, has authorized EPA to treat Indian Tribes as States under various provisions of these Acts. Amendments to both statutes required the Agency to promulgate regulations that would establish exactly how Tribes would be treated as States. Specifically, the February 4, 1987 Amendments to CWA added a new section 518, which requires EPA to promulgate regulations specifying how the Agency will treat qualified Indian Tribes as States for the purposes of, among others, the section 404 Dredge and Fill Program described above, to the extent that EPA determines such regulations are necessary to implement section 518.

On November 29, 1989, EPA proposed amendments to the Section 404 State Program Regulations in response to CWA section 518 requirements (see 54 FR 49180). The proposal included an amendment that would add procedures by which an Indian Tribe could qualify for treatment as a State for the purpose of the Section 404 dredge and fill permit program (and, as discussed below, for purposes of sections 308 and 309 of the CWA as they relate to section 404). The proposal also included an amendment to the section 404(b)(1) Guidelines for specification of Disposal Sites for Dredged or Fill Material by adding new definitions for "Federal Indian reservation", "Indian Tribe" and "States". The public comment period closed on January 29, 1990. EPA received a total of 20 comments on the proposed rule.

Pursuant to CWA section 518, the proposal was prepared in consultation with States and Indian Tribes. The proposal was developed with the assistance of an informal work group composed of representatives from Indian Tribes, States, and EPA. In addition, a national consultation meeting involving States and Tribes was held in Denver, Colorado in June of 1988 for the purpose of obtaining additional comments. Finally, EPA distributed a number of drafts of the proposal to all States and tribes (following a mailing list of federally recognized Tribes obtained by the Office of Water) for review and comment prior to issuing the proposed rule.

EPA believes that many of the difficult issues were resolved during the consultation period prior to proposal, and that this explains why relatively few comments were received on the proposal and why relatively few changes to the proposal were required in preparing today's final rule. Another reason is that EPA had previously published similar procedures under CWA section 518 for the section 106 water quality management and planning program (54 FR 14354; Apr. 11, 1989).

Additional background information was included in the preamble to the proposed rulemaking.

Finally, EPA issued very similar regulations treating Tribes as States for purposes of sections 303 and 401 of the

CWA (Water Quality Standards program), which were also proposed on September 22, 1989. EPA received similar comments on most issues. Today's responses to comments echo EPA's responses in that final rule. EPA incorporates all of those responses into today's administrative record by reference, and has not repeated all of them here.

B. Response to Public Comments

The response to public comments is organized into two sections: (1) Treatment of Tribes as States, and (2) other comments. Comments discussed within each of these sections has been further categorized by topic.

1 Treatment of Tribes as States

Comments on the Authority Requirements

a. The Scope of Inherent Tribal Authority

Comment: The issue of whether and how EPA should require Tribes to demonstrate that they meet the requirements of section 518(e)(2) of the CWA, i.e., that they can demonstrate authority to regulate the discharge of dredged or fill material within the boundaries of their reservations, attracted significant comment. Numerous commenters remarked on the significance of the Supreme Court's decision in *Brendale* versus *Confederated Tribes and Bands of the Yakima Nation*, 492 U.S. 408, 109 S.Ct. 2994 (1989) for EPA's programs and today's regulations, although there were widely differing views of how to read the decision. Several commenters asserted that *Brendale* clearly indicates that an Indian Tribe may not enforce the section 404 permit program against non-members of the Tribe on non-Indian-owned fee lands within the boundaries of the reservation or that, at the very least, the Tribe must include detailed factual information that describes the non-Indian lands the Tribe proposes to regulate and the reasons supporting its jurisdictional assertions.

By contrast, other commenters asserted that Tribes invariably possess inherent authority to regulate all reservation waters, and that EPA should presume the existence of such authority and not require Tribes to make any specific factual showing. These commenters asserted that such authority over environmental matters was recognized in *Montana* versus *United States*, 450 U.S. 544 (1981), and not diminished by *Brendale*.

Response: EPA does not read the holding in *Brendale* as preventing EPA from recognizing Tribes as States for purposes of regulating the discharge of dredged or fill material on fee lands within the reservation, even if section 518 is not an express delegation of authority (an issue discussed in detail below). In *Brendale*, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by non-members. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area. The decision reflects some difficult issues in this area of the law and, as the comments indicated, has generated considerable controversy over the extent of Tribal authority.

Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* versus *United States*, which previously had held that:

> To be sure, Indian Tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the Tribe or its members through commercial dealing, contracts, leases or other arrangements * * * A Tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.

Montana, 450 U.S. at 565–566 (citations omitted).

In *Brendale*, the Court applied this test, finding Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–44 (Stevens, J., writing for the Court); *id.* at 449–50 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * * health or welfare." *Id.* at 432 (White, J., writing for the Court). The Agency therefore disagrees with commenters who argue that *Brendale* somehow overrules *Montana*.

As further discussed below, EPA agrees with certain commenters that pending further judicial or Congressional guidance on the extent to which section 518 delegates additional authority to Tribes, the ultimate decision regarding Tribal authority must be made on a Tribe-by-Tribe basis and has finalized the proposed process for making those determinations. Thus, EPA rejects the suggestion of other commenters that EPA make a conclusive statement regarding the extent of Tribal jurisdiction over fee lands for all Tribes and all waters or even a statement regarding any particular reservation, except in the context of an actual treatment as a State application. This is consistent with the approach the Agency adopted under the Safe Drinking Water Act, when it determined that it would not "automatically assume," or adopt, in the first instance, a rebuttable presumption of Tribal authority over all water within a reservation that would operate even in the absence of any factual evidence. See 53 FR 37396, 37399 (September 26, 1988). Nonetheless, EPA sees no reason in light of *Brendale* to assume that Tribes would be *per se* unable to demonstrate authority over water quality management on fee lands within reservation borders. Rather, as discussed below, EPA believes that as a general matter there are substantial legal and factual reasons to assume that Tribes ordinarily have the legal authority to regulate surface water quality within a reservation.

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by non-members but located within a reservation, EPA will examine the Tribe's authority in light of the language of section 518 and evolving case law as reflected in *Montana* and *Brendale*. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana*, 450 U.S. at 565–66. However, in *Brendale* several justices argued that for a Tribe to have "a protectable interest" in an activity, the activity's effect should be "demonstrably serious." *Brendale*, 492 U.S. at 431 (White, J.). In addition, in a more recent case involving Tribal criminal jurisdiction, a majority of the Court indicated in *dicta* that a Tribe may exercise civil authority "where the exercise of Tribal authority is vital to the maintenance of Tribal integrity and self-determination." *Duro* v. *Reina*, 110 S.Ct. 2053, 2061 (1990). See also *Brendale*, 492 U.S. at 450 (Blackmun, J.) (test for inherent Tribal authority

whether activities "implicate a significant Tribal interest"); *id* at 462 (Blackmun, J.) (test for inherent Tribal authority whether exercise of authority "fundamental to the political and economic security of the Tribe").

As discussed above, the Supreme Court, in recent cases, has explored several options to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*, although to date the Court has not agreed, in a case on point, on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an interim operating rule, a formulation of the standard that will require a showing that the potential impacts of regulated activities on the Tribe are serious and substantial.

The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se*. Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare. As a result, the Agency believes that Tribes will usually be able to meet the Agency's operating rule, and that use of such a rule by the Agency should not create an improper burden of proof on Tribes or create the administratively undesirable result of checkerboarding reservations.

Whether a Tribe has jurisdiction over activities by non-members will be determined case-by-case, based on factual findings. The determinations as to whether the required effect is present in a particular case depends on the circumstances.

Nonetheless, the Agency may also take into account the provisions of environmental statutes, and any legislative findings that the effects of the activity are serious in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control reservation environmental quality. See e.g. *Keystone Bituminous Coal Assoc.* v. *DeBenedictis*, 480 U.S. 470, 476–77 and notes 6, 7 (1987). As a result, in making the required factual findings as to the impact of a water-related activity on a particular Tribe, it may not be necessary to develop an extensive and detailed record in each case. The Agency may also rely on its special expertise and practical experience regarding the importance of water management, recognizing that clean water including important habitats (e.g., wetlands, bottom sediments, spawning beds, etc.), is absolutely crucial to the survival of many Indian reservations.

The Agency believes that Congressional enactment of the Clean Water Act establishes a strong Federal interest in effective management of water quality. Indeed, the primary objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a)) and, to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants, into the navigable waters of the U.S. and attaining a level of water quality which is fishable and swimmable (section 101(a)(1)–(2)). Thus the statute itself constitutes, in effect, a legislative determination that activities which affect surface water and important habitat quality may have serious and substantial impacts.

EPA also notes that, because of the mobile nature of pollutants in surface waters and the relatively small length/size stream segments or other water bodies on reservations, in would be practically very difficult to separate out the effects of water quality impairment on non-Indian fee land within a reservation from those on Tribal portions. In other words, any impairment that occurs on, or as a result of, activities on non-Indian fee lands is very likely to impair the water quality of the Tribal lands. This also suggests that the serious and substantial effects of water quality impairment within the non-Indian portions of a reservation are very likely to affect the Tribal interest in water quality. EPA believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of surface water quality on the reservation, would ignore the difficulties of assuring compliance with the section 404 permit program when two different sovereign entities are regulating the same small stream segments.

EPA also believes that Congress has expressed a preference for Tribal regulation of surface water quality to assure compliance with the goals of the CWA. This is confirmed by the text and legislative history of section 518 itself. The CWA establishes a policy of recognizing, preserving, and protecting the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, and to plan the development and use (including restoration, preservation, and enhancement) of land and water resources (section 101(b)). By extension, the treatment of Indian Tribes as States means that Tribes are to be primarily responsible for the protection of reservation water resources. As Senator Burdick, floor manager of the 1987 CWA Amendments, explained, the purpose of section 518 was to "provide clean water for the people of this Nation." 133 Cong. Rec. S1018 (daily ed. Jan. 21, 1987). This goal was to be accomplished, he asserted, by giving Tribes the primary authority to regulate practices which may affect water quality on Indian lands. *Id.*

In light of the Agency's statutory responsibility for implementing the environmental statutes, its interpretations of the intent of Congress in allowing for Tribal management of the section 404 permit program within the reservation are entitled to substantial deference. *Washington Dept. of Ecology* v. *EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985); see generally *Chevron, USA* v. *NRDC*, 467 U.S. 837, 843–45 (1984).

The Agency also believes that the effects of Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on the reservation may be easier to establish in the context of water quality management than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and water quality management. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation * * * does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Commission* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by Federal law. *Id.* at 587–89.

Further, water quality management serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[1] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. See e.g. *Brendale*, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of State zoning decision).

[1] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. See *Keystone Bituminous Coal Association* v. *DeBenedictis*, 480 U.S. 470, 491 n.20 (1987); *Id.* at 512, (Rehnquist, C.J., dissenting).

Moreover, water pollution is by nature highly mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

Operationally, EPA's generalized findings regarding the relationship of water quality to Tribal health and welfare will affect the legal analysis of a Tribal submission by, in effect, supplementing the factual showing a Tribe makes in applying for treatment as a State. Thus a Tribal submission meeting the requirements of § 233.61(c) of this regulation will also need to make a relatively simple showing of facts that there are waters within the reservation used by the Tribe or Tribal members, (and thus that the Tribe or Tribal members could be subject to exposure to pollutants present in, or introduced into, those waters) and that the waters are subject to protection under the Clean Water Act. The Tribe must also explicitly assert that impairment of such waters by the activities of non-Indians, would have a serious and substantial effect on health and welfare of the Tribe. Once the Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of reservation water quality discussed above, presume that there has been an adequate showing of Tribal jurisdiction on fee lands, unless an appropriate governmental entity (e.g., and adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection, rather than engage in confrontations over jurisdiction.

b. The Effect of Section 518 on Tribal Authority Over Non-Indian Activities

Comment: EPA has received letters from three members of Congress, Senator Simpson, Senator Baucus, and Representative Morrison, regarding the impact of *Brendale* on EPA's Indian Policy and the development of "treatment as a State" regulations for EPA water programs in light of the legislative history of section 518. All three commenters asserted that Congress did not intend to expand the scope of Tribal authority over non-Indians on the reservation by the passage of section 518.

Rep. Morrison asserted that he inserted into the Congressional Record a memorandum written by staff on the House Committee on Interior and Insular Affairs regarding section 518 (also inserted into the Congressional Record by Senator Adams at 133 Cong. Rec. S753–54 (daily ed. Jan. 14, 1987)) solely to demonstrate that section 518 was not intended to expand Tribal water quantity rights. 133 Cong. Rec. H184–85 (daily ed. Jan 8, 1987). Rep. Morrison disavowed other statements from that memorandum which might support the proposition that Congress intended to authorize Tribal jurisdiction over non-members on reservations. ("Indian Tribes have the right to regulate lands and other natural resources within the reservation, *including non-Indian owned fee lands or resources.*" *Id.* (emphasis added)). Rep. Morrison stated his belief that Congress did not, by the passage of section 518, expand the scope of Tribal authority over non-Indians. In light of this legislative history, Rep. Morrison asserted that, consistent with *Brendale*, EPA should not allow Tribal regulation of non-members on so-called "open" reservations.

Senators Baucus and Simpson also recommended that EPA consider the legislative history of section 518(e) and the *Brendale* decision and determine not to allow Tribal regulation over non-members on the reservation.

Finally, all three of these Congressional commenters asserted that the legislative history of section 518 clearly shows that it was not intended to affect rights to water quantity under State law. The concerns raised by these Members of Congress echo other comments discussed elsewhere in today's notice. Several commenters asserted that section 518(e)(2) should not be read as an express grant of Congressional authority to Indian Tribes to regulate such fee lands, despite indications in *Brendale* to the contrary.

