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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1902

Supervised Bank Accounts; Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding Supervised Bank Accounts. This action is taken for more efficient administration of the program. The intended effect is to ensure that depositary's post collateral for excess over $100,000 before deposits are made.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Debt Management Specialist, Financial and Management Analysis Staff, Financial Analysis Branch, Farmers Home Administration, USDA, Room 5507, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone: (202) 475–4425.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This action requires no increase in cost to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements of the public. The Agency has determined that this regulation maximizes net benefit to society at the lowest net cost.

For the reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects in 7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and Community development, Loan programs—Agriculture, Loan programs—Housing and Community development.

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

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for Part 1902 continues to read as follows:

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

Subpart A—Loan and Grant Disbursement

2. In § 1902.6, paragraph (d) is revised to read as follows:

§ 1902.6 Establishing supervised bank accounts.

* * * * *

(d) For each borrower, if the amounts of any loan and grant funds, plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $100,000, the financial institution will be required to pledge collateral for the excess over $100,000, before the deposit is made (see § 1902.7).

* * * * *

§ 1902.7 [Amended]

3. Section 1902.7(e) is amended in the last sentence by changing the words "Financial Support Division" to read "Budget Staff, Revolving Fund Analysis Branch."

4. In § 1902.7, paragraphs (a), (c), and (f) are revised to read as follows:

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000 deposited for borrowers in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank (FRB) in an amount not less than the excess.

* * * * *

(c) If the financial institution is agreeable to pledging collateral, the District Director or County Supervisor should complete FmHA Form Letter 1901–A–2 "Designated Financial Institution—Collateral Pledge" in an original and two copies, the original for the National Office, the first copy for the State Office, and the second copy for the District or County Office. The FmHA Form Letter 1902–A–2 should be forwarded to the National Office at least 30 days before the date of loan closing.

* * * * *

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the financial institution desires part or all of its collateral released, it should write the local FmHA office requesting the release and stating the balance in the supervised bank account. The FmHA office upon receipt of this written request will send that request to the Department of Treasury, FMS Funds Flow Division, Collaterial Section, Room 802, Premier Bldg., Treasury Annex, Washington, DC 20226.

5. In § 1902.15, the introductory text and paragraph (b) and (c) are revised to read as follows:

§1902.15 Closing accounts.

When FmHA loan or grant funds and those of any other lender or grantor have all been properly expended or withdrawn, Form FmHA 402-6 may be used to give FmHA's consent (and of another lender or grantor, if involved) to close the supervised bank account in the following situations:

* * * * *

(b) For all loans accounts, except loans listed in § 1902.15(c) of this section, after completion of authorized loan funds expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For Community Facility, Water and Waste Disposal, Grazing Association, Irrigation and Drainage, Indian Land Acquisition, Watershed (WS), Organizational Rural Rental Housing (RRH), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan and grant accounts, when the funds have been expended in accordance with the requirements of Part 1942 Subpart A and Part 1823, Subpart I (FmHA Instruction 442.9), the supervised bank account will be closed within 90 days following completion of development, unless an extension of time is authorized in writing by the District Director. If the borrower will not agree to close the account, the District Director or County Supervisor will request the State Director to make demand upon the financial institution in accordance with § 1902.16.

* * * * *

Exhibit A [Removed and reserved]

6. Exhibit A of Subpart A is removed and reserved.

Date: December 31, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-154 Filed 1-5-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 86-ASW-35; Amdt. 39-5796]

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model AS355 Series; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Correction.

SUMMARY: This action corrects the issuance date of the priority letter as published in the **Federal Register** of Friday, December 11, 1987. In FR document 87-28447, published Friday, December 11, 1987, on page 46986, in the last paragraph of the document; "November 21, 1987" is changed to read "November 21, 1986."

FOR FURTHER INFORMATION CONTACT: Wilbur F. Wells, (817) 624-5123.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88-83 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-ASW-16-AD; Amdt. 39-5821]

Airworthiness Directives; Fairchild (Swearingen) Models SA226-TC and SA226-AT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), 80-09-08R1 Amendment 39-3883 for Fairchild (Swearingen) Models SA226-TC and SA226-AT airplanes, which required a repetitive 250-hour inspection and adjustment, as required, of the cargo door latches. This revision provides for installation of an improved bottom latch as an alternate means of compliance that when installed will relax the inspection interval from 250 hours to 1,200 hours. This revision also clarifies the serial number effectivity for this AD.

EFFECTIVE DATE: February 5, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation Service Bulletins (SB's) 226-52-009 (revised June 12, 1987) and 226-52-008 (revised April 6, 1984) applicable to this AD may be obtained from Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490, or this information may be examined at the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michele Owsley, Airplane Certification Branch, ASW-150, Aircraft Certification Division, FAA, Forth Worth, Texas 76193-0150, Telephone (817) 624-5160.

SUPPLEMENTARY INFORMATION: A proposal to revise AD 80-09-08R1 applicable to certain Fairchild (Swearingen) Models SA226-TC and SA226-AT airplanes, to provide an alternate means of compliance, was published in the **Federal Register** on October 29, 1987 (52 FR 41586). The proposal resulted from a statistical analysis of service experience since the original AD was issued which indicates that the AD repetitive inspection interval can safely be relaxed from 250 hours to 1,200 hours providing an improved bottom latch for the cargo door has been installed.

Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. A commuter airline and the Air Line Pilots Association (ALPA) both support the proposed amendment. ALPA further emphasizes that inspection data should continue to be reviewed to ensure that the 1,200-hour interval is not excessive. The FAA continuously monitors reports submitted under their service difficulty program and this interval can be further adjusted if warranted. ALPA also questioned whether the improved bottom latch should be incorporated on Model SA227 airplanes. The FAA has determined that this change was made in production for all Model SA227 airplanes so they are not included in the applicability of this AD.

Accordingly, the proposal is being adopted without change except that the entire AD will be written below instead of just a listing of the changes as was done in the NPRM.

The FAA has determined there are approximately 293 airplanes affected by this AD. The cost of each repetitive inspection is $34. The total estimated inspections performed annually are 1,500 at a total cost of $51,000. Adoption of the amendment will reduce these annual values to 300 total inspections at a total cost of $10,200. Requiring the estimated, remaining 30 percent of the fleet (approximately 90 aircraft) to comply with SB 226-52-008 (improved bottom latch assembly) will have a nonrecurring cost of $36,720 which is offset by the recurring annual inspection savings of $40,800. Because the cost reduction applies directly to the operational cost of the airplane owners and operators, there is an economic benefit (instead of impact) as a result of this proposal. No economic impact to small entities is foreseen as a result of this amendment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising and reissuing AD 80–09–08R1, in its entirety as follows:

Fairchild Aircraft Corp. (Swearingen): Applies to Models SA226–TC (S/N TC 201 through TC419) and SA226–AT (S/N AT001 through AT074) certificated in any category. Compliance required before pressurized flight or prior to obtaining 250 unpressurized flight hours after compliance with emergency telegraphic AD T80SW14 dated March 15, 1980, amended.

To assure proper adjustment, operation, and structural integrity of the cargo door latching mechanism, accomplish the following:

(a) With the cargo door open, conduct the following inspection to assure full expansion of the click-clack latch jaws. Move the door handle to the door closed position. Using a "go, no-go" type of gage, determine that the distance from the inside of the click-clack plunger face to the edge of the click-clack jaws is not less than 0.34 inches. Adjust each latch as necessary to gain a minimum of 0.34 inches by varying the length of its connecting push-pull rod.

(b) To assure proper engagement of the click-clack jaws into the door frame receptacle, three measurements are necessary. The first measurement (door open) is the dimension from the door face plate surface to the undercut on the click-clack jaws. The second measurement (door open) is the dimension from the door frame receptacle face plate surface to the jaws seating surface. The third measurement (door closed) is the gap (taken with a feeler gage) between the surface of the door frame receptacle and the door face plate surface. The first dimensioin must be at least the sum of the second and third dimensions to assure proper engagement of the click-clack jaws in the door frame receptacle. Adjust each latch as necessary to gain the proper click-clack engagement by varying the length of its connecting push-pull rod.

(c) Inspect each door face plate and receptacle face plate for evidence of deformation. If deformed, also inspect door frame and door latch assembly for evidence of cracks or deformation. If such defects are detected, replace with airworthy part.

(d) Using an inside micrometer, or equivalent, measure the inside diameter of each receptacle. Measure across the hole in at least three directions to check for roundness. The widest dimension must be used to compare with the following allowables.

(1) Receptacles on side of cargo door, one piece type, limit .690 inches.

(2) Receptacles on side of cargo door, eccentric type, limit .700 inches.

(3) Receptacles on bottom of cargo door, one piece type, limit .670 inches.

(4) If any receptacle is oversized, replace with an airworthy part.