By contrast, Senators McCain, Burdick, and Inouye, expressed a view that section 518(e) delegates Tribes authority to regulate all waters within reservation boundaries including those on non-Indian fee lands. Some commenters cited *Brendale* for this proposition. The latter argument of these commenters is based upon the opinion of Justice White in *Brendale*. Justice White indicates that certain statutes may delegate Federal authority to Tribes, thereby providing a basis for authority over all lands within a reservation. As Justice White explained, on the record in *Brendale* there could be—

> "no contention * * * that Congress has expressly delegated to the Yakima Nation the power to zone fee lands of nonmembers of the Tribe. *Compare 18 U.S.C. 1151, 1161 (1982 ed., and Supp. V); 33 U.S.C. 1377 (e) and (h)(1) (1982 ed., Supp. V)* [i.e., sections 518(e) and 518(h)(1) of the CWA]."

492 U.S. at 428 (1989) (White, J.) (emphasis added). This language clearly categorizes the two cited statutory schemes as express delegations of Federal authority. Thus, Justice White, *inter alia*, cites the Clean Water Act as an example of an explicit delegation of authority over non-Indian activities to Indian Tribes.

Response: EPA has fully considered the Congressional comments and their interpretation of the legislative history of section 518. EPA must, of course, consider contemporaneous legislative history as it is written, and has been cautioned not to rely on subsequent Statements by Members of Congress. *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355 (DC Cir. 1989), *cert. denied*, 111 S.Ct. 139 (1990).

EPA differs with the Congressional commenters to the extent that they suggest the legislative history of section 518 is clear and expresses an intent to limit the scope of Tribal authority. EPA notes that other legislative history might be interpreted as evincing Congressional intent to confer expanded Tribal authority over non-Indians within the reservation.

In particular, the following colloquy between Senators Inouye and Burdick on this issue is very relevant:

> *Mr. Inouye:* * * * I am concerned about section 518(e)(2). As I read that provision, it enables qualified Indian Tribes to exercise the same water quality regulation jurisdiction *with respect to water that traverses, borders, or is otherwise located within their reservations* [paraphrasing section 518(h)(1) and 18 U.S.C. 1151(a)] that States have for regulation of water outside Indian reservations. Is my understanding of section 518(e) correct?
>
> *Mr. Burdick:* Yes. The intent of the conferees was to assure that Indian Tribes would be able to exercise the same regulatory jurisdiction over water quality matters *with regard to waters within Indian jurisdiction* that States have been exercising over their water.

133 Cong. Rec. S1018 (daily ed. Jan. 21, 1987) (emphasis added). Senator Inouye's statement could arguably support a reading that Congress intended to recognize Tribal authority over all waters within the reservation, including those managed by non-Indians. Mr. Burdick, a member of the

Conference Committee, agrees with Senator Inouye's statement.

However, in EPA's view this colloquy is ambiguous and inconclusive. Senator Burdick, in responding to Senator Inouye, agrees that under section 518 Tribes may regulate waters only if they are already "within Indian jurisdiction." However, Senator Burdick was only recognizing the status quo, i.e., whatever is within Indian jurisdiction may be regulated via section 518. Senator Burdick's statement does not clearly show that he—or the Congress as a whole—intended to legislate that all waters within the reservation are in fact "within Indian jurisdiction." Thus, the colloquy is circular: Indians have jurisdiction if, but only if, they have jurisdiction from some source other than section 518. It does not clearly indicate whether Congress intended to expand what lies "within Indian jurisdiction."

Further, if this colloquy were to be construed as supporting an expansion of Tribal authority, it would arguably conflict with a statement Senator Burdick had made earlier in response to an inquiry from Senator Baucus. In that discussion, Senator Burdick reiterated that section 518 was not intended to affect existing water quantity rights, and added that "*[p]rivate lands* and water rights owners within boundaries of Indian reservations are not to be *additionally* affected by this act." 133 Cong. Rec. S753 (daily ed. Jan. 14, 1987) (emphasis added). This could suggest that the Act was not intended to alter the status quo regarding regulatory authority over these lands.

The legislative history in the House is also unclear as to whether Congress intended to expand Tribal power over non-Indians. The statement in the House staff memorandum cited above supports a view that under current case law Tribes already possess regulatory authority over non-Indians within reservation boundaries; thus it would be unnecessary to delegate such authority to Tribes. Insertion of this memorandum into the Congressional Record could suggest that the House agreed with that view; however, this aspect of the memorandum was never the subject of House discussions, which focused almost exclusively on issues relating to water rights.

EPA believes that if Congress had intended to make a change as important as an expansion of Indian authority to regulate non-members, it probably would have done so through statutory language and discussed the change in the committee reports. Given that the legislative history ultimately is ambiguous and inconclusive, EPA believes that it should not find that the statute expands or limits the scope of Tribal authority beyond that inherent in the Tribe absent an express indication of Congressional intent to do so. See *Montana*, 450 U.S. at 564. Therefore, EPA has decided that it will, as discussed above, continue to recognize inherent Tribal civil regulatory authority to the full extent permitted under Federal Indian law, in light of *Montana*, *Brendale*, and other applicable case law.

EPA believes that Congress only manifested an explicit intent to authorize EPA to treat Indian Tribes as States over any activities within the scope of Tribal authority in light of the relevant principles of Federal Indian law. EPA believes that this approach will best effectuate the overall purposes of the statute.

EPA agrees with those commenters who Stated that Justice White's opinion in *Brendale* can be read to suggest a contrary conclusion, and to indicate that at least four justices of the Supreme Court would apparently interpret section 518(e) as expressly delegating to Tribes the authority to regulate water quality on reservations, including those affected by activities on non-Indian fee lands. Nonetheless, EPA recognizes that Justice White's opinion was not a majority opinion of the Court and was not necessary to the decision even of the plurality that joined it, since the issue was not before the Court in *Brendale*. Nor is there any discussion in the opinion about the somewhat confusing legislative history of section 518. The passing reference in that opinion does not finally resolve the question of whether section 518(e) is a delegation of authority, and, as discussed above, EPA does not believe that it can make an absolute determination that Congress in fact expressed a clear intent on the issue.

EPA agrees with the Congressional commenters that section 518 does not affect existing water quantity rights. This has been the Agency's consistent position, based on the language of Sections 101(g) and 518(a).

C. Procedural Requirements for Demonstrating Inherent Tribal Authority

Comment: Numerous comments submitted before and after the proposed rule was published have suggested that the provisions (see §§ 233.61(b)(3) and 233.61(c)) requiring that Tribes submit a copy of all documents which support the Tribe's assertion of authority is unnecessary, inappropriate, and flows from a misunderstanding of Indian law. These commenters argued that Tribes have inherent authority unless Congress rescinds that authority. In addition, these commenters stated, since section 518 specifically authorizes Tribal authority, no such demonstration and supporting documentation is needed.

Response: As discussed in detail above, the Agency assumes that, in general, Tribes are likely to possess the authority to regulate activities affecting water quality on the reservation. The Agency does not believe, however, that it would be appropriate to recognize Tribal authority and approve treatment as a State requests in the absence of verifying documentation. In addition, in light of the legislative history of section 518, the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved. Therefore, EPA does not believe it is currently appropriate to eliminate the requirement that Tribes make an affirmative demonstration of their regulatory authority. EPA will authorize Tribes to exercise responsibility for the section 404 permit program once the Tribe shows that, in light of the factual circumstances and the generalized findings EPA has made regarding reservation water quality, it possesses the requisite authority.

EPA would advise Tribes, in their Attorney-General Statements, to outline all bases for concluding that the Tribe has adequate authority. This can only help EPA to make a proper determination to treat the Tribe as a State.

As stated in the preamble to the proposal, where the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to an area in dispute, then Tribal assumption of the section 404 permit program would be restricted accordingly. If the authority in dispute were focused on a limited area, this would not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

Comment: Numerous commenters suggested that § 233.61(c), which requires the Tribe to submit a map or legal description of the area over which the Indian Tribe asserts authority to regulate water, should be amended to require that fee lands and lands owned by non-members and non-Indians be shown on the map.

Response: No such amendment was made to the regulation. EPA believes that, in some cases, both States and Tribes may want to identify the location of fee lands on reservations. However, EPA does not believe it is appropriate to specifically require Tribes to submit such information in all cases. EPA also believes that in some cases States are

more likely to have ready access to such information than are Tribes. EPA further believes that the regulation clearly requires Tribes to identify the area over which the Tribe asserts authority to regulate water quality, and that requiring an identification of fee lands and lands owned by non-Indians in all cases is unnecessary and unduly burdensome. Finally, EPA notes that § 233.61(e) gives the Regional Administrator the discretion to require whatever additional information is necessary to support a Tribal application on a case-by-case basis.

d. Treatment as a State for Off-Reservation Waters Within Inherent Tribal Authority

Comment: Several comments were received regarding the geographic scope of programs authorized under section 518(e)(2). The provision authorizes EPA to treat a Tribe as a State for water resources which are held by an Indian Tribe, held in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or *otherwise within the borders of an Indian reservation.*
(emphasis added)

EPA has consistently read the phrase "or otherwise within * * *" as a separate category of water resources and also as a modifier of the preceding three categories of water resources, thus limiting the Tribe to acquiring treatment as a State status for the four specified categories of water resources within the borders of the reservation.

Comments received suggested that EPA should alter its reading of this provision to allow Tribes to qualify for treatment as a State over all water resources within its jurisdiction. These comments asserted that limiting Tribes to water resources within the reservation would prevent a Tribe from obtaining treatment as a State status over water resources outside the reservation to which it has legitimate jurisdictional claim. Examples cited included traditional resources areas (known as "usual and accustomed" areas) outside reservation borders, and all lands held in trust for Tribes by the U.S. Government or held by individual Indians that lie outside reservation borders, lands in "Indian Country" (as defined in 18 U.S.C. 1151) that lie outside reservation borders and, in general, all water resources within the territorial jurisdiction of the Tribe that lie outside reservation borders.

One commenter pointed out that often such lands are subject to Tribal or Federal jurisdiction and are thus beyond the police power and regulatory authority of the State in which they are located. This comment concluded that failure to provide Tribes with an opportunity to obtain treatment as a State status over such lands would create "regulatory voids" in which neither States nor Tribes have clear authority. Several comments suggested that resolving this issue could be accomplished simply by revising the definition of Federal Indian Reservation included in § 233.2.

In contrast, other commenters asserted that EPA is correct in reading the phrase "or otherwise within the borders * * *" as a modifier of the preceding three categories of water resources. These commenters pointed out that failure to do so would render the statute nonsensical and contradict Congressional intent. However, these commenters also asserted that EPA is not correct in reading the phrase "or otherwise within the borders * * *" as a fourth category of water resources, because to do so would render the three previous clauses superfluous. These commenters therefore conclude that section 518(e)(2) should not be read as authorizing Tribes to regulate non-Indian owned lands within the boundaries of the reservation.

Response: Under today's rule, Tribes are limited to obtaining treatment as a State status for only water resources within the borders of the reservation over which they possess authority to regulate the discharge of dredged or fill material. The meaning of the term "reservation" must, of course, be determined in light of statutory law and with reference to relevant case law. EPA considers trust lands formally set apart for the use of Indians to be "within a reservation" for purposes of section 518(e)(2), even if they have not been formally designated as "reservations." *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S.Ct. 905, 910 (1991). This means it is the status and use of the land that determines if it is to be considered "within the reservation" rather than the label attached to it. EPA believes that it was the intent of Congress to limit Tribes to obtaining treatment as a State status to lands within the reservation. EPA bases this conclusion, in part, on the definition of "Indian Tribe" found in CWA section 518(h)(2). As discussed above, EPA also does not believe that section 518(e)(2) prevents EPA from recognizing Tribal authority over non-Indian water resources located within the reservation if the Tribe can demonstrate the requisite authority over such water resources.

Comments on the Capability Requirements

Comment: A variety of comments were received concerning the general issue of Tribal capability (§§ 233.60(d) and 233.61(d)). Comments on this question ranged from suggesting that EPA should require no demonstration of capability at all to making the capability requirements stronger. Several comments asserted that rejecting Tribes based on capability will only heighten unevenness of experience between States and Tribes.

Response: EPA made no change in the regulation. The provision is not unduly burdensome and EPA intends to apply similar procedures for Tribes qualifying as States in all CWA programs. The Clean Water Act establishes basic requirements for a Tribe to meet in order to qualify for treatment as a State. Eliminating the requirement to demonstrate capability would fail to meet these statutory requirements. On the other hand, EPA does recognize the fact that for many Tribes the assumption of various Clean Water Act programs is new. Information necessary for EPA to make determinations of capability must be balanced against the need to allow Tribes to gain experience in CWA programs. EPA believes that today's rule provides that balance.

Comment: Comments were received asserting that the rule should require, as part of the demonstration of capability, a demonstration of separation of powers for executive, legislative, and judicial functions, or at least describe how bifurcation of Tribal regulatory and proprietary roles will occur.

Response: EPA has not required Tribes to demonstrate separation of powers for purposes of treating Tribes as States because such a demonstration is not required by the Clean Water Act. EPA will, however, in the context of deciding to authorize Tribal 404 permit programs, consider potential conflicts of interest where the Tribe would be in the position of issuing a permit to a Tribal entity.

Comment: Several comments were received requesting that EPA clarify how the Agency will evaluate whether the Tribe has a history of successful managerial performance of public health or environmental programs, and clarify how much detail is required in describing a Tribe's history of managerial experience (see § 233.61(d)(1)).