(e) Check the cargo door warning system as follows:

(1) With the door in the open position, manually depress all door warning switches. Check to see that the cargo door warning light in the annunciator panel is extinguished.

(2) Selectively release and depress each warning switch. Check that with all other switches depressed, releasing any individual switch causes illumination of the cargo door warning light. Actuate each switch several times while checking for any tendency for the switch to stick in the depressed position.

(3) Any switches that show any tendency to stick in the depressed position should be replaced.

(f) After the inspections and adjustments required by paragraphs (a) through (e) have been satisfactorily completed, open and close the cargo door a minimum of three cycles.

(1) Operate the door handle to the closed position during each door closed cycle.

(2) Door open light on annunciator panel must be out when door is closed. (Reference Swearingen SA226 series maintenance manual for proper switch adjustment.)

(3) If the door mechanism or warning light system does not function properly during the three open and close cycles, reconduct inspections and adjustments as described above.

(g) Repeat the steps as necessary until the cargo door operates properly.

(h) Repeat the inspections and adjustments required by paragraph (a) through (g) of this AD as follows:

(1) Each 1,200 flight hours for airplanes which have been modified per Fairchild SB 226–52–008 revised April 6, 1984, or

(2) Each 250 flight hours for airplanes that have not been modified per the above SB.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base where the inspections and adjustments can be accomplished.

(j) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, Southwest Regional Office, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 624–5150.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 80–09–08R1, Amendment 39–3883 (45 FR 56333; August 25, 1980).

This amendment becomes effective on February 5,1988.

Issued in Kansas City, Missouri, on December 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88–80 Filed 1–5–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket 24394]

Special Flight Authorization for Noise Restricted Aircraft; Special Federal Aviation Administration Regulation No. 47-2; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, (202) 267–3561.

SUMMARY: FAA is deleting errors in an amendment and a Special Federal Aviation Regulation number.

In the document headings of FR Document number 87–28710, published Tuesday, December 15, 1987, on page 47672, please delete Amendment number 91–203, and please add 47–2 in place of 47 to Special Federal Aviation Regulation.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88–92 Filed 1–5–88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 5H5475/R928; FRL-3312-4]

Tolerances for 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the combined residues of the herbicide 2-[1-

(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the food commodity tomato products, concentrate, and the feed commodity dried tomato pomace. This regulation to establish a maximum permissible level for the combined residues of the herbicide on these commodities was requested pursuant to a petition by BASF Corp.

EFFECTIVE DATE: January 6, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of December 4, 1985 (50 FR 49760), which announced that BASF Corp., P.O. Box 181, 100 Cherry Hill Road, Parsippany, NJ 07054, had filed food/feed additive petition 5H5475 proposing to amend 21 CFR Part 193 (food commodity) and 21 CFR 561.430 (feed commodity) by establishing a regulation permitting the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the commodities as follows:

Petition No.	CFR affected	Commodities	Parts per million (ppm)
FAP 5H5475	21 CFR Part 193.	Tomato paste	24.00
		Tomato puree	8.00
FAP 5H5475	21 CFR 561.430.	Dried tomato pomace.	12.00

There were no comments received in response to the notices of filing.

The petitioner subsequently amended petition FAP 5H5475 by submitting a revised section F proposing to amend 21 CFR Part 193 by proposing a tolerance for the combined residues of the herbicide and its metabolites on the food commodity tomato products, concentrated, at 24.0 ppm. Because there is no potential increase in risk to humans from the revised proposal, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 5F3824 and 6F3383) establishing tolerances on fruiting vegetables, strawberries, and raspberries appearing elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the food and feed additive regulations. Adequate analytical methodology is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II (gas chromatography using a sulfur-specific flame photometric detector). It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. Part 193 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.479, to read as follows:

§ 193.479 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

A food additive regulation is established to permit the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites on the food commodity tomato products, concentrated, at 24.0 parts per million.

PART 561—[AMENDED]

2. Part 561 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.430 by adding and alphabetically inserting in the list of commodities the following entry, to read as follows:

§ 561.430 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

* * * * *

Commodities	Parts per million
* * * * *	
Tomato pomace, dried	12.00

[FR Doc. 88-159 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories. The supplement provides for use of a higher strength amoxicillin trihydrate and clavulanate potassium tablet in treating larger dogs for certain skin and soft tissue infections.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620, is sponsor of approved NADA 55-099 which provides for use in dogs of amoxicillin trihydrate and clavulanate potassium (Clavamox®) tablets to treat skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., and *Esherichia coli*. The supplement provides for use of a 375-milligram (mg) film-coated tablet in addition to previously approved 62.5-mg, 125-mg, and 250-mg tablets. The new size is for treating larger dogs. There is no change in dosage of drug per unit of body weight. The supplement is approved and 21 CFR 540.103g is amended in paragraph (a)(1) in the second sentence by adding the phrase "or 300 milligrams amoxicillin and 75 milligrams clavulanic acid" at the end of the sentence. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director and Deputy Director, Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 583.

§ 504.103g [Amended]

2. Section 540.103g *Amoxicillin trihydrate and clavulanate potassium film-coated tablets* is amended in paragraph (a)(1) in the second sentence by adding the phrase "or 300 milligrams amoxicillin and 75 milligrams clavulanic acid" at the end of the sentence.

Dated: December 28, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-98 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 546

[Docket No. 78N-0248]

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline-Sulfamethazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflects approval of a new animal drug application (NADA) sponsored by American Cyanamid Co. The NADA provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA is being withdrawn.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: As explained in a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 55-025 sponsored by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. The NADA covers use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. This final rule removes 21 CFR 546.110e, which reflects approval of the NADA.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 546 is amended as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 546 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 546.110e [Removed]

2. Section 546.110e *Chlortetracycline-sulfamethazine tablets* is removed.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-103 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove the provision of the regulations reflecting approval of a new animal drug application (NADA) sponsored by J&R Specialty Supply Co. FDA is also reserving the provision for future use. The NADA provides for use of Type A medicated articles containing 9.6 or 19.2 grams of pyrantel tartrate per pound to make Type C swine feeds. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of J&R Specialty Supply Co.'s NADA 138-609. The NADA provides for use of Country Mixer Swine Guard-BN Banminth® Premixes containing 9.6 or 19.2 grams of pyrantel tartrate per pound (Type A medicated articles) for making Type C medicated swine feeds for their anthelmintic effect. This document removes 21 CFR 558.485(a)(26), which reflects approval of the NADA, and reserves it for future use.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b): 21 CFR 5.10 and 5.83.

§ 558.485 [Amended]

2. Section 558.485 *Pyrantel tartrate* is amended by removing paragraph (a)(26) and reserving it for future use.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-95 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co., providing for revisions in the currently approved concentration range for monensin and providing a range for tylosin (currently a fixed concentration) in Type C beef cattle feeds when the drugs are used in combination. These amendments will make combination use of the drugs fully consistent with currently approved individual drug use. The drugs are currently approved for combination use in beef cattle for improved feed efficiency and reduction of incidence of liver abscesses.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 104-646. The NADA currently provides for combination administration via Type C feeds of monensin at a range of 10 to 30 grams (g) per ton plus tylosin at the fixed concentration of 10 g per ton to beef cattle. The feed is fed at a consumption rate that provides a dosage of 100 to 360 milligrams (mg) of monensin and 90 mg of tylosin per head per day. However, monensin alone is approved for administration to cattle at the broader concentration range of 5 to 30 g per ton at a rate that provides 50 to 360 mg per head per day. Also, tylosin alone is approved for administration at a range of 8 to 10 g per ton.

The indications for use in beef cattle of monensin and tylosin, improved feed efficiency and reduction of the incidence of liver abscesses, respectively, are the same alone and in combination. Elanco has requested that the conditions of use for the combination be modified so that they are consistent with those for separate drug use. The firm has submitted a supplement to NADA 104-646 that contains information supporting its request. Therefore, the supplement is approved and 21 CFR 558.355(f)(3)(ii) introductory text and (f)(3)(ii)(*b*) are amended to reflect the approval. The basis for approval is further discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by revising paragraphs (f)(3)(ii) introductory text and (f)(3)(ii)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(ii) *Amount per ton.* Monensin, 5 to 30 grams, plus tylosin, 8 to 10 grams.

(*a*) * * *

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously as sole ration at the rate of 50 to 360 milligrams of monensin and 90 milligrams of tylosin per head per day; as monensin sodium; as tylosin phosphate.

* * * * *

Dated: December 23, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88-104 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86-12, Notice No. 3]

National Standards for Traffic Control Devices; Restructure of Manual on Uniform Traffic Control Devices; Closing of Docket

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of rulemaking; closing of docket.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard

for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting the MUTCD with the objective of improving the application of effective traffic control devices and systems. The application of the concepts presented in the two previously published advance notices would have affected all parts of the MUTCD and were intended to improve the effectiveness and efficiency of the MUTCD. As a result of the evaluation, including a review of the responses to the two advance notices, the FHWA had determined that it will not make major changes to the MUTCD at this time. Also, the FHWA has determined that there is a need to print a new MUTCD containing all revisions through the end of 1988.

DATE: The docket is closed as of January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366–2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366–1383, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Present Regulations

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950–036–00000–1. The purchase of a MUTCD includes a subscription service for adopted revisions. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices (TCDs) standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Current Rulemaking

This rulemaking was initiated by the issuance of an Advance Notice of Proposed Rulemaking (ANPRM) on June 9, 1986 (51 FR 20840). In this ANPRM, the FHWA expressed its concern that the changes that have been made to the 1978 MUTCD have had negative impacts on the integrity and continuity of the Manual. Many copies of the MUTCD are not being kept up-to-date. In this ANPRM, the FHWA formulated a number of questions relating to improving the application of standards, and invited responses concerning the need for reformatting or revising the MUTCD.

The major thrust of the rulemaking was to explore short- and long-range needs to improve the MUTCD standards. In addition, the FHWA asked ". . . should the FHWA continue to be responsible for maintaining the MUTCD?"

Since the first ANPRM did not provide enough time for commenters to prepare information on the structure and format of the MUTCD, a second ANPRM was issued on April 9, 1987 (52 FR 11502). This ANPRM (1) extended the comment period from July 20, 1987, to September 1, 1987, and (2) provided an opportunity to more fully explore needed changes to Part VI of the MUTCD, as they relate to the state-of-the-practice of construction and maintenance work zone traffic control device standards and management.

Summary of Comments

The FHWA analyzed the comments received from 45 commenters in response to both the first and second ANPRM's. All of these comments are included in the public docket in this proceeding.

A large majority of comments received (1) stated that there was a need for a current version of 1978 MUTCD, (2) stated that a new manual is necessary in the next three to five years, although many would not suggest substantial changes to the present structure, format, or substance of the MUTCD, (3) supported additional traffic control devices standards and applications for Part VI, and (4) stated that the FHWA should continue to administer the MUTCD.

With regard to the need for a current version of the MUTCD, nearly all commenters favored the reissuance of the 1978 MUTCD complete with all the revisions that have been made since 1978, including all final rules that have not been included in a previous revision, rather than issue Revision 5 as a separate document. Most of the commenters requested that a current manual (the 1978 MUTCD, with the superseded pages replaced with the appropriate pages from the five revisions), be published and released to the public as soon as possible. It was felt that a current MUTCD would better assure that users will have a complete manual than would the continued distribution of revisions of the 1978 MUTCD, and that a current MUTCD would better serve as a base or benchmark document upon which future needs could be determined.

Conclusions

The FHWA will publish a revised edition of the MUTCD in early 1989. This 1988 MUTCD will contain a consolidation of all revisions promulgated and issued since publication of the 1978 MUTCD including those yet to be finalized toward the end of 1987 and 1988.

The FHWA published its "Procedures to Amend the Manual on Uniform Traffic Control Devices" in a June 30, 1983, notice of availability of staff study and proposed procedural changes, and request for comments, at 48 FR 30145, Docket No. 83–18. The notice predicted that under these procedures, substantial or significant changes (those requiring notice and comment rulemaking procedures) would be relatively few in number. Through application of these procedures, the FHWA reduced a backlog of requests to change standards and kept the number of requests for changes to the MUTCD that go to rulemaking to a minimum.

The FHWA does not intend to make routine incremental amendments to the 1988 MUTCD once it is published and made available. Proposals for revisions will be considered, as in the past, but only those standard changes or additions which are felt to directly impact the safety of the motoring public and-or pedestrians will be advanced to rulemaking. Due to the time schedule, the currently ongoing evaluation and revision of Part VI of the MUTCD will not be incorporated into the 1988 Manual. However, work on this manual improvement will continue with the possible incorporation of an updated Part VI into some future issuance of the MUTCD beyond 1988.

The FHWA will look to the National Committee on Traffic Control Devices, the Institute of Transportation Engineers, the American Association of State Highway and Transportation Officials, and others in the transportation community, to assume the leadership in determining future MUTCD needs.

Accordingly, all rulemaking actions regarding Docket No. 86–12 are terminated.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation. Due to the nature of this termination action, a regulatory evaluation is not required since any economic impacts that occur are negligible. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 109(d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: December 31, 1987.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 88-155 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8170]

Minimum Vesting Standards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding the minimum vesting standards for qualified employee plans. These temporary regulations conform to changes in the law made by the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with the minimum vesting standards and affect all employers maintaining qualified plans. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

DATES: These temporary regulations are generally effective for plan years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: V. Moore of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations regarding the minimum vesting standards for qualified employee plans under sections 410 and 411 of the Internal Revenue Code of 1986. These temporary regulations conform to the changes made by sections 1113 (a), (c), and (d) of the Tax Reform Act of 1986 (Pub. L. 99-514) and are required by section 1141 of that Act. These temporary regulations do not reflect amendments to the Internal Revenue Code made by the Retirement Equity Act of 1984 (Pub. L. 98-397, 98 Stat. 1436, *et seq.*), the technical corrections to the Retirement Equity Act of 1984 (section 1898 of the Tax Reform Act of 1986), the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), or section 1113(b) of the Tax Reform Act 1986 (repealing section 411(d)(4), pertaining to class year vesting), and no inferences should be drawn by reason of the fact that an issue relating to these amendments is not addressed in these temporary regulations. There is a need for immediate guidance so that employers maintaining qualified plans can comply by making the necessary plan amendments to conform the plans to the new minimum vesting standards. These regulations will remain in effect until superseded by final regulations on this subject.

Prior Law

An employee plan does not qualify under section 401(a) unless it satisfies the minimum participation standards of section 410(a) and the minimum vesting standards of section 411(a). In general, section 410(a) provides that a plan will not qualify if it requires, as a condition of participation in the plan, that an employee complete a period of service with the employer beyond the later of the date on which the employee attains age 21 or the date on which the employee completes a year of service. An exception, however, is provided for plans providing that after not more than 3 years of service each participant has a right to 100 percent of his or her accrued benefit under the plan. In such a plan, participation may be conditioned on not more than 3 years of service. Section 411(a) provides that a plan will not qualify unless an employee's right to his or her accrued benefits derived from employer's contributions becomes nonforfeitable (1) upon the attainment of normal retirement age; and (2) at least as rapidly as under one of three alternative minimum vesting schedules. Section 411(a)(2) sets out the schedules as follows: (A) 10-year cliff vesting (100 percent vesting after 10 years of service); (B) 5- to 15-year graded vesting (25 percent vesting after 5 years of service, increasing gradually to 100 percent after 15 years of service); and (C) Rule of 45 (taking both age and service into account so that an employee who has completed at least 5 years of service, and the sum of whose age and years of service equals or exceeds 45, vests according to a table, but, in any event, in 50 percent after 10 years of service and an additional 10 percent for each additional year of service).

Section 411(a)(10)(B) provides that a plan amendment changing the plan's vesting schedule must permit all employees with at least 5 years of service to elect to remain under the vesting schedule in effect prior to the amendment.

Explanation of Provisions

Sections 1113 (a), (c), and (d) of the Tax Reform Act of 1986 amended sections 410(a) and 411(a). Section 410(a) was amended to provide that a plan may require no more than 2 years of service with the employer as a condition of participation in the plan if the plan provides for 100 percent vesting after no more than 2 years. Section 411(a) was amended to provide that an employee's right to all accrued benefits derived from employer contributions must become nonforfeitable at least as rapidly as under one of two alternative schedules, changing 10-year cliff vesting to 5-year cliff vesting and changing the 5- to 15-year graded schedule to a 3- to 7-year graded schedule. Ten-year cliff vesting is still allowed in the case of certain employees covered pursuant to a collective bargaining agreement and participating in a multiemployer plan. Employees who are not covered by the collective bargaining agreement are not eligible for the 10-year cliff vesting schedule, even if such employees are in the multiemployer plan pursuant to a participation agreement that relates to the collective bargaining agreement. Further, section 411(a)(10)(B) was amended to provide that a plan amendment changing the plan's vesting schedule must permit employees with 3, rather than 5, years of service to elect to remain under the prior vesting schedule. These changes apply to all accrued benefits derived from employer contributions whether accrued before or after the effective date of the changes. This Treasury decision provides temporary regulations in conformity with these changes.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these temporary regulations is V. Moore of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plans, Pension, Stock options, Individual Retirement Accounts, Employee stock ownership plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. New § 1.410(a)-3T is added immediately after § 1.410(a)-3 to read as follows:

§ 1.410(a)-3T Minimum age and service conditions (temporary).