Response: In evaluating Tribal experience in public health and environmental programs, EPA will look for indications that the Tribe has participated in such programs, whether

the programs be those administered by EPA, other Federal Agencies, or of Tribal origin. For example, several Tribes are known to have participated in developing area-wide water management plans or Tribal water quality standards. EPA will also look for evidence of historical budget allocations dealing with public health or environmental programs along with any experience in monitoring in related programs. In general, EPA will look favorably on Tribes which have experience in managing environmental programs, because such experience is an indicator of existing capability and commitment to environmental protection. In most cases, EPA anticipates that submission of a brief narrative statement on this topic will be sufficient.

Comments on the Procedure for Reviewing Tribal Applications

Comment: Several comments were received on the opportunity provided to States to review Tribal assertions of authority (see § 233.62(c). Various commenters believed this provision to be inappropriate because, for example, Tribes do not review State applications for primacy, States have already established their authority in their primacy applications, and the review is inconsistent with EPA's Indian policy. Other comments suggested that States comment along with everyone else during a general public comment period.

Response: The provision allowing participation by other governmental entities in EPA's review of Tribal authority does not imply that States or Federal agencies (other than EPA) have veto power over Tribal applications for treatment as a State. Rather, the procedure is simply intended to identify any competing jurisdictional claim and thereby ensure that the Tribe has the necessary authority to administer the section 404 permit program. The Agency will not rely solely on the assertions of a commenter who challenges the Tribe's assertion of authority; EPA will make an independent evaluation of the Tribal showing and all available information.

In addition, the provision allowing appropriate governmental entities to comment on Tribal assertions of authority is not intended as a barrier to Tribal program assumption. As stated in the preamble to the proposed rulemaking, where disputes regarding Tribal authority are focused on a limited area this will not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

Comment: Several commenters suggested that EPA should provide more definition regarding the "governmental entities" which will be provided notice and an opportunity to comment on the Tribe's assertion of authority (see § 233.62(b). One commenter specifically recommended that EPA notify the Army Corps of Engineers of any Tribal applications received.

Response: EPA defines the phrase "governmental entities" as States, Tribes, and other Federal entities administering land located contiguous to the reservation of the Tribe which is applying for treatment as a State. Such "governmental entities" will be provided up to 30 days to comment on Tribal assertions of authority. Neighboring Tribes will be treated as "governmental entities" regardless of whether the neighboring Tribe is treated as a State for purposes of section 404. Where such governmental entities are States, EPA intends to provide notice and an opportunity to comment to the most appropriate State contacts which may include, for example, the Governor, Attorney General, or the appropriate environmental agency head. The rule limits the Agency to only considering comments from such "governmental entities."

EPA recognizes that city and county governments which may be subject to or affected by a Tribal section 404 permit program may also want to comment on the Tribe's assertion of authority. Although EPA believes that the responsibility to coordinate with local governments falls primarily upon the State, the Agency will make an effort to provide notice to local governments by placing an announcement in appropriate newspapers. Since the rule limits EPA to considering comments from governmental entities, such newspaper announcements will advise interested parties to direct comments on Tribal authority to appropriate State governments.

The process of notifying States and Tribes and consulting with the Department of the Interior, as delineated in this and other EPA regulations implementing the Clean Water Act and the Safe Drinking Water Act, was and is intended merely to assist the Agency in making its determination whether a Tribe has adequate authority to justify treatment as a State by EPA. Such notification and consultation procedures were not and are not intended to establish any form of adjudication or arbitration process to resolve differences between State and Tribal governments. Rather, EPA has a duty to determine whether a Tribe has adequate authority, as defined by Federal law and EPA policy, to carry out the grant or program under consideration. The notification and consultation procedures assist EPA in making this determination by providing information and perspectives from the points of view of neighboring Tribal and State governments and the Federal agency having extensive expertise in Federal Indian law. For these same reasons, EPA believes that formal consultation with the Corps of Engineers on treatment as State applications is probably unnecessary.

However, once the Tribe qualifies for treatment as a State under this regulation and subsequently applies for assumption of the section 404 dredge and fill permit program EPA will consult with the Corps of Engineers as prescribed by regulations (See subpart B—Program Approval).

Finally, EPA wishes to emphasize that the procedure for commenting on Tribal authority is only for the purposes of determining whether the Tribe meets the statutory criteria for treatment as a State, not whether a Tribal 404 permit program should be approved. The existing procedures outlined in 40 CFR 233.15 will be followed. This will ensure full public participation and evaluation of Tribal authority before the Tribe issues 404 permits in lieu of the Corps.

Comment: It is unlawful to limit public comment to just the Tribal demonstration of authority. Section 233.62(c) should allow public review of all four statutory criteria. Furthermore, formal adjudicatory hearings should be held to determine the scope of Tribal jurisdiction before treating the Tribe as a State.

Response: CWA section 518 provides EPA with the authority to determine whether Indian Tribes are qualified to be treated as States. The CWA does not require EPA to provide for public comment to Tribal applications. For three of the criteria which Tribes must meet, EPA believes that the Agency will be able to make appropriate determinations absent any public comment. EPA believes that providing for public comment on these three criteria would unnecessarily complicate and potentially delay the process. For the authority criterion, EPA has provided for a 30 day comment period by appropriate governmental entities because the Agency believes that it will be important to gather all available information regarding Tribal authority prior to making a determination. EPA believes that providing for comment on the authority criterion is appropriate because this is the only criterion which outside comments might help to

address. Furthermore, as noted above, this is only a preliminary determination and does not eliminate the public process that will occur before approval of the Tribal 404 permit program. Thus, EPA believes that formal hearings are unnecessary and would only delay the process with no benefit.

Comment: Several comments pointed out that the proposal did not specify in any detail the procedure by which EPA will consult with the Secretary of the Interior in making a determination concerning challenges to a Tribe's assertion of authority (see § 233.62(d). It was suggested that the consultation process should provide for notice and opportunities for input (e.g., a hearing) to affected Tribes and States.

Response: EPA did not make changes to the proposed rule in response to these comments. However, subsequent to publishing the proposed rule EPA did reach agreement with the Department of the Interior regarding the procedures for conducting such consultations. The procedure established as the Secretary of the Interior's designees the Associate Solicitor, Division of Indian Affairs and the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development). EPA will forward a copy of the application and any documents asserting a competing or conflicting claim of authority to such designees as soon as possible. For most applications, an EPA–DOI conference will be scheduled from one to three weeks after the date the Associate Solicitor receives the application. Comments from the Interior Department will be primarily a discussion of the law applicable to the issue to assist EPA in its own deliberations.

Responsibility for legal advice to the EPA Administrator or the other EPA decision makers will remain with the EPA General Counsel. EPA does not believe that the consultation process with the Department of Interior should involve notice and opportunities for input by States and Tribes because such parties are elsewhere provided appropriate opportunities to participate in EPA's review of Tribal authority.

Comment: Several comments suggested that once EPA makes a determination regarding a Tribal application, EPA should provide notice of its decision to State, Tribal, and local governments and all commenters on the Tribal assertion of authority, and should publish a list of Tribes treated as States in the **Federal Register**.

Response: EPA will take all reasonable means to advise interested parties of the decision reached regarding challenges to Tribal assertions of authority. At a minimum, written notice will be provided to State(s) and other governmental entities that were sent notice of the Tribal application.

Comment: One commenter requested that EPA provide a mechanism for States or other entities to extend the 30-day comment period in § 233.62(c).

Response: EPA interprets this section as giving the Regional Administrator discretion to grant such a request. Nonetheless, given the preliminary nature of the approval of a Tribal application for treatment as a State, EPA will generally not favor significant extensions of time.

Comment: A number of comments suggested that EPA specify a timeframe or change the timeframe associated with the various steps in the application review procedure (§ 233.62).

With regard to the review of the Tribe's assertion of authority (see § 233.62(c)), various comments supported shortening the review period, lengthening the review period, and also adding a provision allowing an extension to the review period.

With regard to final determinations (see § 233.62(d)), several comments suggested that EPA should complete its review and respond to Tribes within 60 days after receipt of an application. Other comments suggested that EPA should conduct a completeness review within 30 days of receipt of a Tribal application. In general, a number of comments advocated some time limit within which EPA would be required to complete the review process.

Response: No timeframes in the review procedure were changed in the regulation in response to comments. The timeframes assigned are consistent with regulations promulgated for other EPA water programs. Because EPA has no reasonable way to predetermine how complete initial applications for treatment as a State might be, what challenges might arise or how numerous or complex the issues might be, the Agency deems it inappropriate to attempt to establish timeframes that may not allow sufficient time for resolution. Also, several of the comments appear to be based on early experience with the "treatment as a State" process. EPA believes that as Tribes, States, and EPA become more familiar with working together on "treatment as a State" procedures, the delays associated with approval of early applications will cease. Thus, EPA believes it unnecessary to establish additional deadlines in the regulation.

Other Comments on Treatment of Tribes as States

Comments: Several commenters suggested that as part of the treatment as a State process, EPA require Indian Tribes to describe how they will protect constitutional rights of non-Tribal members in issuance and enforcement of 404 permits, that Tribes waive their sovereign immunity, and provide for voting rights for non-members.

Response: EPA notes that constitutional rights of both Indians and non-Indians exist without explicit recognition in a Federal regulation. The regulation provides a mechanism for a Tribe to demonstrate that it meets the criteria of CWA section 518(e). EPA believes it is inappropriate to consider any other factors in light of the preliminary nature of the approval of a Tribe for treatment as a State. EPA may consider such issues when reviewing an application for Tribal program assumption, although the Agency notes that it generally would lack the authority to mandate changes in the structure of a Tribal government in such a situation.

Comment: EPA should make clear that qualification for treatment as a State under one program is not dispositive for applications under other programs.

Response: That is the correct interpretation of this rule. As discussed previously, however, EPA expects that once a Tribe has qualified for one program, the key step toward assumption of other programs, in most cases, will be demonstrating appropriate capability.

Comment: A variety of comments were received concerning the general issue of the Tribe's criminal enforcement authority. Comments ranged from strong objection to the proposed regulation without an amendment to the CWA, to specifically State that criminal enforcement can be waived, to support for the proposed regulation as written.

Response: EPA provided a detailed rationale for the proposed enforcement provision (§ 233.63) in the preamble to the proposed regulation (See 54 FR 49181,2).

Since the comments raised no significant new issues, much of that discussion is merely repeated here.

As is the case for States, an Indian Tribe must have its own legal authorities to administer a program under the CWA; EPA cannot delegate its own authority. However, the Agency considered whether the lack of comprehensive criminal enforcement authority would preclude Tribes from applying for the National Pollution Discharge Elimination System (section 401) and the Dredge and Fill Permit programs (section 404) that currently require such authority for an approvable State program.

Section 1451 of SDWA specifically states that Indian Tribes are not required to exercise criminal enforcement jurisdiction for primary enforcement responsibility. The CWA amendments, however, do not include similar language indicating criminal enforcement authority over all individuals on the reservation as a State where such authority is currently required for State program assumption.

The Agency realizes that a comprehensive criminal enforcement requirement could raise substantial impediments to Tribal assumption of those CWA programs that require such authorities of States. Federal law bars Indian Tribes from criminally trying or punishing non-Indians in the absence of a treaty or other agreement to the contrary. *Oliphant* v. *Suquamish Indian Tribe* 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian court or tribunal from imposing any criminal fine greater than $5,000 (25 U.S.C. 1302(7)).

The Agency believes that even though Congress did not explicitly waive the requirement under CWA, as under SDWA, Congress nonetheless intended Tribes to be able to obtain primacy without demonstrating comprehensive criminal enforcement authority. If EPA were to infer that Congress, by failing to insert language similar to that contained in section 1451 of SDWA, intended not to waive the criminal enforcement requirement, EPA's reading would make part of section 518 of CWA a nullity, since absent further legislative action, no Tribe would be able to assume a program under 402 or 404 CWA. This reading would contradict the apparent intent of section 518 to allow Tribes to assume all specified CWA programs where they meet the 518(e) criteria.

Section 233.41 of the 404 State Program Regulations (SPR) requires that a State have criminal enforcement authority to have an approvable 404 State program. This notice proposes to amend the existing regulations so that Tribes will not be required to exercise comprehensive criminal enforcement jurisdiction as a condition to assuming the 404 program. Tribes would instead be required to provide for the referral of criminal enforcement matters when Tribal enforcement authority does not exist (e.g., non-Indians or fines over $5,000) to EPA and/or the Corps as the parties agree, in an appropriate and timely manner. Such procedures must be established in a formal Memorandum of Agreement (MOA) with the Regional Administrator and/or the appropriate District Engineer(s) of the Corps. There may be a single MOA among the Tribe, EPA and the Corps; separate MOA's between the Tribe and EPA and the Tribe and the Corps; or only one MOA, between the Tribe and EPA or the Corps, if the parties so agree. The MOA(s) used to satisfy this agreement may, but do not have to be, the same as those required in 40 CFR 233.13 and 233.14.

Thus, the lack of comprehensive Tribal criminal enforcement authority should not prevent a Tribe from having an approvable 404 State program.

Therefore we have made no change in the regulation as proposed. However, we did move the provision for Tribal criminal enforcement authority from Subpart G Treatment of Indian Tribes as States, (233.63) to Subpart E Compliance Evaluation and Enforcement and redesignated it "233.41(f) Provision for Tribal criminal enforcement authority."

Other Comments

Comments on Trust Responsibility

Comment: EPA received several comments regarding its assertion that the "Federal trust responsibility" owed to Indian Tribes, as it applies to EPA actions under the CWA, is defined by the terms of the CWA.

Certain comments asserted that EPA should explicitly clarify whether the CWA defines any trust obligations to Tribes and, if so, where and how that obligation will be expressed. Other commenters not only asked for clarification, but asserted that EPA must State that the Federal-Tribal trust relationship "exists independently of and informs EPA decision making" concerning the CWA and State-Tribal disputes. Still another comment asked EPA to clarify that the proposed regulations are not to be read as modifying or abrogating EPA's trust responsibility.