(a) [Reserved]

(b) *Special rule for plan with 2-year 100 percent vesting.* A plan which provides that after not more than 2 years of service each participant's right to his or her accured benefit under the plan is completely nonforeitable (within the meaning of section 411 and the regulations thereunder) at the time such benefit accrues satisfies the requirements of paragraph (a) of this section if the period of service required by the plan as a condition of participation does not extend beyond the later of—

(1) [Reserved]

(2) *Two years of service.* The date on which the employee competes 2 years of service. For employees not described in § 1.411(a)-3T(e)(1), which describes employees with one hour of service in any plan year beginning after December 31, 1988, or later in the case of certain collectively bargained plans, the preceding sentence shall be applied by substituting "3 years of service" for "2 years of service".

Par. 3. New § 1.410 (a)-8T is added immediately after § 1.410(a)-7T to read as follows:

§ 1.410(a)-8T Year of service; break in service (temporary).

(a) [Reserved]

(b) [Reserved]

(c) *Breaks in service—*

(1) [Reserved]

(2) *Employees under 2-year 100 percent vesting schedule*—(i) *General rule.* In the case of an employee who incurs a 1-year break in service under a plan which provides that after not more than 2 years of service each participant's right to his accrued benefit under the plan is completely nonforfeitable (within the meaning of section 411 and the regulations thereunder) at the time such benefit accrues, the employee's service before the break in service is not required to be taken into account after the break in service in determining the employee's years of service under section 410(a)(1) and § 1.410(a)-3 if such employee has not satisfied such service requirement.

(ii) *Example.* The rules of this subparagraph are illustrated by the following example:

Example. A qualified plan computing service by the actual counting of hours provides full and immediate vesting. The plan can not require as a condition of participation that an employee complete 2 consecutive years of service with the employer because the requirement as to consecutive years is not permitted under section 410(a)(5). However, such a plan can require 2 years without a break in service, i.e., 2 years with no intervening years in which the employee fails to complete more than 500 hours of service. Under a plan containing such a participation requirement, the following example illustrates when employees would become eligible to participate.

Year	Hours of service completed		
	Employee A	Employee B	Employee C
1	1,000	1,000	1,000
2	1,000	700	500
3	1,000	1,000	1,000
4	1,000	1,000	700
5	1,000	1,000	1,000

Note.—Employee A will have satisfied the plan's service requirement at the end of year 2, Employee B at the end of year 3, and Employee C at the end of year 5.

(3) *One-year break in service—*

(i) [Reserved]

(ii) *Examples.* The rules provided by this subparagraph are illustrated by the following examples:

Example (1). Employee A completes a year of service under a plan computing service by the actual counting of hours for the 12-month period ending December 31, 1989, and incurs a 1-year break in service for the 12-month period ending December 31, 1990. The plan does not contain the provisions permitted by section 410(a)(5)(B) (relating to 2-year 100 percent vesting) and section 410(a)(5)(D) (relating to nonvested participants). Thereafter, he does not complete a year of service. As of January 1, 1991, in computing his period of service under the plan his service prior to December 31, 1990, is not required to be taken into account for purposes of section 410(a)(1) and § 1.410(a)-3.

Example (2). [Reserved]

Par. 4. New § 1.410 (a)-9T is added immediately after § 1.410(a)-8T to read as follows:

§ 1.410(a)-9T Elapsed time (temporary).

(a) [Reserved]

(b) [Reserved]

(c) *Eligibility to participate—*

(1) [Reserved]

(2) *Determination of one-year period of service.*

(i) [Reserved]

(ii) For purposes of section 410(a)(1)(B)(i), a "2-year period of service" shall be deemed to be "2 years of service."

(d) *Vesting*—(1) *General rule.*

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) For purposes of determining an employee's nonforfeitable percentage of accrued benefits derived from employer contributions, a plan, after calculating an employee's period of service in the manner prescribed in this paragraph, may disregard any remaining less than whole year, 12-month or 365-day period of service. Thus, for example, if a plan provides for the statutory three to seven year graded vesting, an employee with a period (or periods) of service which yields 3 whole year periods of service and an additional 321-day period of service is twenty percent vested in his or her employer-derived accrued benefits (based solely on the 3 whole year periods of service).

(2) [Reserved]

Par. 5. New § 1.411(a)-3T is added immediately after § 1.411(a)-3 to read as follows:

§ 1.411(a)-3T Vesting in employer-derived benefits (temporary).

(a) *In general.*

(1) [Reserved]

(2) *Composite arrangements.* A plan will not be considered to satisfy the requirements of paragraph (b), (c), or (d) of this section unless it satisfies all requirements of a particular one of such paragraphs with respect to all of an employee's years of service. A plan which, for example, satisfies the requirements of paragraph (b) (but not (c) or (d)) for an employee's first 4 years of service and satisfies the requirements of paragraph (c) (but not (b)) for all of his remaining years of service does not satisfy the requirements of this section. A plan is not precluded from satisfying the requirements of one such paragraph with respect to one group of employees and another such paragraph with respect to another group provided that the groups are not so structured as to evade the requirements of this paragraph.

(3) [Reserved]

(b) *5-year vesting.* A plan satisfies the requirements of section 411(a)(2)(A) and this paragraph if an employee who has completed 5 years of service has a nonforfeitable right to 100 percent of his or her accrued benefits derived from employer contributions.

(c) *3- to 7-year vesting.* A plan satisfies the requirements of section 411(a)(2)(B) and this paragraph if an employee who has completed at least 3 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions, which percentage is not less than the nonforfeitable percentage determined under the following table:

Completed years of service	Nonforfeitable percentage
3	20
4	40
5	60
6	80
7 or more	100

(d) *Multiemployer plans.* A plan satisfies the requirements of section 411(a)(2)(C) and this paragraph if—

(1) The plan is a multiemployer plan (within the meaning of section 414(f)), and

(2) Under the plan—

(i) An employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions not later than upon completion of 10 years of service, and

(ii) The requirements of paragraph (b) or (c) of this section are met with respect to employees who are not covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B).

(iii) For purposes of this provision, an employee is not covered pursuant to a collective bargaining agreement unless the employee is represented by a bona fide employee representative that is a party to the collective bargaining agreement pursuant to which the multiemployer plan is maintained. Thus, for example, an employee of either the multiemployer plan or the employee representative is not covered pursuant to the collective bargaining agreement under which the plan is maintained even if the employee is covered pursuant to an agreement entered into by the multiemployer plan or employee representative on behalf of the employee and even if all such employees covered under the plan constitute only a de minimis percentage of the total employees covered under the plan.

(e) *Effective date.* (1) The provisions of this section apply to all employees who have one hour of service in any plan year beginning after—

(i) December 31, 1988, or

(ii) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, for employees covered by any such agreement, the earlier of—

(A) The later of—

(*1*) January 1, 1989, or

(*2*) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

(2) For employees not described in paragraph (e)(1), above, the regulations in effect prior to January 1, 1989, shall be applied to determine the requirements of this section.

(f) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). Plan B provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable as follows:

Completed years of service	Nonforfeitable percentage
1	0
2	10
3	25
4	45
5	65
6	75
7	100

Plan B does not satisfy the requirements of paragraph (c) of this section (relating to 3- to 7-year vesting) because the nonforfeitable percentage provided by the plan after completion of 6 years of service (75 percent) is less than the percentage required by paragraph (c) of this section at that time (80 percent). The fact that the nonforfeitable percentage provided by the plan for years prior to the 6th year of service is greater than the percentage required under paragraph (c) of this section is immaterial. The plan fails to satisfy the requirements of paragraph (c) of this section even if it is demonstrated that the value of the vesting provided by the plan to the employees is at least equal to the value of the vesting rate required by this paragraph.

Example (2). Plan C provides for plan participation after the completion of 1 year of service. The plan provides that each employee's rights to his employer-derived accrued benefits are 100 percent nonforfeitable after 5 years of plan participation rather than service. The plan does not satisfy the requirements of paragraph (b) of this section because, under the plan, an employee obtains a 100 percent nonforfeitable right to his or her employer-derived accrued benefit only after completion of more than 5 years of service.

Example (3). Plan D provides that each employee's rights to his employer-derived accrued benefits are nonforfeitable in accordance with the following schedule:

Completed years of service	Nonforfeitable percentage
0 to 4	0
5	60
6	80
7	100

The plan does not satisfy the requirements of paragraph (b) of this section after the 4th year of service. It does not satisfy the requirements of paragraph (c) of this section for years prior to the 5th year of service. The plan does not satisfy the requirements of this section because it does not satisfy the requirements of a particular one of the two paragraphs for each of an employee's years of service.

Example (4). Plan G provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable upon completion of 3 years of service. The plan satisfies the requirements of paragraphs (b) and (c) of this section and, because it satisfies the requirements of at least one of such paragraphs for all of an employee's years of service, it satisfies the requirements of this section.

Par. 6. New § 1.411(a)-4T is added immediately after § 1.411(a)-4 to read as follows:

§ 1.411(a)-4T Forfeitures, suspensions, etc. (temporary).

(a) *Nonforfeitability.* Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time. Certain adjustments to plan benefits, such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable. Rights which are conditioned upon a sufficiency of plan assets in the event of a termination or partial termination are considered to be forfeitable because of such condition. However, a plan does not violate the nonforfeitability requirements merely because in the event of a termination an employee does not have any recourse toward satisfaction of his nonforfeitable benefits from other than the plan assets, the Pension Benefit Guaranty Corporation, or a trust established and maintained pursuant to sections 4041(c)(3)(B) (ii) or (iii) and section 4049 of ERISA with respect to the plan. Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced as allowed under sections 401(a)(5) and 401(l). To the extent that rights are not required to be nonforfeitable to satisfy the minimum vesting standards, or the nondiscrimination requirements of section 401(a)(4), they may be forfeited without regard to the limitations on forfeitability required by this section. The right of an employee to repurchase his accrued benefit for example under section 411(a)(3)(D), is an example of a right which is required to satisfy such standards. Accordingly, such a right is subject to the limitations on forfeitability. Rights which are required to be prospectively nonforfeitable under the vesting standards are nonforfeitable and may not be forfeited until it is determined that such rights are, in fact, in excess of the vesting standards. Thus, employees have a right to vest in the accrued benefits if they continue in employment of employers maintaining the plan unless a forfeitable event recognized by section 411 occurs. For example, if a plan covered employees in Division A of Corporation X under a plan utilizing a 5-year 100 percent vesting schedule, the plan could not forfeit employees' rights on account of their moving to service in Division B of Corporation X prior to completion of 5 years of service even though employees are not vested at that time.

(b) [Reserved]

(c) *Examples.* The rules of this section ae illustrated by the following examples:

Example (1). Corporation A's plan provides that an employee is fully vested in his employer-derived accrued benefit after completion of 3 years of service. The plan also provides that if the employee works for a competitor he forfeits his rights in the plan. Such provision could result in the forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and therefore the plan would not satisfy the requirements of section 411. If the plan limited the forfeiture to employees who completed less than 5 years of service, the plan would not fail to satisfy the requirements of section 411 because the forfeitures under this provision are limited to rights which are in excess of the minimum required to be nonforfeitable under section 411(a)(2)(A).

Example (2). [Reserved]

Par. 7. New § 1.411(a)-8T is added immediately after § 1.411(a)-8 to read as follows:

§ 1.411(a)-8T. Changes in vesting schedule (temporary).

(a) [Reserved]

(b) *Election of former schedule*—(1) *In general.* Under section 411(a)(10)(B), for plan years for which section 411 applies, if the vesting schedule of a plan is amended, the plan will not be treated as meeting the minimum vesting standards of section 411(a)(2) unless the plan as amended provides that each participant whose nonforfeitable percentage of his accrued benefit derived from employer contributions is determined under such schedule, and who has completed at least 3 years of service with the employer, may elect, during the election period, to have the nonforfeitable percentage of his accrued benefit derived from employer contributions determined without regard to such amendment. Notwithstanding the preceding sentence, no election need be provided for any participant whose nonforfeitable percentage under the plan, as amended, at any time cannot be less than such percentage determined without regard to such amendment. For employees not described in § 1.411(a)-3T(e)(1), this section shall be applied by substituting "5 years of service" for "3 years of service" where such language appears.

(2) *Election period.* For purposes of subparagraph (1) of this paragraph, the election period under the plan must begin no later than the date the plan amendment is adopted and end no earlier than the latest of the following dates:

(i) The date which is 60 days after the day the plan amendment is adopted,

(ii) The date which is 60 days after the day the plan amendment becomes effective, or

(iii) The date which is 60 days after the day the participant is issued written notice of the plan amendment by the employer or plan administrator.

(3) *Service requirement.* For purposes of subparagraph (1) of this paragraph, a participant shall be considered to have completed 3 years of service if such participant has completed 3 years of service, whether or not consecutive, without regard to the exceptions of section 411(a)(4) prior to the expiration of the election period described in subparagraph (2) of this paragraph. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Lawrence B. Gibbs,

Commission of Internal Revenue.

Approved: November 23, 1987.

O. Donaldson Chapoton,

Assistant Secretary of The Treasury.

[FR Doc. 88-113 Filed 1-5-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F3284, 6F3383/R929; FRL-3312-3]

Tolerances for 2-[1-(ethoxyimino) butyl]-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) fruiting vegetables at 4.0 parts per million (ppm), strawberries at 5.0 ppm, and raspberries at 5.0 ppm. This regulation was requested by BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: January 6, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued notices published in the **Federal Register** that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposed amending 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as parent) in or on the following RACs:

Pesticide petition No.	Crops	Parts per million (ppm)	Federal Register citation
5F3284	Fruiting vegetables.	4.0	December 4, 1985 (50 FR 49760).
6F3383	Strawberries	10.0	June 11, 1986 (51 FR 21232).

No comments were received in response to the notices of filing.

The petitioner subsequently amended Pesticide Petition No. 6F3383 by submitting a revised section F proposing tolerances for strawberries at 5.0 ppm and raspberries at 5.0 ppm. Because there is no potential increase to humans from the revised proposal, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies; a 6-month feeding study with dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with no-observed-effect level (NOEL) of 2 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a two-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day and a maternal NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis, E. coli,* and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and host-mediated assays (mouse) with *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams (g/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day) and using a hundred-fold safety factor, is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.0190 mg/kg/day. The current action will contribute 0.00019 mg/kg/day to the TMRC and will utilize 0.94 percent of the ADI. Published tolerances and unpublished but approved tolerances utilize 95.69 percent of the ADI.

A related final rule (FAP 5H5475/R928) appears elsewhere in this issue of the **Federal Register** and establishes tolerances on the feed commodity dried tomato pomace and the food commodity tomato products, concentrated.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this dificiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any seconday residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180-[AMENDED]

1. The authority citation continues to read as follows:

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

2. In § 180.412, by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Fruiting vegetables	4.0
* * * * *	
Raspberries	5.0
* * * * *	
Strawberries	5.0
* * * * *	

[FR Doc. 88-160 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3119/R927; FRL-3312-2]

Oxyfluorfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide oxyfluorfen in or on the raw agricultural commodities (RACs) almond hulls and tree nuts group. This regulation to establish a maximum permissible level for residues of oxyfluorfen in or on the RACs was requested by Rohm & Haas Co.

EFFECTIVE DATE: Effective on January 6, 1988.

ADDRESS: Written objections, identified by the document control number [PP 4F3119/R927], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 8, 1984 (49 FR 31757), which announced that Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted a pesticide petition (PP 4F3119) to EPA proposing to amend 40 CFR 180.381 by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the RACs tree nuts group (except almond hulls) at 0.05 part per million (ppm), and almond hulls at 0.1 ppm.

Rohm & Haas subsequently amended the petitions to specify the total residues of the herbicide oxyfluorfen and its metabolites containing the diphenyl ether linkage.

No comments were received in response to the notice of filing.

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

1. A 20-month mouse feeding study (chronic feeding/oncogenicity) with a no-observed-effect level (NOEL) of 2 ppm (equivalent to 0.3 milligram (mg) per kilogram (kg) of body weight (bw) per day) and a lowest effect level of 20 ppm (increased absolute liver weight and nonneoplastic histological lesions). The Cancer Assessment Group (CAG) was asked to evaluate the oncogenic potential of oxyfluorfen. CAG stated that both the rat and the mouse oncogenic studies did not use the maximum tolerated dose (MTD). The Agency requested that 90-day mouse and rat studies be performed as an estimate to determine the MTD. Subsequently, it was determined that toxicological concerns were not considered sufficient to regulate oxyfluorfen as an oncogen, and oxyfluorfen received unconditional registration by the Agency.

2. A 2-year dog feeding study with a NOEL of 100 ppm (equivalent to 2.5 mg/kg/day).

3. A rat oral lethal dose LD_{50} greater than 5.0 grams/kg.

4. A rat cytogenetic test (purified oxyfluorfen), negative; two Ames assays (technical), positive; an Ames assay (purified oxyfluorfen), negative; an Ames assay (polar fraction), positive; and Unscheduled DNA Synthesis Assays (technical and polar fraction), both negative.

5. A rabbit teratology study with no observed teratogenic effect at 30 mg/kg of bw and a developmental toxicity NOEL of 10 mg/kg.

6. A rat teratology study with no observed terata at 1,000 mg/kg of bw (highest dose tested) and a developmental toxicity NOEL of 100 mg/kg.