Response: EPA recognizes the responsibility owed by the Federal government as trustees for the affairs of Indian Tribes. However, the Agency does not believe the trust responsibility precludes EPA from playing an impartial role in the dispute resolution process.

Comments on Definitions Proposed for Sections 230.3 and 233.2

Comment: EPA should change the proposed definition of a Tribe in §§ 230.3 and 233.2 to mean any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental powers and functions over a Federal Indian Reservation.

Response: No change was made. The rule reflects the statutory definition. However, we moved the definitions of "Federal Indian reservation," "Indian Tribe," and "State" proposed for § 230.3 to § 232.2 Definitions—for consistency with the placement of other section 404 program definitions.

Comments on Dispute Resolution

Comment: EPA should add a mechanism for resolving disputes over Tribal 404 permits similar to that proposed for the section 303 program.

Response: Section 518(e) requires EPA to provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of different water quality standards that may be set by States and Indian Tribes located on common bodies of water. Congress directed EPA to develop a mechanism to resolve the consequences of States and Tribes setting different water quality standards. Hence, EPA included such a mechanism with the regulations treating Tribes as States for the water quality standards program. The statute does not, however, require issuance of a similar mechanism when Tribes are treated as States for purposes of any other CWA program, including the permit programs under sections 402 and 404. Nor does the legislative history of section 518 suggest that Congress thought such a dispute resolution mechanism would be necessary outside of the water quality standards context.

Treating an Indian Tribe as a State for purposes of the 404 program is somewhat different than treating a Tribe as a State for purposes of setting water quality standards. Once a Tribe is treated as a State for purposes of 404, the Tribe must still apply for authorization to issue 404 permits in lieu of the Corps of Engineers on the reservation, following the procedures of 40 CFR 233.15. Those procedures allow for public comment on the proposed Tribal permit program approval, which will allow States to raise any disputes regarding Tribal authority or other concerns. Thus, a separate dispute resolution mechanism would be unnecessary. Once a Tribe is treated as a State and subsequently submits its standards for approval, EPA will not solicit public comment on, nor re-evaluate whether the Tribe has the authority to adopt such standards.

In addition, if a Tribe subsequently assumes the 404 permit program, approval of a Tribal 404 permit is unlikely to cause "disputes" between a Tribe and a State which need to be resolved beyond those disputes which cannot be resolved by existing mechanisms. If EPA determines that the Tribe has an approvable permit program under part 233, then, by definition,

neither the Corps of Engineers nor the State will be issuing 404 permits in assumable waters in that reservation. (Note that the Corps of Engineers does retain the permitting authority in non-assumable waters.) Thus, there is no direct conflict with State authority to issue permits off the reservation. Furthermore, the decision of who will issue 404 permits on the reservation does not affect what water quality standards must be met under that permit. In other words, any water quality standards set by either a Tribe or a State adjacent to or downstream of the reservation must be met in the 404 permit, whether that permit is issued by the Tribe, the Corps of Engineers, or the State. Any dispute over the terms of that permit are reflected in a dispute over the underlying water quality standards, which can be resolved by the existing mechanism. In simplest terms, the Indian 404 rule affects who is the permitting authority, not the substance of the permits.

For the above reasons a separate dispute resolution mechanism is therefore unnecessary.

C. Changes in the Proposed Rule

As stated above, the only changes to the proposed regulations were (1) to move the provision for Tribal criminal enforcement Part G, Treatment of Indian Tribes as States, § 233.63 to Part E, Compliance Evaluation and Enforcement, and redesignated § 233.41(f) and (2) to move, without change the definitions of "Federal Indian reservation," "Indian Tribe," and "State" proposed for 230.3 to § 232.2 Definitions. Moving the provision for Tribal criminal enforcement is appropriate because a Tribe's criminal enforcement authority and how to handle criminal enforcement matters will be determined when and if a Tribe applies for assumption of the section 404 dredge and fill permit program once EPA has determined that the Tribe is eligible to be treated as a State for the section 404 permit program. The definitions were moved for consistency with the placement of other section 404 definitions.

D. State 404 Permit Program Approval Requirements

In response to comments, EPA wishes to emphasize that Tribes which obtain treatment as a state for purposes of section 404 pursuant to today's rule must further comply with the provisions of part 233 to obtain authorization of its 404 permit program. EPA has made no changes to these requirements with respect to Tribes. Thus, a Tribe must submit an application which satisfies the requirements of § 233.10, including submission of Memoranda of Agreement with the EPA Administrator and the Secretary of the Army (§ 233.13–.14), and submission of a Statement of the Attorney General (or the Tribal equivalent) which, *inter alia*, discusses the basis for asserting jurisdiction on Indian lands (§ 233.12(b)). EPA will process these applications pursuant to the procedures in § 233.15.

On August 9, 1991, the Administration announced a comprehensive plan for the protection of the Nation's wetlands. Included were a number of actions to improve the workability of the Clean Water Act section 404 regulatory program, which regulates the discharge of dredged or fill material into wetlands. Among these changes will be support for measures to increase the role of States in the wetlands permitting process. When such changes have been identified, amendments to the section 404 State Program Regulations (See 40 CFR 232–233) and other applicable legal authorities will be implemented, where appropriate. The section 404 State Program Regulations, modified in accordance with the Administration's wetlands protection program, will apply to Indian Tribes qualifying for treatment as a State under today's rule.

EPA wishes to clarify that under today's final rule any Tribe which is approved to be treated as a State for purposes of section 404 will automatically be eligible to be treated as a State for purposes of section 309(a)(1), which addresses Federal enforcement of CWA permits issued by authorized States. As discussed above, a Tribe treated as a State for purposes of section 404 would subsequently be eligible to apply to administer the 404 permit program under the applicable provisions of 40 CFR part 233. EPA would assert the authority to enforce any 404 permit issued by an Indian Tribe treated as a State which had obtained authorization under part 233. The same is true for enforcement of a permit issued by a Tribe treated as a State for purposes of the NPDES permit program. Thus, EPA does not need to and does not plan to issue separate regulations dealing with treatment as a State for section 309.

In addition, any Tribe treated as a State for purposes of the section 404 program will also automatically be eligible to be treated as a State for purposes of section 308 (inspection authority) with respect to 404 permits issued by the Tribe. The Agency has adopted this approach for similar reasons as section 309. Pursuant to the requirements of section 404(h)(1)(B), the existence of State inspection authority is part of the 404 State permit program authorization requirements, for which a Tribe may apply once it is treated as a State under section 404. See 40 CFR 233.40. EPA also does not plan to issue separate regulations for treatment as a State under section 308.

E. Regulatory Impact Analysis

Compliance With Executive Order 12291

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As discussed earlier the purpose of this rule is to amend the existing State Program Regulations (part 233) by adding the procedures by which an Indian Tribe, if it chooses to apply, may qualify for Treatment as a State in order to be eligible to subsequently apply for assumption of the section 404 permit program administered jointly by the Corps of Engineers and EPA. The provisions of part 233 for assumption are not changed by this rule. Therefore, the economic impact of this rule on Indian Tribes is the cost associated with the preparation of requests for a determination of treatment as a State under section 518(e) of the Clean Water Act. The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments for OMB to EPA and any response to these comments will be available for public inspection from the person listed at the beginning of this notice. Since the rule has only minor economic impacts it does not meet the definition of a major rule. The Agency, therefore, is not conducting a Regulatory Impact Analysis.

F. Simplification of EPA Process for Implementing Statutory Authority To Treat Tribes as States

As discussed earlier, this rule was originally proposed in November 1989.

The Agency had already completed all of its internal reviews of this rule when, on November 10, 1992, EPA's Deputy Administrator signed a memorandum entitled "Simplification of EPA's Process for Treating Tribes as States." By that memorandum, the Agency formally adopted a new policy for simplifying the process for treating Indian Tribes in the same manner in which it treats States under several statutes, including the Clean Water Act.

EPA has decided to issue this rule as final so that there will be no further delays in allowing interested Tribes to seek approval to operate the 404 permit program. EPA recognizes, however, that some changes to today's rule may be necessary to implement fully its new policy on treatment as a State simplification. EPA plans to make necessary changes to its treatment as a State regulations across all of its programs in the near future; it will make any necessary changes to this regulation at that time. In the interim, EPA will continue to work with Tribes to ensure that the existing regulations do not pose an unreasonable burden on Tribes wishing to assume authority for the 404 permit program.

G. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040–0140.

Public reporting burden for this collection of information is estimated to be an average of 100 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

H. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

—Small governmental jurisdictions—any government of a district with a population of less than 50,000.
—Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.
—Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).

Using the above definition of small entity, EPA has concluded that the final regulation, as promulgated, will not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is unnecessary. EPA has reached this conclusion based on the following considerations.

The final regulation will not have a significant impact on a substantial number of small governmental organizations. Approximately 275 Indian Tribes are potentially eligible for treatment as a State under the wetlands program. While most Indian Tribes meet the definition of small governmental organizations provided above, EPA believes the number of Tribes subject to significant impacts as a result of this proposed regulation will be a very small fraction of the total that apply. EPA considers the information required by this rule to be the minimum necessary to effectively treat Indian Tribes as States for the purpose of the 404 permit program.

The regulation will not have a significant impact on a substantial number of small businesses. Although it is conceivable that an Indian Tribe could impose additional requirements upon a permit applicant than the Corps, EPA believes that these situations will be rare. Any additional economic impact on the public resulting from implementation of this regulation is expected to be negligible, since Tribal regulation of these activities is limited to areas within Tribal jurisdiction.

The regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this final regulation, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR part 232

Intergovernmental relations, Water pollution control

40 CFR part 233

Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

Dated: January 13, 1993.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, parts 232 and 233 of title 40 of the Code of Federal Regulations are amended as follows:

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

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

Authority: 33 U.S.C. 1344.

2. Section 232.2 is amended by removing the paragraph designations and adding, in alphabetical order, new definitions for "Federal Indian reservation," "Indian Tribe" and "State" to read as follows:

§ 232.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in this part, which meet the requirements of § 233.60.

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General

2. Section 233.1 as amended by revising paragraph (b) to read as follows:

§ 233.1 Purpose and scope.

* * * * *

(b) Except as provided in § 232.3, a State program must regulate all discharges of dredged or fill material into waters regulated by the State under section 404(g)–(1). Partial State programs are not approvable under section 404. A State's decision not to assume existing Corps' general permits does not constitute a partial program. The discharges previously authorized by general permit will be regulated by State individual permits. However, in many cases, States other than Indian Tribes will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State which is not an Indian Tribe to regulate activities on Indian lands does not constitute a partial program. The Secretary of the Army acting through the Corps of Engineers will continue to administer the program on Indian lands if a State which is not an Indian Tribe does not seek and have authority to regulate activities on Indian lands.

* * * * *

3. Section 233.2 is amended by removing the paragraph designations and adding, in alphabetical order, new definitions for "Federal Indian reservation," and "Indian Tribe" and by revising the definition of "State" to read as follows:

§ 233.2 Definitions.

* * * * *

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

* * * * *

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe, as defined in this part, which meet the requirements of § 233.60. For purposes of this part, the word State also includes any interstate agency requesting program approval or administering an approved program.

4. Section 233.41 is amended by adding paragraph (f) to read as follows:

§ 233.41 Requirements for enforcement authority.

* * * * *

(f) *Provision for Tribal criminal enforcement authority.* To the extent that an Indian Tribe does not assert or is precluded from asserting criminal enforcement authority (§ 233.41(a)(3) (ii) and (iii)), the Federal government will continue to exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region and Corps District(s) with jurisdiction, shall develop a system where the Tribal agency will refer such a violation to the Regional Administrator or the District Engineer(s), as agreed to by the parties, in an appropriate and timely manner. This agreement shall be incorporated into joint or separate Memorandum of Agreement with the EPA Region and the Corps District(s), as appropriate.

5. Part 233 is amended by redesignating subpart G as subpart H, redesignating § 233.60 as § 233.70; and by adding a new subpart G consisting of §§ 233.60 through 233.62 to read as follows:

Subpart G—Treatment of Indian Tribes as States

Sec.

233.60 Requirements for treatment as a State.

233.61 Request by an Indian Tribe for a determination of treatment as a State.

233.62 Procedure for processing an Indian Tribe's application for treatment as State.

Subpart G—Treatment of Indian Tribes as States

§ 233.60 Requirements for treatment as a State.

Section 518(e) of the CWA, 33 U.S.C. 1378(e), authorizes the Administrator to treat an Indian Tribe as a State for purposes of making the Tribe eligible to apply for the 404 permit program under section 404(g)(1) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(c) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the Untied States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction an alienation, or otherwise within the borders of the Indian reservation.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective section 404 dredge and fill permit program.

§ 233.61 Request by an Indian Tribe for a determination of treatment as a State.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies for treatment as a State pursuant to section 518 of the Act, for purposes of the section 404 program. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 233.60. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This Statement shall:

(1) Describe the form of the Tribal government.

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c)(1) A map or legal description of the area over which the Indian Tribe asserts regulatory authority pursuant to section 518(e)(2) of the CWA and § 233.60(c);

(2) A statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's assertion under section 518(e)(2) (including the nature or subject matter of the asserted regulatory authority);

(3) A copy of all documents such as Tribal constitutions, laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of regulatory authority;

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective 404 permit program. The Statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized by the Indian Self Determination & Education Act (25 U.S.C. 450 *et seq.*), The Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering a section 404 dredge and fill permit program or plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound 404 dredge and fill permit program.

(e) The Administrator may, at his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator has previously determined that a Tribe has met the requirements for "treatment as a State" for programs authorized under the Safe Drinking Water Act or the Clean Water Act, then that Tribe need only provide additional information unique to the particular statute or program for which the Tribe is seeking additional authorization.

(Approved by the Office of Management and Budget under control number 2040–0140)

§ 233.62 Procedures for processing an Indian Tribe's application for treatment as a State.

(a) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 233.61 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's complete application for treatment as a State, the Regional Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance and basis for the Tribe's assertion that it meets the requirements of § 233.60(c).

(c) Each governmental entity so notified by the Regional Administrator shall have 30 days to comment upon the Tribe's assertion under § 233.60(c). Comments by governmental entities shall be limited to the Tribe's assertion under § 233.60(c).

(d) If a Tribe's assertion under § 233.60(c) is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 233.60(c) for the dredge and fill permit program.

(e) If the Regional Administrator determines that a Tribe meets the requirements of § 233.61, the Indian Tribe is then eligible to apply for 404 program assumption.

(f) The Regional Administrator shall follow the procedures described in § 233.15 in processing a Tribe's request to assume the 404 dredge and fill permit program.

[FR Doc. 93–2699 Filed 2–10–93; 8:45 am]

BILLING CODE 6560–50–M

federal register

Thursday
February 11, 1993

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 770, et al.
Determination of Areas of Undue Concentration of Poverty-Level Population, and Conforming Amendments: Withdrawal of Interim Rule; Proposed Conforming Amendments; Rule and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 770, 882, 889, 890, 941

[Docket No. R–93–1627; FR–3256–I–02]

RIN 2501–AB37

Determination of Areas of Undue Concentration of Poverty-Level Population, and Conforming Amendments; Notice of Withdrawal of Interim Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of withdrawal of interim rule.

SUMMARY: On January 13, 1993 (58 FR 4262), HUD published an interim rule which established, in a new part 770, objective, quantitative criteria for determining whether a proposed site for HUD-assisted housing contains an undue concentration of persons living in poverty (poverty-level population). The "undue concentration" determination is one of the site and neighborhood standards currently applied to the selection of sites for HUD-assisted housing.

The purpose of this document is to advise the public that HUD is withdrawing the January 13, 1993 interim rule. The Department, on further consideration, believes that it would benefit from public comment before issuing this rule for effect. Accordingly, the Department is re-issuing this rule as a proposed rule, which is published elsewhere in today's edition of the **Federal Register**. Any comments received on the January 13, 1993 interim rule will be considered as comments received on the proposed rule published today.

EFFECTIVE DATE: The interim rule is withdrawn as of February 11, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Shenk, Director of the Division of Economic and Market Analysis, Office of Policy Development and Research, Department of Housing and Urban Development, room 8222, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–0577 or (202) 708–0770 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

List of Subjects

24 CFR Part 770

Grant programs—housing and community development, Reporting and recordkeeping.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Disabled, Mental health programs, Civil rights, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Withdrawal of Interim Rule

Accordingly, the interim rule which would amend title 24 of the Code of Federal Regulations by adding a new part 770, and by making conforming amendments to parts 882, 889, 890, and 941, and which was published in the **Federal Register** on January 13, 1993 (58 FR 4262) is withdrawn.

Authority: 42 U.S.C. 1437, 1441, 3535(d), 3608, 5301.

Dated: February 8, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–3324 Filed 2–10–93; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 770, 882, 889, 890, 941

[Docket No. R-93-1627; FR-3256-P-03]

RIN 2501-AB37

Determination of Areas of Undue Concentration of Poverty-Level Population; and Proposed Conforming Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations to create a new part 770, which would establish objective, quantitative criteria for determining whether a proposed site for HUD-assisted housing contains an undue concentration of persons living in poverty (poverty-level population). The "undue concentration" determination is one of the site and neighborhood standards currently applied to the selection of sites for HUD-assisted housing. These site and neighborhood standards are codified in HUD's regulations governing programs that involve construction, rehabilitation and acquisition of HUD-assisted housing. The existing undue concentration standard, however, does not set out the criteria by which a determination of undue concentration is to be made.

Accordingly, this proposed rule would create a new part 770, which would prescribe uniform and objective criteria for making an undue concentration determination. This proposed rule also would make conforming amendments to §§ 882.404, 882.708, 889.230, 890.230, and 941.202 to reference the standards set forth in new part 770. The purpose of this rule is to ensure that proposed sites for HUD-assisted housing are evaluated under the undue concentration standard in a uniform and consistent manner.

This proposed rule was previously published as an interim rule on January 13, 1993 (58 FR 4262). The Department, on further consideration, believes that it would benefit from public comment before issuing this rule for effect. Accordingly, by notice published elsewhere in today's edition of the **Federal Register**, the Department has withdrawn the interim rule. Any comments received on the January 13, 1993 interim rule will be considered as comments received on this proposed rule.

DATES: Comment due April 12, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: David E. Shenk, Director of the Division of Economic and Market Analysis, Office of Policy Development and Research, Department of Housing and Urban Development, room 8222, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-0577 or (202) 708-0770 (TDD). These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

HUD's approval of a proposed location, or site, for HUD-assisted housing is conditioned upon the site meeting certain standards. These standards, referred to as "site and neighborhood standards," assess the suitability of the proposed site, and the area surrounding the site, to accommodate and sustain assisted housing. One of the site and neighborhood standards is referred to as the "undue concentration standard," the purpose of which is to assess the concentration of low-income persons in the area of the site in which HUD-assisted housing is proposed to be located.

The undue concentration standard has been codified, to date, as follows—"the site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower income persons." Although this language appropriately reflects the policy intended to be served by this standard (the undue concentration standard)—promoting the provision of assisted housing in a variety of locations by avoiding significant concentrations of low-income families in any one section of a metropolitan area, it fails to explain the methodology to be used to ensure that this policy is served.

On January 13, 1993 (58 FR 4262), HUD published an interim rule which established, in a new part 770, objective, quantitative criteria for determining whether a proposed site for HUD-assisted housing contains an undue concentration of persons living in poverty (poverty-level population). By notice published elsewhere in today's **Federal Register**, HUD is withdrawing the January 13, 1993 interim rule. The Department, on further consideration, believes that it would benefit from public comment before issuing this rule for effect.

Accordingly, this proposed rule is identical to the January 13, 1993 interim rule. For information concerning the origins of the undue concentration standard, HUD's study which prompted development of a new standard, and an analysis of the proposed new undue concentration standard, the Department refers the reader to the discussion of these subjects in the preamble to the January 13, 1993 (58 FR 4262-4267).

Other Matters

Environmental Impact

At the time of development of the January 13, 1993 interim rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Policy Act of 1969. That Finding remains applicable to this proposed rule and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Regulatory Impact

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Although the criteria for determining an undue concentration of poverty-level population has been quantified by this rule, HUD does not anticipate a significant difference between the number and types of housing sites approved or rejected under the previous standard, and those approved or rejected under the new standard.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C.

605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on small entities. Applicants for HUD-assistance for construction, acquisition or rehabilitation of HUD-assisted housing are subject, under HUD's existing regulations, to certain site and neighborhood standards. These standards include avoidance of areas that contain an undue concentration of persons living in poverty. This proposed rule would establish numerical criteria by which HUD will determine whether a proposed site area contains, or will contain if the application for HUD-assisted housing is approved, an undue concentration of poverty-level population. The establishment of this criteria should ensure acceptable, consistent and uniform project site determinations within and among HUD's Regions.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would further implement HUD's stated policy, consistent with statutory objectives, to avoid locating assisted housing in areas that contain an undue concentration of persons living in poverty by establishing numerical criteria pursuant to which HUD will determine whether a proposed site area contains, or will contain if the application for assisted housing is approved, an undue concentration of poverty level population.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule would not have the potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. The purpose of the revised undue concentration standard is to avoid locating assisted housing in neighborhoods where social and economic conditions are undesirable for potential residents, and untenable for sustaining assisted housing viability. No significant change in this policy would result from promulgation of this rule.

Semiannual Agenda of Regulations

This rule was listed as sequence number 1380 in HUD's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51409) pursuant to Executive Order 12291 and Regulatory Flexibility Act.

List of Subjects

24 CFR Part 770

Grant programs—housing and community development, Reporting and recordkeeping.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Disabled, Mental health programs, Civil rights, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Accordingly, title 24 of the Code of Federal Regulations is proposed to be amended by adding a new part 770, and by making conforming amendments to parts 882, 889, 890, and 941, which would read as follows:

PART 770—DETERMINATION OF AREAS OF UNDUE CONCENTRATION OF POVERTY-LEVEL POPULATION

Sec.

770.101 Purpose.
770.102 Applicability.
770.103 Definitions.
770.104 Procedures for determining areas of undue concentration.
770.105 Exception for revitalization of site area.

Authority: 42 U.S.C. 1437, 1441, 3535(d), 3608, 5301.

§ 770.101 Purpose.

The purpose of this part is to recognize the importance, in the administration of its housing programs, of promoting a greater choice of housing opportunities by avoiding the location of HUD-assisted housing in areas containing an undue concentration of persons living in poverty (poverty-level population). Accordingly, this part establishes the criteria to be used by HUD to determine whether an area in which HUD-assisted housing is located or proposed to be located contains, or would contain, if the housing were approved by HUD, an undue concentration of poverty-level population.

§ 770.102 Applicability.

(a) *Covered HUD programs.* The undue concentration site standard, as set forth in this part, is applicable to the following HUD programs:

(1) Section 8 Housing Assistance Payments Program—Existing Housing; Special Procedures for Moderate Rehabilitation (24 CFR part 882, subpart D);

(2) Section 8 Housing Assistance Payments Program—Existing Housing; Section 8 Certificate Program Attached to Units (Project-Based Certificate Assistance) (24 CFR part 882, subpart G);

(3) Supportive Housing for the Elderly (24 CFR part 889);

(4) Supportive Housing for Persons with Disabilities (24 CFR part 890);

(5) Public Housing Development (24 CFR part 941).

(b) *Exemption for nonmetropolitan areas.* The undue concentration standard is not applicable to nonmetropolitan areas.

(c) *Date of applicability.* This part is applicable to applications for assistance submitted in response to a notice of funding availability (NOFA), published after the [insert date which is 30 days after publication date of the final rule], that is soliciting applications for construction, rehabilitation or acquisition of HUD-assisted housing under one of the programs set forth in paragraph (a) of this section.

§ 770.103 Definitions.

As used in this part:

Area of the site or *site area* means the census tract within a metropolitan area in which HUD-assisted housing is proposed to be located. If the assisted housing site encompasses more than one census tract, the site area is defined to include all of the affected census tracts. For assisted housing sites located on census tract boundaries, the site area means the census tract in which the assisted housing is located and the census tract(s) adjacent to the boundary on which the assisted housing development is located.

Area of undue concentration means a site area in which the HUD-assisted housing is proposed to be located, and

in which the percentage of population living below the poverty-level, based on information from the most recent decennial census, is equal to or greater than 40 percent of the total population of the site area, or would be equal to or greater than 40 percent of the population of the site area, if the application for HUD-assisted housing were approved by HUD for assistance.

Census tract means the geographical area delineated by the U.S. Bureau of the Census in the most recent decennial census as a census tract. Block Numbering Areas (BNAs) are the census tract equivalents for delineating small statistical subdivisions where census tracts have not been established.

HUD or *Department* means the Department of Housing and Urban Development, including its Regional and Field Offices to which responsibility is assigned to perform functions under this part.

HUD-assisted housing means low-income housing acquired, developed (constructed) or rehabilitated with assistance provided by HUD under one or more of the programs listed in § 770.102(a).

Metropolitan area means a Metropolitan Statistical Area or Primary Metropolitan Statistical Area as established by the Office of Management and Budget.

Population means the total population of the applicable site area based on data from the most recent decennial census.

Poverty-level population means the population of the applicable site area with incomes below the poverty level, as determined by the U.S. Bureau of the Census in the most recent decennial census.

§ 770.104 Procedures for determining areas of undue concentration.

(a) *Compliance with undue concentration standard.* Proposed sites for new construction, rehabilitation or acquisition of housing developments, for which assistance is sought under one or more of the programs listed in § 770.102(a), must promote a greater choice of housing opportunities by avoiding undue concentration of poverty-level population. To determine whether a proposed site meets this specific site and neighborhood standard, the following procedures apply.

(b) *Responsibility for determining compliance with undue concentration standard.* HUD's Regional and Field Offices have responsibility for determining whether a proposed site for HUD-assisted housing is located in an area of undue concentration, or whether the site area would become an area of undue concentration if the housing were approved for assistance.

(c) *Unacceptable site area.* Unless granted an exception to the undue concentration standard under § 770.105 of this part, or granted a waiver under HUD's general waiver authorities (24 CFR 799.101, 899.101, 999.101), a proposed site will be ineligible for approval under the undue concentration standard if the site is located in an area in which the percentage of poverty-level population is equal to or greater than 40 percent of the total population of the site area, or will become equal to or greater than 40 percent of the population of the site area, if the housing is approved for assistance.

(d) *Undue concentration determination*—(1) *Determining percentage of poverty-level population.* To determine whether a site area contains (or would contain, if proposed housing is approved for assistance) an undue concentration of poverty-level population, the applicable HUD office will consult the most recent decennial census data to determine the percentage of persons living in the site area who have incomes below the poverty level. Subject to certain exceptions set forth in § 770.105 of this part, proposed sites will be approved under the undue concentration site standard only if the percentage of poverty-level population is less than 40 percent of the population of the site area.