7. A three-generation rat reproduction study with a NOEL of 10 ppm (equivalent to 0.5 mg/kg of bw per day).

8. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (equivalent to 2.0 mg/kg of bw per day) and no oncogenic potential observed at the levels tested (2, 40, and 800 ppm, raised to 1,600 ppm at week 57 of the test).

The acceptable daily intake (ADI), based on the chronic mouse feeding study NOEL of 0.3 mg/kg/day and using a hundred-fold safety factor, is calculated to be 0.003 mg/kg of bw/day. The maximum permitted intake for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.04162 mg/day; the current action will increase the TMRC by 0.0008 mg/day (0.19 percent). Published tolerances utilize 23.13 percent of the ADI: the current action will utilize an additional 0.04 percent to total 23.13 percent.

There are no regulatory actions pending against this pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration process and a Notice of Determination that was published in the **Federal Register** of June 23, 1982 (47 FR 27118).

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. The Agency has concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contained a maximum of 200 ppm PCE.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood for the proposed uses, and an adequate analytical method, gas chromotography, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement method in the Pesticide Analytical Manual, Vol. II, the analytical method is being made available in the interim to anyone interested in pesticide enforcement when requested from: William Grosse, Chief, Information Service Branch (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2613.

Established tolerances are adequate to cover any secondary residue in meat, milk, and eggs.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the RACs will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.381(a) is amended by adding, and alphabetically inserting, the raw agricultural commodities tree nuts group (except almond hulls), increasing the tolerance of almond hulls to 0.1 ppm, and removing the raw agricultural commodities almonds and walnuts, to read as follows:

§ 180.381 Oxyflurofen; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Almond hulls	0.1
* * * * *	
Tree nuts group (except almond hulls)	0.05
* * * * *	

[FR Doc. 88-161 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3312-5]

North Carolina; Order To Commence Proceedings To Determine Whether To Withdraw Hazardous Waste Program Approval; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of Correction of Hearing Date and Location.

SUMMARY: This notice corrects the date and location previously published in the **Federal Register** (52 FR 43903) on November 17, 1987, establishing the dates and location for the North Carolina withdrawal proceeding hearing. The hearing will be held on February 23-25, 1988, at the Velvet Cloak Inn, 1505 Hillsborough Street, Raleigh, NC 27605.

The addresses and the contact for further information remain unchanged.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr. at (404) 347-3016.

Dated: December 29, 1987.

Bruce R. Barrett,

Acting Regional Administrator.

[FR Doc. 88-158 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 71279-7279]

Red Drum Fishery of the Gulf of Mexico

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

ACTION: Emergency interim rule.

SUMMARY: NOAA issues this emergency rule to reduce the current annual recreational and commerical catch allowances of red drum from the primary area of the exclusive economic zone (EEZ) of the Gulf of Mexico from 625,000 pounds to zero. This rule provides interim protection to the spawning stock of red drum in the EEZ while the Gulf of Mexico Fishery Management Council (Council) prepares an amendment to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) that would achieve the same result. The intended effect of this rule is to protect the depleted red drum spawning stock from overfishing.

EFFECTIVE DATE: This rule is effective 0001 hours, local time, January 1, 1988, through 2400 hours, local time, March 30, 1988.

ADDRESS: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The red drum fishery is managed under the FMP and its implementing regulations (51 FR 46675, December 24, 1986), as provided by the Magnuson Fishery Conservation and Management Act. Amendment 1 to the FMP, prepared by this Council, and its implementing regulations (52 FR 34918, September 16, 1987), divided the EZZ into primary and secondary areas; prohibited the harvest or possession of red drum from the secondary areas (waters off Texas and Florida); and established an annual total allowable catch (TAC) in the primary area (waters off Louisiana, Mississippi, and Alabama). Under the TAC, the annual quotas were zero for the directed commercial fishery, 200,000 pounds as incidental catch in the shrimp fishery, 100,000 pounds as incidental catch in other commercial fisheries, and 325,000 pounds for the recreational fishery. The regulations also imposed a recreational bag limit of one red drum per person per trip in or from the primary area. Amendment 1 specified that adjustments to TAC and user group allocations be implemented by an FMP amendment. Amendment 1 also provided for annual monitoring and assessment of the condition of the resource, using the best scientific information available, by the Red Drum Scientific Assessment Group (Group), whose members are appointed by the Council. The Group is composed of qualified fishery scientists from throughout the Gulf region.

Management actions taken to date have been perceived as conservative, however, they may not have been conservative enough. Although scientists were previously aware that the rate of juvenile escapement from nearshore waters was extremely low, less than 2 percent, they did not know how long these low levels of escapement had persisted. Recent research suggests that these low escapement levels, owing to high inshore mortality rates, have been the trend for some time. The most recent scientific assessment of the condition of the red drum resource indicates that the spawning stock has been damaged to an extent that was heretofore unrealized. Continued removal of adult red drum from offshore waters would only contribute to further reduction of the already depleted spawning stock and increase the risk of this fishery collapsing. It would hasten the disappearance of older, more productive spawners and further deplete the younger age classes (ages 4 to 7) that are already poorly represented in the population. Even at present fishing mortality rates, the reproductive capacity of the spawning stock has been greatly reduced. This reduced spawning capacity will become increasingly apparent as older fish (ages 7 and older) disappear from the population.

Present Situation

The Group presented its first report under Amendment 1 procedures to the Council on December 2, 1987. Reviewing the most recent information available, including the information determined from red drum schools sampled by purse seine during mark-recapture studies, the Group observed low recruitment of almost all recent age classes in the spawning stock; fish younger than 12 years of age where poorly represented in the samples. Further, the Group noted that fishing mortality rates on juveniles are sufficiently high as to cause the offshore spawning stock to fall below the FMP's goal that it remain at or above 20 percent of the virgin biomass of the unexploited spawning stock. The Group also observed that 1986 exploitation rates were greatly in excess of rates that would allow realization of the management goal of escapement from nearshore waters of 20 percent of the unexploited juvenile red drum population into the offshore spawning stock. Finally, the Group judged that the fishing mortality rate for adult red drum (recreational and commercial) is between 3 and 5 percent, even with no allowable harvest in the EEZ, because there is a limited harvest of adults from nearshore waters and a limited incidental catch in other fisheries.

Based upon this information, the Group concluded: "The most liberal interpretations of the data available suggest that, at present, escapement of juveniles to the adult stock is less than 2 percent, because inshore fishing mortality remains high in all states. Limited observations on the age composition of the offshore stock also support the contention that few fish have reached breeding age during recent years. This possible major decline in recruitment to the adult stock underscores the importance of maintaining and protecting all remaining breeding fish."

Recommendations

The Group recommended that the Council: (1) Set the acceptable biological catch (ABC) for the EEZ at zero until necessary escapement levels are achieved; (2) maintian the management goal for the size of the offshore spawning stock of 20 percent of the virgin spawning stock; and (3) increase the juvenile escapement goal rate from 20 to 30 percent. The Group's report indicates that a serious situation exists in the red drum fishery for which a reduction in TAC is necessary immediately, much sooner than would be possible through an FMP amendment, particularly since, under current regulations, the 650,000-pound annual incidental catch allowance becomes available to the fisheries on January 1, 1988. The report also recommends that the Gulf States consider appropriate action for waters under their jurisdiction in order to achieve a 30 percent escapement rate of inshore juveniles to the offshore spawning stock.

The Council accepted the results of the stock assessment report and the Group's recommendations, determined that an emergency exists in the red drum fishery, and requested the Secretary of Commerce to take immediate emergency action under the Magnuson Act to implement the zero TAC for the primary area. In addition, the Council is proceeding as rapidly as possible with an amendment to the FMP to reduce TAC for the primary area to zero, which would be implemented at the end of the emergency period.

The Council directed the Regional Director to contact the States and request that they institute fishery closure in their waters similar to that in the EEZ. The Council also has requested that all Gulf States strive to achieve a goal of 30 percent escapement of juveniles to assure an adequate spawning stock size. The Group's report recommended specific actions which the States might take to attain this goal.

Regulatory Response

The Secretary concurs with the Council's determination that a serious situation exists involving the red drum fishery and that emergency action is warranted. This rule, therefore, is implemented under section 305(e)(2)(B) of the Magnuson Act to provide immediate protection to the red drum resource. This rule, for its duration, reduces the total allowable harvest of red drum in the EEZ to zero. In the meantime, an FMP amendment will be prepared by the Council to continue this zero harvest level until such time as a surplus exists in the offshore stock in the EEZ which can be removed with a minimum of risk to the resource.

Since production of eggs and larval fish available to migrate to nearshore waters for their growth into juveniles cannot be sustained by the current offshore spawning stock, it is incumbent upon the States to strengthen their management programs to increase levels of juvenile escapement. Cooperative and effective State action is essential to meet the goals and objectives of the FMP. Short of formal preemption under section 306(b)(1) of the Magnuson Act, closing the EEZ to all harvest of red drum is the most restrictive Federal action that can be taken to protect the stock from collapse.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds for good cause (i.e., to prevent further depletion of the red drum spawning stock in the EEZ) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment upon this rule, or to delay for 30 days it effective date, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Mississippi, and Louisiana. Texas does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA may be obtained from address above.