(2) *Determining projected increase in poverty-level population for below-threshold sites.* To determine whether a site area with a poverty-level population below the 40 percent threshold would be increased to 40 percent or greater if the site were approved by HUD, the applicable HUD office will divide the estimated total poverty-level population of the site area (estimated to include the expected poverty-level of the housing for which HUD assistance is sought) by the estimated total population of the site area (estimated to include the total expected population of the proposed housing development). The estimated total population of the site area, and the estimated total poverty-level population of the site area will be determined based on the most recent decennial census data available as follows:

(i) *Determining the estimated total population of the site area.* To determine the estimated total population of the site area, the number of persons residing in the site area shall be added to the estimated total population of the proposed housing development.

(A) The number of persons residing in the site area shall be determined from the most recent decennial census data available.

(B) The estimated total population of the proposed development is determined by multiplying the average number of persons for each unit size of the development, by the total number of units of that size in the proposed housing development. The total number of persons for each unit size are then added, and the sum represents the estimated total population of the proposed housing development.

(C) Unit size is categorized by the number of bedrooms in the unit. The average number of persons per unit size is as follows, based on occupancy guidelines for HUD assisted housing:

Size of unit	Average persons per unit
Efficiency (0 bedroom)	1
One bedroom	1.5
Two bedrooms	3
Three bedrooms	4.5
Four bedrooms	6

For units with more than four bedrooms, the average number of persons per bedroom for general occupancy units is 1.5 persons. For units in elderly and disabled housing, the averages are: one person for efficiency (0-bedroom) and one-bedroom units; and two persons for two-bedroom units.

(ii) *Determining the estimated total poverty-level population of the site area.* To determine the estimated total poverty-level population of the site area, the number of poverty-level persons residing in the site area shall be added to the estimated poverty-level population of the proposed housing development.

(A) The number of poverty-level persons residing in the site area shall be determined from the most recent decennial census data available.

(B) The estimated poverty-level population of the proposed housing development shall be 65 percent of the estimated total population of the development, as determined under paragraph (d)(2)(i) of this section.

§ 770.105 Exception for revitalization of site area.

A proposed site for HUD-assisted housing located in an area of undue concentration may be granted an exception from the undue concentration site standard on the basis that the site area is undergoing or will undergo revitalization. For an exception to be granted on this basis, the applicant seeking HUD assistance for the proposed housing development must request a determination by the

responsible HUD office that the proposed site for the housing development is located in an area of undue concentration. Where the HUD office has made such a determination, the applicant may request an exception if it believes the requirements of paragraph (a) or (b) of this section are met. The request for an exception must be: In writing; accompany the applicant's application for assistance; and identify whether an exception is requested under paragraph (a) or paragraph (b) of this section. No special form for requesting an exception is required.

(a) *Federally-designated enterprise zone.* If the site area is located within the boundaries of a Federally-designated Enterprise Zone, an exception to the undue concentration standard will be granted automatically.

(b) *Revitalization of site area under local jurisdiction sponsorship or approval*—(1) *Verifiable evidence of planned revitalization.* If the site area is currently undergoing revitalization as a result of either public or private sector support (or both), and if there are firm plans for revitalization of the area that have been adopted or approved, or for which adoption or approval is pending, by the unit of general local government or another appropriate governing body, an exception to the undue concentration standard may be granted. For an exception to be granted on this basis, the responsible HUD office must verify, through a review of supporting documentation, obtained by HUD with the cooperation and assistance of the applicant, that the expenditure of funds and the concentrated efforts being undertaken will result in significant improvements to the site area.

(2) *Conditional approval where revitalization plans are pending.* If the revitalization plan is pending (for example, all planning stages are not completed or final approval has not been received from the applicable governing body), any HUD approval of an assisted housing development will be conditional and subject to the approval of the final plan by the applicable governing body no later than two years from the date of the assisted housing application.

(3) *Form of revitalization plans.* Revitalization plans need not be restricted to the site area or tailored to meet the requirements of the assisted housing application. Revitalization plans can be broader in scope, in terms of geographic area and subject matter coverage, and they can be part of city-wide redevelopment or urban renewal processes, as would be the case for a Comprehensive Housing Affordability Strategy (CHAS). In order to qualify as an approvable exception to under this part, the revitalization activities already underway and those proposed must be determined to have direct physical, social and economic impact on the site area.

(4) *Required components of revitalization plan.* Approvable revitalization plans must include the following information:

(i) A listing and evaluation of the specific projects and budget information on the amounts of State and local funds already expended, or committed for expenditure within two years, for redevelopment, revitalization and preservation efforts in the site area;

(ii) A listing and evaluation of the specific projects and budget information on the amounts of Federal funds already spent or committed for Federal loan and grant programs for redevelopment, revitalization and preservation efforts in the site area;

(iii) A listing of private sector investment in residential and nonresidential developments and improvements in the area, including those that are completed, under construction or are to begin construction within two years;

(iv) Evidence of active steps, programs and progress in improving social conditions and expanding services in the site area;

(v) Evidence of a continuing commitment for renewal, revitalization or preservation of the area based on the development schedule of the local revitalization plan, which shows the specific developments and activities that will have been completed or substantially underway by the time the HUD-assisted housing has been developed, and the approximate date of completion of redevelopment of area; and

(vi) If revitalization is occurring as a result of private sector support, evidence that the revitalization efforts involved will significantly improve conditions by the time the proposed HUD-assisted housing is developed.

(5) *Relationship of revitalization plan to CHAS.* Because a jurisdiction's housing strategy in areas of undue concentration is affected, the revitalization plan shall be referenced and made part of any Comprehensive Housing Affordability Strategy (CHAS) covering the site area.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. The authority for part 882 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d).

2. In § 882.404, paragraph (b)(3) would be revised to read as follows:

§ 882.404 Housing quality standards.

* * * * *

(b) * * *

(3) Promote a greater choice of housing opportunities by avoiding areas that contain (or would contain if the housing were approved for assistance) an undue concentration of poverty-level population, as determined under 24 CFR part 770.

* * * * *

3. In § 882.708, paragraph (d) would be revised to read as follows:

§ 882.708 New construction: Site and neighborhood standards.

* * * * *

(d) The site must promote a greater choice of housing opportunities by avoiding areas that contain (or would contain if the housing were approved for assistance) an undue concentration of poverty-level population, as determined under 24 CFR part 770.

* * * * *

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

4. The authority for part 889 would continue to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

5. In § 889.230, a new paragraph (f) would be added to read as follows:

§ 889.230 Site and neighborhood standards.

* * * * *

(f) The site must promote a greater choice of housing opportunities by avoiding areas that contain (or would contain if the housing were approved for assistance) an undue concentration of poverty-level population, as determined under 24 CFR part 770.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

6. The authority for part 890 would continue to read as follows:

Authority: 42 U.S.C. 3535(d), 8013.

7. In § 890.230, a new paragraph (h) would be added to read as follows:

§ 890.230 Site and neighborhood standards.

* * * * *

(h) The site must promote a greater choice of housing opportunities by avoiding areas that contain (or would contain if the housing were approved for assistance) an undue concentration

of poverty-level population, as determined under 24 CFR part 770.

PART 941—PUBLIC HOUSING DEVELOPMENT

8. The authority for part 941 would continue to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, 3535(d).

9. In § 941.202, paragraph (d) would be revised to read as follows:

§ 941.202 Site and neighborhood standards.

* * * * *

(d) The site must promote a greater choice of housing opportunities by avoiding areas that contain (or would contain if the housing were approved for assistance) an undue concentration of poverty-level population, as determined under 24 CFR part 770.

Dated: February 8, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–3325 Filed 2–10–93; 8:45 am]

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Thursday
February 11, 1993

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1209
Mushroom Promotion, Research, and Consumer Information Order; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV–92–701]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule specifies the general rules and regulations to be established under the Mushroom Promotion, Research, and Consumer Information Order (Order). The Order is authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act). This rule implements provisions of the Order concerning nominations procedures; the criteria for financial statements; the payment of assessments, including the application of late payment and interest charges; the procedures for claiming an exemption from assessments; and the filing of reports.

DATES: This interim final rule is effective February 11, 1993. Comments must be received by May 12, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular working hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456, telephone: (202) 720–5976.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the Mushroom Promotion, Research, and Consumer Information Order (7 CFR part 1209). The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112) hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1521–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, and industry information organized and operated under the United States or any State.

The Act further provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1927 of the Act, a person subject to the Order may file with the Secretary of Agriculture (Secretary) a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition, which will be final if in accordance with the law. The Act provides that the district courts, of the United States in any district in which a person who is a petitioner resides or carries on business, are vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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.

The most recent Department estimate of mushroom growers in the United States indicates that there are 390 growers. Between 100 and 150 growers fall under the definition of producer as defined in the Act and will be subject to the provisions of the Order. A minority of these producers are classified as small entities. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, who will be subject to the provisions of the Order. A majority of these handlers are classified as small entities. There are no more than 3 importers, out of approximately 30 importers, who will be subject to the provisions of the Order. A majority of these importers are classified as small entities.

During the period from July 1, 1991, through June 30, 1992, Department statistics indicate that approximately 743 million pounds of mushrooms were produced in the United States. Of this total production, 498 million pounds (67 percent) were for the fresh market and 245 million pounds (33 percent) were for the processed market. During this same period, Department statistics indicate that approximately 4.6 million pounds of fresh mushrooms were imported into the United States. Major exporting countries, as a percentage of total fresh mushroom imports, were Canada (95.2 percent), Japan (1.3 percent), Spain (1.0 percent) and Singapore (0.8 percent).

The Order provides for the payment of assessments by producers and importers who produce or import, on average, over 500,000 pounds of mushrooms annually that are marketed or imported for fresh use. In the first year that the Order is in effect the rate of assessment cannot exceed one-quarter of one cent per pound of mushrooms. This rate of assessment can increase incrementally in the second and third year of the Order, but cannot exceed one cent per pound in subsequent years. The Order requires an estimated 100 first handlers of fresh mushrooms, a majority of whom are classified as small entities, to collect and remit such assessments.

In the first year of the Order, an assessment rate of one-quarter of one cent per pound of fresh mushrooms marketed or imported could result in a total assessment collection of $1.1 million. Beginning in the fourth year of the Order, a maximum assessment rate of one cent per pound of fresh mushrooms marketed or imported could result in a total assessment collection of $4.5 million. The economic impact of a

one cent or less assessment per pound of fresh mushrooms on producers and importers would not be significant relative to the potential benefits to be gained from such a program of promotion, research, consumer information, and industry information.

The Order also imposes a reporting and recordkeeping burden on producers, first handlers, and importers. This burden should average approximately seven hours per year and its economic impact would not be significant relative to the potential benefits to be gained from such a program.

The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this action regarding the nominee background statement form, the first handler's report, and the exemption application have been approved by the Office of Management and Budget (OMB). The first handler's report and the exemption application are assigned OMB control number 0581–0093. The nominee background statement form is assigned OMB control number 0505–0001. Information collection requirements contained in this rule include:

(1) A nominee background statement form for Mushroom Council membership. The estimated number of individuals completing this form is 18 during the first year of the Order and approximately 6 per year thereafter. Two eligible individuals will be nominated for each open position on the Council, each of these individuals will have an estimated average reporting burden of 6 minutes per form;

(2) A requirement that each first handler and importer who markets or imports fresh mushrooms annually must file reports at specified intervals. The estimated number of first handlers and importers filing such reports is 103, each submitting a maximum of 12 reports per year, with an estimated average reporting burden of 30 minutes per report. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual marketings; and

(3) An exemption application for persons who produce or import, on average, 500,000 pounds or less of fresh mushrooms annually seeking exemption from assessments and recordkeeping requirements. The estimated number of persons filing this application is 340, each submitting one application per year, with an estimated average reporting burden of 15 minutes per application.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

On January 8, 1993, the Mushroom Promotion, Research, and Consumer Information Order became effective. The Order authorizes the development of a nationally coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the fresh market; maintain and expand existing markets and uses for fresh mushrooms; and develop new markets and uses for fresh mushrooms.

This action provides rules and regulations needed to implement several provisions of the Order.

Section 1209.200 of this rule provides that the definitions for this subpart are the same as those prescribed in §§ 1209.1 through 1209.21 of the Order.

Sections 1209.231 through 1209.235 of this rule contain procedures whereby producers and importers are nominated to serve on the Mushroom Council.

Section 1209.30 of the Order provides for the establishment of an administrative body, the Mushroom Council (Council), which will administer the Order. The Council will be composed of at least four and not more than nine members. Members will be nominated by producers or importers within their respective regions and appointed by the Secretary. Four geographic regions have been established, representing the geographic distribution of mushroom production throughout the United States, with one member who is a producer nominated and appointed from each region that produces, on average, at least 35 million pounds of mushrooms annually. A fifth region will be established, representing importers throughout the United States, when imports reach, on average, at least 35 million pounds of mushrooms annually. Subject to the nine-member limit on the number of Council members, the Secretary will appoint an additional member to the Council representing any region that produces or imports, on average, an additional 50 million pounds of mushrooms annually.

All producers and importers within a region may participate in the nomination process provided that their region produces or imports, on average, at least 35 million pounds of mushrooms annually. Nominations for appointments to the Council may be made either at regional caucuses or by mail ballots, except that nominations for appointments to the initial Council will be made through regional caucuses. Whether at a regional caucus or by mail ballot, two nominees will be selected for each open position on the Council. The individual receiving the highest number of votes cast will be one of the nominees and the individual receiving the highest volume of production or importation voted will be the other nominee. Should an individual receive both the highest number of votes cast and the highest volume of production or importation voted, the individual with the second highest number of votes cast will be the other nominee.

Section 1209.233 of this rule provides procedures for the regional caucuses and § 1209.235 provides mail balloting procedures. A representative of the Secretary will conduct the caucuses to nominate the initial Council members. At subsequent regional caucuses, this rule provides that a caucus chairperson shall be elected by eligible voters present, and the chairperson will coordinate the nomination process at that meeting. The caucus chairperson is also responsible for providing the Department with a report on the caucus which shall include the names of the nominees and minutes. This report provides the Department with a record of the caucus. Without such a record, particularly without the names of nominees, the Department will be unable to initiate the nominee selection process. Section 1209.333 also specifies that this information be provided to the Department within 14 days after the meeting. This 14 day time frame is considered reasonable and necessary in terms of expediting the nominee selection process.

In addition, this action provides, in § 1209.235, that nominations may be conducted by mail ballot rather than regional caucuses. Mail balloting may be conducted should the Council determine that such means would be more practical and cost effective. Examples of when mail balloting might be conducted include when producers are thinly spread over many States within a region; when few producers exist within a region; when producers or importers are in disagreement about holding a regional caucus; or when producers or importers are in agreement about not holding a regional caucus.

Section 1209.237 of this rule limits a producer's or importer's representation on the Council to one current member. The purpose of this limitation is to ensure that no one producer or importer has a dominant position on the Council. In addition, a member of the Council shall be disqualified from serving on the Council should such individual cease to be affiliated with the region the individual represents. Should such a situation occur, the affected region's producers or importers will be allowed to nominate a successor for the open position on the Council.

In § 1209.51, the Order provides that producers and importers who produce or import, on average, over 500,000 pounds of mushrooms for fresh use annually will be required to pay assessments. Such assessments cannot exceed one cent per pound of mushrooms. The assessments will be used to fund programs, plans, and projects relating to promotion, research, consumer information, and industry information. This maximum rate of assessment cannot be realized until the fourth year of the Order. Assessments will be collected and remitted to the Council by first handlers of domestic mushrooms and by the U.S. Customs Service (USCS) on imported mushrooms. Importers will be responsible for remitting assessments not collected by the USCS.

Pursuant to § 1209.51 of the Order, § 1209.251 of this rule addresses the payment of assessments. It states that first handlers are responsible for collecting assessments on domestic mushrooms and remitting such amounts directly to the Council on a monthly basis not later than the fifteenth day after the end of the month such mushrooms were marketed to or through them. Producers who are also first handlers are responsible for paying assessments on the mushrooms they handle and remitting such assessments directly to the Council on a monthly basis not later than the fifteenth day after the end of the month such mushrooms were marketed. Under the Act and Order, importers are required to pay an assessment on all mushrooms imported for marketing in the United States. Importers are required by the Act to pay assessments to the Council in the manner prescribed by the Order. Section 1209.51(e) of the Order prescribes that each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the USCS or in such other manner as may be established by rules and regulations approved by the Secretary. Accordingly, importers must make prompt payment to the Council of any assessment amount not collected by the USCS at the time of entry or withdrawal for consumption into the United States.

Further, pursuant to § 1209.51(g)(2) of the Order, § 1209.251 of this rule establishes a one time payment charge in the amount of 10 percent of the outstanding balance due to the Council. This charge will be applied each time all assessments due are not remitted by the fifteenth day and received the last day of the month immediately following the end of the month the mushrooms involved were marketed or, in the case of imports, not collected by the USCS at the time of entry or withdrawal for consumption into the United States. This amount is in keeping with good business practices in that 10 percent, while not considered excessive, is considered to be substantive enough that it should serve as an effective deterrent to encourage first handlers, producers, and importers to remit assessments in a timely manner. Further, this rate is consistent with later payment charges levied under other similar research and promotion programs.

In addition to the late payment charge, this action sets the interest rate that will be applied to outstanding balances at 1.5 percent per month. This rate will also be applied to any accounts delinquent beyond the last day of the second month following the month the assessments are due and will be applied to the late payment charge and any accrued interest as well as to the outstanding assessment balance. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council. This provision is intended to ensure that assessments are remitted to the Council in a timely manner. Further, the interest rate is consistent with interest charges levied under similar research and promotion programs.

Section 1209.51(i) of the Order provides that, in lieu of the monthly assessment, the Council is authorized to accept advance payment of assessments for the ensuing fiscal year, or portion thereof. Accordingly, § 1209.251(h) of this rule provides procedures for such advance payments. These procedures provide that first handlers must file with the Council an initial report estimating the volume of assessable mushrooms during the period involved and prepay the estimated assessments. Such persons will also provide a final report of actual marketings during the period involved and remit any unpaid assessments. Further, any overpayment of assessments will be returned to the first handler after receipt by the Council of the final report of actual marketings during the period involved. The Council shall not, in any case, be obligated to pay interest on any advance payment. Advancement payment is a service provided by the Council to first handlers. The intent of providing this service is to simplify and expedite the remittance process. Therefore, as this form of payment is strictly voluntary and is provided for the convenience of those remitting assessments, the Council should not be obligated to pay interest on any funds received in this manner.

Section 1209.52 of the Order exempts from assessments those persons who produce or import, on average, 500,000 pounds or less of fresh mushrooms annually. It also exempts domestic mushrooms which are exported, and domestic and imported mushrooms which are commercially processed. This section provides that to claim such exemption, persons shall apply to the Council, in the form and manner prescribed in the rules and regulations. Accordingly, § 1209.252 of this rule prescribes that persons claiming an exemption during a fiscal year shall apply to the Council for a certificate of exemption. On receipt of such application, the Council shall determine whether a certificate of exemption may be granted and will then issue a certificate to persons deemed eligible. Persons who are issued a certificate must provide their exemption number to first handlers in order not to be subject to collection of assessments. Further, first handlers and importers shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the USCS and shall apply to the Council for reimbursement of assessments paid. Persons who desire to renew their exemption for a subsequent fiscal year shall reapply to the Council. In addition, the Council may require persons receiving an exemption to provide reports on the disposition of exempt mushrooms. These procedures are deemed to be practicable in the effective administration of the Order and are in conformity with the intent of the Act.

In addition, this action, in § 1209.239, identifies what information should be included when the Council prepares and submits financial statements to the Department. Further, this action in § 1209.260 provides that each first handlers should include, in addition to the information required in § 1209.60 of the Order, the farm identification number or social security number of

each producer the first handler has dealt with during the reporting period. Finally, this action, in § 1209.280, provides the OMB control numbers assigned to the information collection requirements of the Order and the regulations.

It is found that this action, tends to effectuate the declared policy of the Act.

Pursuant to the provisions of 5 U.S.C. 553, it is found and determined that upon good cause 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 action until 30 days after publication in the **Federal Register** because: (1) it is necessary that these rules be in place for the effective implementation of the Order; (2) a 90-day period is provided to allow interested persons to comment prior to finalization; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1209 is amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112.

2. Subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec.
1209.200 Terms defined.

Nomination Procedures

1209.231 Nominations.
1209.233 Regional caucus chairpersons.
1209.235 Mail balloting.
1209.237 Appointment.

General

1209.239 Financial statements.

Assessments

1209.251 Payment of assessments.
1209.252 Exemption procedures.

Reports

1209.260 Reports.

Miscellaneous

1209.280 OMB control numbers.

SUBPART B—RULES AND REGULATIONS

Definitions

§ 1209.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Mushroom Promotion, Research, and Consumer Information Order of this part.

Nomination Procedures

§ 1209.231 Nominations.

Nominations shall be made at regional caucuses of producers or importers, or by mail ballot in accordance with the procedures prescribed in § 1209.31 of this part. Proxy voting by producers and importers shall not be permitted at a regional caucus or in a mail ballot. Each regional caucus and mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by August 1, or such other date approved by the Secretary.

§ 1209.233 Regional caucus chairpersons.

(a) Regional caucus chairpersons shall be elected by a simple majority vote of eligible voters in attendance. Such elections shall be coordinated by the Council, except for the initial elections, which shall be coordinated by a representative of the Secretary.

(b) Regional caucus chairpersons will coordinate the entire nomination process. In conducting the nominations process, each regional caucus chairperson shall ensure that:

(1) Voting for producer nominees is limited to producers, and voting for importer nominees is limited to importers; and

(2) Producer candidates for nomination are producers, and importer candidates for nomination are importers.

(c) Within 14 days after completion of each regional caucus, each chairperson shall provide the Secretary with the following information:

(1) The identification of that region's two nominees for each open position on the Council; and

(2) A typed copy of the regional caucus's minutes.

(d) The chairperson of each regional caucus shall provide nominees with qualification statements and other specified information. Each nominee will be contacted by the chairperson and asked to forward such completed documentation to the Council within 14 days after completion of the regional caucus, except for the initial nominees, which shall be asked to forward such completed documentation to the Secretary.

(e) The tenure of the chairperson shall only be for the duration of the regional caucus and the preparation of required documentation.

§ 1209.235 Mail balloting.

(a) After the initial regional caucuses, the Council may conduct nominations of individuals as candidates for appointment to the Council by mail ballot in lieu of a regional caucus.

(b)(1) In the event of a mail ballot, all qualified individuals in a region interested in serving as a member on the Council or persons who are interested in nominating an individual to serve on the Council shall submit to the Council in writing such information as name, mailing address, number of pounds of mushrooms produced or imported, or such other information as may be required, in order to place such individual on the ballot.

(2) Notice of mail balloting to nominate candidates for a position on the Council shall be publicized by the Council to producers or importers in the region involved, and to the Secretary, at least 120 days before the region's nominee ballot is issued.

(3) In proposing nominees for inclusion on a mail ballot, proposed nominations must be received by the Council at least 30 days before the region's nominee ballot is issued.

(c) Once proposed nominations have been submitted from the applicable region, the Council shall cause each proposed nomination, if the individual qualifies, to be placed on the region's nominee ballot. The Council then shall mail a ballot to each known producer or importer within the region.

(d) Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Council through newspapers and other publications having general circulation among producers in the mushroom producing areas involved or among mushroom importers.

(e) Each producer or importer shall cast a ballot for each open position on the Council assigned to the region in accordance with the procedures prescribed in § 1209.31 of this part. The completed ballot must be returned to the Council or its designee within 30 days after the ballot is issued.

(f) Within 45 days after a mail ballot is issued, the Council shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the

region's two nominees for each open position on the Council.

(g) The Council shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Council and asked to forward such completed documentation to the Council within 14 days of such notification.

§ 1209.237 Appointment.

If an employee, partner, officer, or shareholder of a producer or importer is a current member of the Council, no nominee who is also an employee, partner, officer, or shareholder of such producer or importer shall be appointed to the Council. A Council member shall be disqualified from serving on the Council if such individual ceases to be affiliated with a producer or importer within the region the Council member represents.

General

§ 1209.239 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

Assessments

§ 1209.251 Payment of assessments.

(a) Each first handler responsible for collecting assessments on domestic mushrooms shall collect the amounts assessed and remit such amounts to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed to or through the first handler.

(b) Each producer responsible for paying any assessment amount on the producer's own mushrooms shall remit such amount to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed by the producer.

(c) Each importer shall be responsible for remittance to the Council of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Council on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports mushrooms, as principal or as an agent, broker, or consignee for any person who produces mushrooms outside the United States for marketing in the United States shall be considered an importer.

(d) Remittance shall be by check, draft, or money order payable to the Mushroom Council, and shall be accompanied by a report, on a form provided by the Council.

(e) A late payment charge shall be imposed on any first handler or importer who fails to make timely remittance to the Council of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the mushrooms involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of § 1209.260 of this subpart and § 1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mushrooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fifteenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemption procedures.

(a) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1209.52 of this part shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such persons shall certify that their production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. Pursuant to this section, the term *on average* shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with such person's production or importation in the preceding fiscal year.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment

must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(d) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt mushrooms.

Reports

§ 1209.260 Reports.

Each first handler shall be required to report monthly to the Council such information as may be required under § 1209.60(a) of this part. In addition, each first handler shall be required to provide the farm identification number or social security number of each producer the first handler has dealt with during the time period covered by the report.

Miscellaneous

§ 1209.280 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* is OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001.