This rule does not contain a collection of information requirement and therefore it is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

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

2. In § 653.7, paragraphs (a)(8), (17), (18), (19), (21), and (22) are suspended, January 1 through March 30, 1988, and a new paragraph (c) is added to be effective from January 1 through March 30, 1988, to read as follows:

§ 653.7 Prohibitions.

* * * * *

(c) It is unlawful for any person to retain on board a vessel or possess red drum in or from the primary or secondary areas as specified in § 653.22(f).

§ 653.21 [Amended]

3. Section 653.21 is suspended, January 1 through March 30, 1988.

4. In § 653.22, paragraphs (b), (d), and (e) are suspended, January 1 through March 30, 1988, and a new paragraph (f) is added to be effective January 1 through March 30, 1988, to read as follows:

§ 653.22 Harvest and landing limitations.

* * * * *

(f) *Harvest from the primary area.* No red drum may be harvested or prossessed in or from the primary area. Red drum caught in the primary area must be released immediately with a minimum of harm to the fish.

§ 653.23 [Amended]

5. Section 653.23 is suspended, January 1 through March 30, 1988.

[FR Doc. 87-30211 Filed 12-31-87; 1:28 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 71158-7288]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of final 1988 fishery specifications.

SUMMARY: NOAA announces the final 1988 specifications for Pacific coast groundfish taken in the ocean off the coasts of Washington, Oregon, and California. The specifications include the acceptable biological catch, the optimum yield (quotas), and the distribution of the optimum yield between domestic and foreign fishing operations as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to establish allowable harvests of Pacific coast groundfish from the U.S. exclusive economic zone and territorial waters in 1988.

EFFECTIVE DATE: January 1, 1988, until modified, superseded, or rescinded.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140, or Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR Part 663 require that management specifications for groundfish be evaluated each calendar year, that preliminary specifications for the upcoming year be published in the **Federal Register** inviting public comment, and that final specifications be published in the **Federal Register** following public comment as described at 50 CFR 663.24. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), and the distribution of OY between domestic and foreign fishermen. The ABC is an estimate of the annual catch that can be taken of the more than 80 groundfish species managed by the FMP without jeopardizing the stock's productivity. The OY, which is specified for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), is based on socio-economic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be retained or landed each year from the exclusive economic zone (EEZ) (3–200 nautical miles) and the territorial sea (0–3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is apportioned into specifications of the amounts available for domestic and foreign fishing. The domestic annual harvest (DAH) consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), which are verified by surveys of the domestic industry in September and June. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than initially was estimated.

The other groundfish species managed under the FMP do not have numerical OYs. They may be regulated by gear, area, and catch restrictions. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization of some species in this multispecies complex by domestic processors precludes joint venture or foreign targeting on underexploited species in the complex because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing may not be directed on these "other" groundfish species in the multispecies complex. However, ABCs are specified for the major species or species groups.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22.

The Pacific Fishery Management Council (Council) reviewed and recommended preliminary specifications for the 1988 ABCs and received public comment at its September 1987 meeting. Because better scientific information became available in October, the Regional Director, NMFS, at the request of the Council, revised the ABCs for some species. The preliminary ABCs that were announced at 52 FR 45668 (December 1, 1987) were based upon the best available scientific information and surveys of the industry to estimate planned utilization.

Written public comments on the preliminary specifications were requested through December 16, 1987; none were received. The Council received public comment at its November 17–19, 1987 Council meeting, the last opportunity in 1987 for the Council to recommend final specifications for 1988. The Council considered public comments at that meeting in addition to advice from members of the council's Groundfish Advisory Subpanel (industry and consumer representatives) and Groundfish Management Team (state and federal fishery biologists and an economist) in recommending final specifications to NMFS. The Council recommended the following revisions to the preliminary specifications for sablefish in 1988.

Sablefish. Based on the best available information, the Groundfish Management Team determined that the 1988 ABC for sablefish should be significantly lower than recent landings, which averaged 13,600 metric tons (mt) between 1980 and 1986, because signs of biological stress were evident. Therefore, the ABC for sablefish remains as proposed at 10,000 mt, a 17 percent decrease from the 1987 ABC of 12,000 mt and about 25 percent lower than the 1980–1986 average. However, given the variabilities associated with the data and analytical methods used to estimate sablefish stock size and the difficulties in projecting landings, the Council recommended an OY range of 10,000 mt ± 8 percent (9,200 mt to 10,800 mt), with the intent of managing the fishery at the ABC, the midpoint of the range (10,000 mt). If total landings reach the upper end of the OY range (10,800 mt), all further landings will be prohibited. This strategy, in conjunction with management measures taken to slow the rate of landings, is intended to reduce the probability of a fishery closure early in the year. This will minimize the waste of incidentally caught sablefish which must be discarded after the quota is reached. Because domestic processors intend to process all available sablefish, DAP and DAH equal OY. No sablefish are available for joint venture or foreign fishing except for small incidental catches.

Pacific Whiting

The reserve for Pacific whiting (which equals 20 percent of OY) inadvertently was rounded to the nearest thousand metric tons in the preliminary specifications. It is more appropriately designated to the nearest hundred metric tons, consistent with the other specifications of OY and its components. Accordingly, the reserve is increased from 46,000 mt to 46,400 mt and TALFF is reduced from 20,000 mt to 19,600 mt.

All other ABC and OY designations for final specifications for groundfish in 1988 remain as proposed in the preliminary specifications. After considering this information, the Secretary of Commerce concurs with the Council's recommendations including the revisions stated above, and in the absence of other public comment announces the final specifications for 1988 as shown in Tables 1 and 2.

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1988 IN METRIC TONS FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	(2)	(2)	(2)	3,100
Pacific Whiting						[3] 232,000
Sablefish						[3] 10,000
Rockfish:						
Pacific Ocean Perch	0	0	(2)	(2)	(2)	0
Shortbelly						[3] 10,000
Widow						[3] 12,100
Other Rockfish: [4]						
Bocaccio	(2)	(2)	(2)	4,100	2,000	6,100
Canary	800	[5] 2,100	600	(2)	(2)	3,500
Chilipepper						[3] 3,600
Yellowtail	1,100	[5] 2,600	300	(2)	(2)	4,000
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,900
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish	700	3,000	1,700	1,800	500	7,700
Other fish: [6]						
Jack Mackerel [7]						12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "Other fish" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only

[3] Total all areas.

[4] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°21′34″ N. latitude), and ABCs for the Columbia area are prorated as follows:

	Columbia area (total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining Rockfish	3,700	3,300	400

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.

[7] North of 39° N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1988

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	232.0	16.0	150.0	166.0	46.4	19.6
Sablefish	[2] 9.2–10.8	9.2–10.8	0.0	9.2–10.8	0.0	0.0
Pacific ocean perch	[3] 1.3	[3] 1.3	0.0	[3] 1.3	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	12.1	12.1	0.0	12.1	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other species	[4]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: Sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] The Pacific Fishery Management Council has expressed its intent to manage for the midpoint of this range, 10,000 metric tons. However, all further landings will be prohibited if landings reach the upper end of the OY range (10,800 metric tons).

[3] Of this 1,300 metric tons, 500 metric tons is for the Vancouver subarea and 800 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Classification

This action is taken under the authority of 50 CFR 663.24 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the regulations implementing the original FMP.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

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

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30219 Filed 12-31-87; 3:30 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 71158-7288]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions on fishing in 1988 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, reduce or prevent biological stress, allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed in 1987 for these species.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) January 1, 1988, until modified, superseded, or rescinded. Comments will be accepted through January 21, 1988.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action supersedes fishing restrictions imposed in 1987 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and also adjusts the management measures at § 663.27(b)(3) for sablefish.

The FMP provides the means for managing over 80 species of groundfish caught in ocean waters off Washington, Oregon, and California. The FMP differentiates between species with numerical and non-numerical optimum yields (OYs). A species that may be harvested fairly selectively has a numerical OY, which is the maximum amount of that species that may be landed in a year (except for small incidental allowances in the foreign and joint venture fisheries). Landings in excess of OY are prohibited. Widow rockfish (*Sebastes entomelas*), Pacific ocean perch (*S. alutus*), and sablefish (*Anoplopoma fimbria*) have numerical OYs. When landing rates have become too high, trip limits have been imposed on these species to extend the fishery as long as possible throughout the year, but allow incidental catches to be landed to minimize waste of fish which must be discarded once an OY quota is reached.