Dated: February 8, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–3351 Filed 2–10–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 27

Thursday, February 11, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

6601–6678.....1
6679–6874.....2
6875–7046.....3
7047–7184.....4
7185–7476.....5
7476–7714.....8
7715–7860.....9
7861–7952.....10
7953–8200.....11

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive orders:
12800 (Revoked by EO 12836).....7045
12818 (Revoked by EO 12836).....7045
12836.....7045
Administrative Orders:
Memorandums:
January 22, 1993.....7455
January 22, 1993.....7455
January 22, 1993.....7455
Proclamations:
6527.....7477

5 CFR

Proposed Rules:
970.....7052

7 CFR

52.....7607
318.....7953
907.....7964
908.....7964
915.....7972
1097.....6679
1099.....6679
1209.....8194
Proposed Rules:
52.....7296
275.....7296
283.....7296
1139.....7996

10 CFR

19.....7715
20.....7715
30.....7715
36.....7715
40.....7715
51.....7715
70.....7715
170.....7715
Proposed Rules:
30.....6730
40.....6730
50.....6730, 7757
70.....6730
72.....6730

11 CFR

201.....6875

12 CFR

203.....6601
207.....6602
208.....7973
220.....6602
221.....6602
224.....6602
225.....7973
611.....6604
612.....6605
796.....6605
Proposed Rules:
208.....8007
225.....8007

13 CFR

121.....7479

14 CFR

33.....6875
39.....6703–6707, 6877–6881, 7185, 7479–7482, 7737, 7861, 7862, 0000
71.....6709, 6884–6886, 7179, 7484, 7738
73.....6884
95.....6887
97.....6709, 6712, 7485, 7746
Proposed Rules:
39.....6740–6746, 6906, 7196, 7494, 7495, 7759
61.....7197
63.....7197
65.....7197
71.....6911
93.....7950
121.....7197
135.....7197
300.....7040
399.....7053

16 CFR

4.....7047
Proposed Rules:
305.....7852
Ch. II.....8013–8023

17 CFR

140.....6677
145.....7040
150.....6854
270.....7984
Proposed Rules:
1.....6748, 7056
3.....6748
10.....6748
145.....6748

18 CFR

3c.....7486
154.....7984
157.....6893
381.....7488
385.....7984

19 CFR

Proposed Rules:
10.....6677

21 CFR

520.....7864
1308.....7186

23 CFR

140.....6713

Proposed Rules:

625.....6914

24 CFR

770.....8186
882.....8186
889.....8186
890.....8186
941.....8186

Proposed Rules:

770.....8187
882.....8187
889.....8187
890.....8187
941.....8187

26 CFR

1.....6678, 7041, 7296, 7747, 7865, 7987, 7988, 8098
602.....6678, 7987, 7988

Proposed Rules:

1.....6854, 6922, 6923, 7179, 7497, 7845, 8027
26.....6854, 7497
52.....8099
301.....6854, 7497, 7761

29 CFR

2616.....6605
2617.....6605

Proposed Rules:

103.....7149
2619.....7921
2676.....7921

30 CFR

254.....7489

Proposed Rules:

14.....8028
18.....8028
75.....8028
870.....7761

31 CFR

103.....7047

32 CFR

201.....7865
592.....6715
606.....6715
608.....6715
612.....6715
616.....6715

33 CFR

3.....6716
100.....7492
117.....6717
150.....7330
154.....7330
155.....7376
334.....6718

Proposed Rules:

117.....6766, 6767, 7497, 7498
165.....7500
334.....6768

34 CFR

8.....7860

Proposed Rules:

300.....7938

36 CFR

Proposed Rules:

1191.....6924

37 CFR

304.....7051

38 CFR

1.....7296

39 CFR

Proposed Rules:

3001.....6769

40 CFR

2.....7187
52.....6606
60.....7189
82.....8136
180.....6893
232.....8172
233.....8172
261.....6854
266.....6607
271.....6854, 7865
281.....6894
300.....7189, 7492
305.....7704
721.....7190

Proposed Rules:

Ch. I.....6609, 7501
52.....7762
54.....7870
81.....7762
144.....7924, 8028
191.....7924, 8028
194.....8029
260.....8102
261.....6925, 8102
262.....8102
264.....8102
265.....8102
268.....8102
270.....8102
273.....8102
372.....6609
700.....7646
720.....7661
721.....7676
723.....7646, 7679

42 CFR

59.....7462

Proposed Rules:

59.....7464

43 CFR

Public Land Order:

6956.....6719
6957.....7867

45 CFR

303.....7040
1626.....6608

Proposed Rules:

1607.....6611
1609.....6612

46 CFR

571.....7190
586.....7988

Proposed Rules:

502.....7199
505.....7199
510.....7199
514.....7501
540.....7199

47 CFR

1.....6895
61.....7867
69.....7867
73.....7869
73.....7194, 7195
76.....7990

Proposed Rules:

Ch. 1.....6937, 7062
2.....6769
15.....6769, 7205
43.....7764
73.....6677, 7874, 7875
76.....7205, 7875

48 CFR

Proposed Rules:

Ch. 53.....6771

49 CFR

1.....6896–6898
229.....6899
9.....6719
99.....00000
171.....6864
172.....6864
173.....6864
174.....6864
176.....6864
390.....6726
394.....6726
1002.....7748
1017.....7748
1018.....7748
1312.....7748
1313.....7748
1314.....7748

Proposed Rules:

40.....7197, 7506
199.....7197
217.....7197
219.....7197
350.....7197
382.....7197
383.....7197
391.....7197
392.....6937, 7197
395.....6937, 7197
531.....6939
571.....7206, 7506
572.....7506
611.....6948
653.....7197
654.....7197
1039.....8030
1180.....6612

50 CFR

650.....7040
675.....7040

Proposed Rules:

17.....8032
226.....7206
663.....7525
672.....6677

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S. 202/P.L. 103–4

To designate the Federal Judiciary Building in Washington, D.C., as the "Thurgood Marshall Federal Judiciary Building". (Feb. 8, 1993; 107 Stat. 30; 1 page)

Last List February 10, 1993

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103d Congress, 1st Session, 1993

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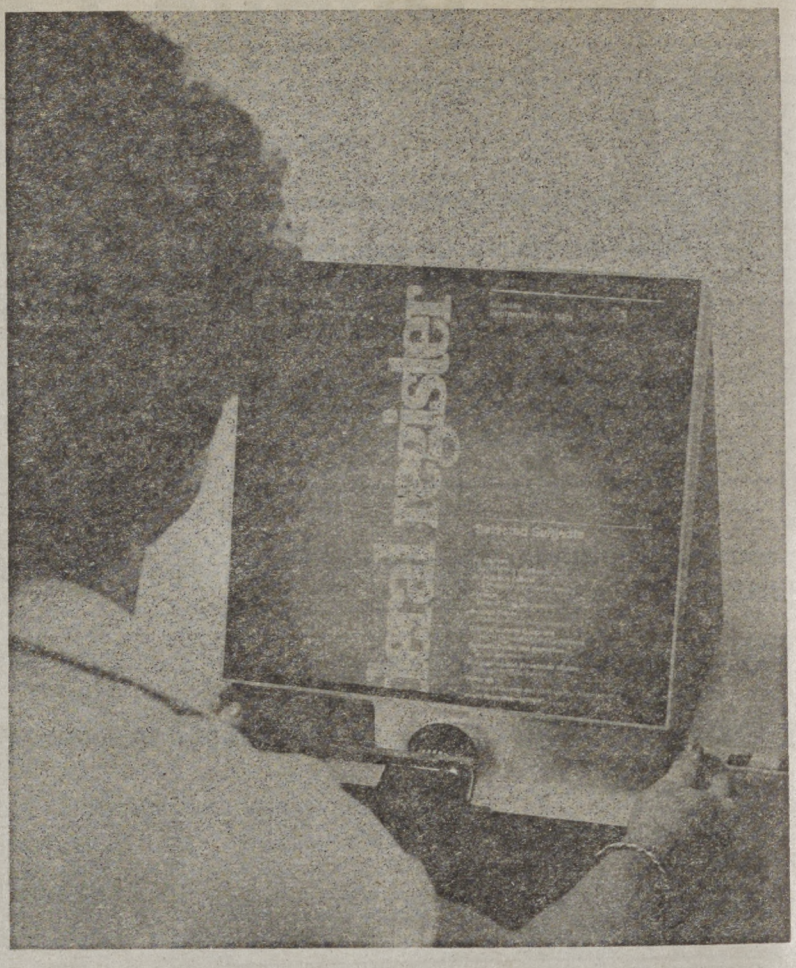
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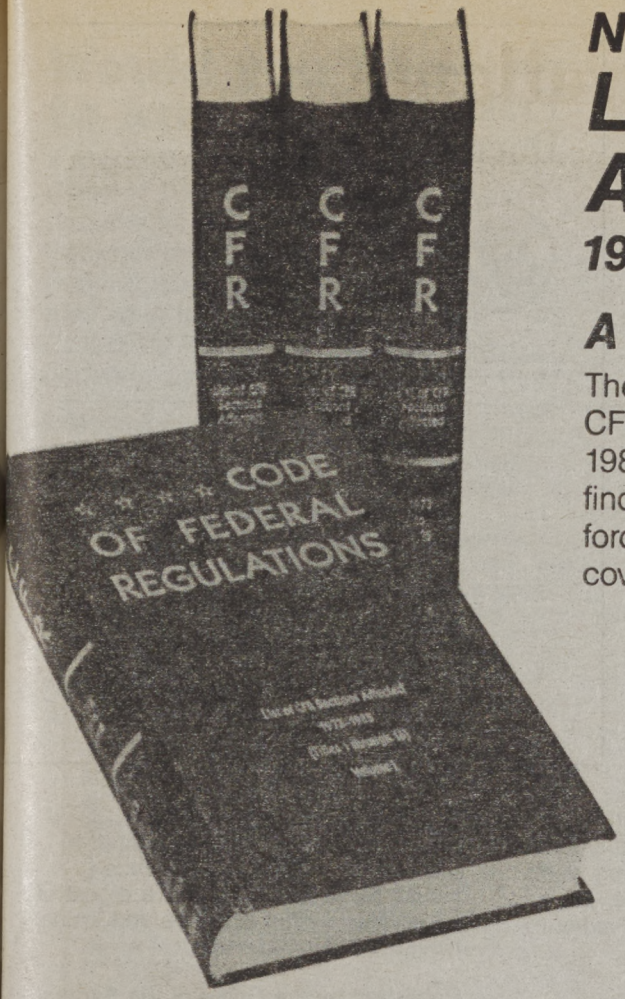
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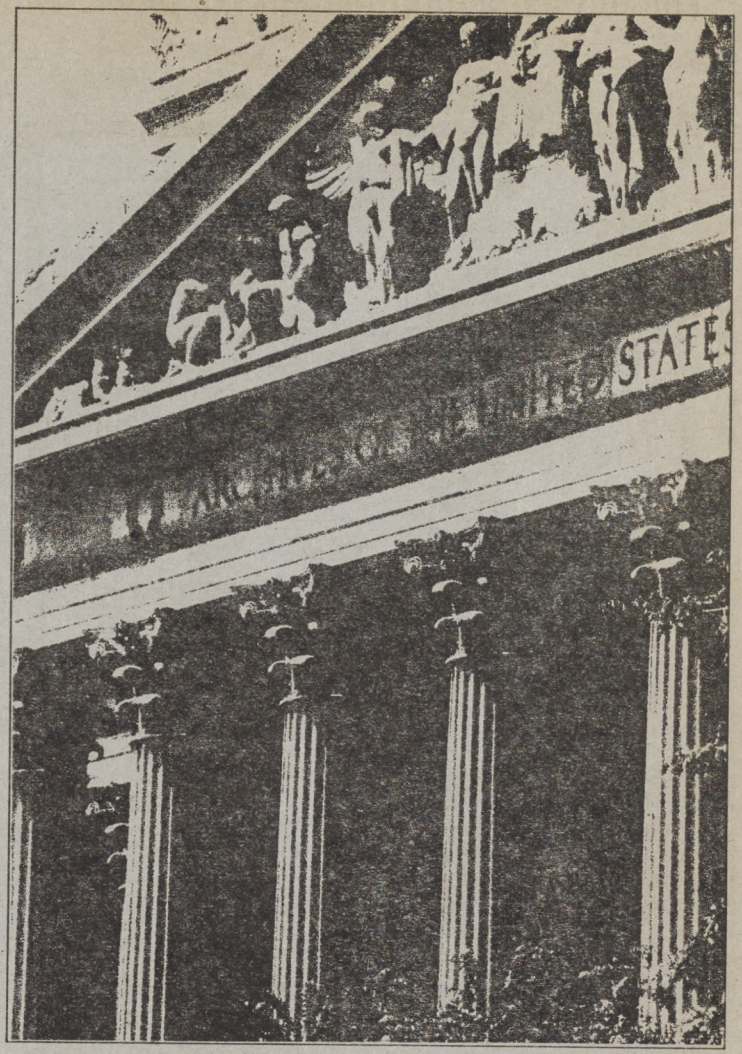
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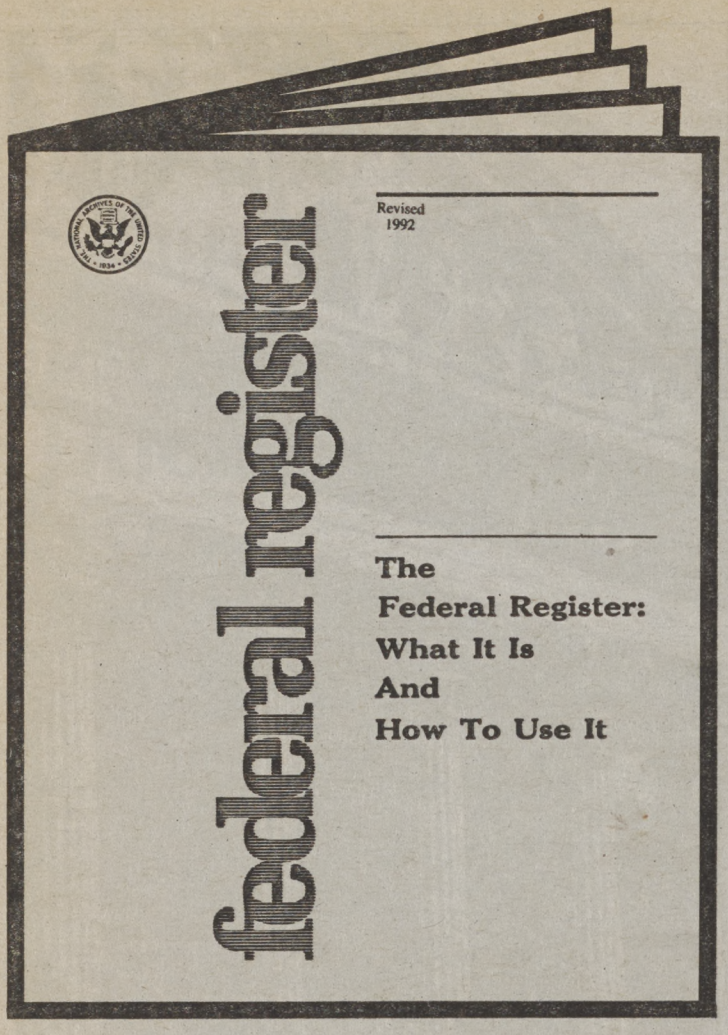
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