Species which are not harvested selectively, or for which there is very little commercial interest or scientific data, are part of the non-numerical OY group and are managed most commonly by gear, area, and landing restrictions. An estimate of the acceptable biological catch (ABC), the annual catch that can be taken without jeopardizing the resource's productivity, has been made for most species in this group. (ABC estimates also are made for all species with numerical OYs.) Some species may be fished above the ABC. However, if one or more species in the group is biologically stressed, or is expected to become stressed if no limits on fishing are set, the Secretary of Commerce (Secretary) may determine that the harvest of species that are caught together should be reduced, even though some of those species are not stressed. Reduction usually has been accomplished by establishing a "harvest guideline" for the group as a whole and setting trip limits to achieve this harvest level. The harvest guideline may be, but is not necessarily, designated as a quota.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) has endorsed the determination of its Groundfish Management Team that if landings of widow rockfish, yellowtail rockfish (included in the *Sebastes* complex of rockfish), Pacific ocean perch, and sablefish are unrestricted, the likelihood or intensity of biological stress on those stocks is increased. Pacific ocean perch, in particular, is considered to be under long-term stress and is managed under a rebuilding schedule. Recent information on sablefish indicates the stock has declined much more than previously thought and currently is stressed. Landings of widow rockfish, Pacific ocean perch, and sablefish have been limited since the FMP was implemented in 1982 to minimize stress, or its likelihood, on these stocks; similarly, landings of the *Sebastes* complex have been restricted since 1983.

In its deliberations for 1988 management, the Council considered advice from its Groundfish Management Team (state and federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), the concerned public, and a Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, the Scientific and Statistical Committee, and the Groundfish Management Team. At its November 17–19, 1987 meeting in Portland, Oregon, the Council reviewed the latest data and developed management measures intended to limit landings of groundfish in 1988, thereby minimizing the likelihood and intensity of biological stress on groundfish stocks, and reducing the chances of having to close a fishery before the end of the year. In each case, the Council recommended a trip limit. As in 1987, the Council also recommended allocation of the sablefish resource between the trawl and nontrawl (fixed gear) user groups. The Council's recommendations for 1988 and actions taken by the Secretary on those recommendations are presented below.

Because the vast majority of groundfish landed off Washington, Oregon, and California is taken from the exclusive economic zone (EEZ) which extends from 3 to 200 nautical miles offshore, all groundfish taken and retained, possessed, or landed under these restrictions will be treated as though they were taken in the EEZ as in 1984–1987.

Widow Rockfish

Council Recommendation

The Council recommended a coastwide weekly trip limit of 30,000 pounds of widow rockfish, with only one landing above 3,000 pounds per vessel per week.

Rationale

The widow rockfish resource appears to be in about the same condition as was indicated by analyses in 1986. The stock is believed to be close to levels which produce the maximum sustainable yield (MSY), an average of the largest catch which can be taken continuously over time without depleting the stock. Evidence of a high proportion of young fish in the catch still is apparent, but it is not clear whether this indicates stress. It is difficult to determine whether the catch of large, mature fish, large incoming year classes, of fishing down a virgin stock accounts for the high proportion of young fish landed. Although biomass estimates show an encouraging degree of stability between 1986 and 1987, if the 1983 year class is as weak as expected, ABC may be reduced about 20 percent by 1990.

Trip limits have been used to limit landings of widow rockfish since 1982. In 1987, the year started with a 30,000-pound weekly trip limit and the OY was set at 12,500 metric tons (mt); the ABC was raised in-season to equal OY. At its September meeting, the Council recommended that, when 95 percent of OY is reached, the weekly trip limit should be lowered to 5,000 pounds to discourage target fishing while allowing incidental catches to be landed (52 FR 37466, October 7, 1987). This reduced trip limit was imposed on October 14 (52 FR 38429, October 16, 1987). Landings were not slowed, however, and OY was reached on November 7. The fishery was closed on November 25, the earliest date practicable (52 FR 45455, November 30, 1987).

The widow rockfish OY in 1988 is 12,100 mt, 3 percent lower than in 1987, and the rate of landings will be restricted in 1988 to minimize the probability of biological stress on the stock and to extend the fishery longer than otherwise would be possible. If this were not done, the OY quota could be reached early in the year, possibly by May or June, resulting in incidental catch and discards that would exceed OY. Accordingly, in 1988, the year will start with a 30,000-pound weekly trip limit as in 1987.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces:

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) One landing above 3,000 pounds of widow rockfish may be made during the period January 1–5, 1988.

These restrictions apply to all widow rockfish taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All widow rockfish possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sebastes Complex

Council Recommendation

The Council recommended that the 10,200 mt harvest guideline used for the *Sebastes* complex in 1987 be maintained in 1988. To achieve this, the Council recommended that trip limits be the same as at the beginning of 1987: A 25,000 pound weekly trip limit for the *Sebastes* complex taken north of Coos Bay, Oregon (containing no more than 10,000 pounds of yellowtail rockfish), with only one landing above 3,000 pounds allowed per vessel per week. The Wednesday–Tuesday definition of "week" remains in effect. Trip limit options are continued so that fishermen may choose a biweekly limit that allows landing up to 50,000 pounds (containing no more than 20,000 pounds of yellowtail rockfish) in one trip in a two-week period, or a twice-weekly limit that allows two landings up to 12,500 pounds each (containing no more than 5,000 pounds of yellowtail rockfish each) in a one-week period. These options apply only if proper notification is given to the appropriate state authority. As in the past, the number of landings less than 3,000 pounds is not restricted. The Council also recommended maintaining the 40,000-pound trip limit for landings of the *Sebastes* complex caught south of Coos Bay, Oregon, with no limit on the number of landings allowed per week.

Rationale

The harvest guideline for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon (43°21'34" N. latitude) is the sum of the ABCs of the species in the complex, and, at 10,200 mt, has been relatively stable since 1984. Landings are not necessarily prohibited when the harvest guideline is reached, although the Council could consider doing so.

Yellowtail rockfish, a dominant component in the *Sebastes* complex in the Vancouver and Columbia subareas, was documented as biologically stressed in March 1983 (48 FR 8283, February 28, 1983). Trip limits have been imposed since that time in an attempt to reduce the harvest of this species, which had been landed at rates exceeding the annual ABC estimates for the previous six years. Because yellowtail rockfish frequently are caught with other species in the multispecies *Sebastes* complex, limits were placed on the complex as a whole.

In 1987, weekly trip limits for the *Sebastes* complex caught north of Coos Bay were maintained at 25,000 pounds all year, but landing limits for yellowtail rockfish were reduced from 10,000 pounds in January to 7,500 pounds in July (52 FR 27818, July 24, 1987). Biweekly and twice-weekly landing options were available. Landings of the *Sebastes* complex in 1987 will exceed the 10,200 mt harvest guideline, and landings of yellowtail rockfish also will exceed the 1987 ABC of 3,600 mt for the same area. The Council did not consider these overages to be significant and did not recommend further reductions in the trip limits in 1987.

The stock biomass of yellowtail rockfish has been declining for the past two decades, although it appears to have stabilized in recent years. A comprehensive assessment of this species is expected in 1988; no new information currently is available. It is clear from historical data that unrestricted landings would exceed ABC significantly, thereby increasing the likelihood of biological stress on yellowtail rockfish. Accordingly, trip limits in 1988 are the same as those initially in effect in 1987, and may be adjusted during the year to keep landings close to the 1988 harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish.

As in past years, landings south of Coos Bay are limited to discourage large effort shifts into that area, but not to impede traditional operations. Accordingly, the 40,000-pound trip limit for the *Sebastes* complex caught south of Coos Bay is maintained as in 1987.

Secretarial Action

The Secretary concurs with the Council's recommendations and herein announces—

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads or idiot rockfish).

(b) "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish in the *Sebastes* complex taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All fish in the *Sebastes* complex possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) Coos Bay means 43°21'34" N. latitude, which is the latitude of the north jetty at Coos Bay, Oregon.

(d) It is unlawful to take and retain, possess, or land fish in excess of the 1987 trip limits until the new trip limit becomes effective on January 1, 1988.

(3) Restrictions on the *Sebastes* Complex Caught North of Coos Bay

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

Note: If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 30, 1987–January 5, 1988.

(b) *Biweekly trip limit.* If the state where the fish will be landed is notified as required by this paragraph, up to 50,000 pounds of the *Sebastes* complex, including no more than 20,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period.

Note: If fishing under the biweekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made December 23, 1987–January 5, 1988, or December 30, 1987–January 12, 1988. Biweekly trip limit options in effect on December 30, 1987 will continue until revoked as provided in this paragraph.

The state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate state agency, prior to the two-week period in which the rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206–753–6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone 707–445–6499.

(c) *Twice-weekly trip limit.* If the state where the fish will be landed is notified as required by this paragraph, up to 12,500 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period.

Note: If fishing under the twice-weekly trip limit, only two landings above 3,000 pounds of the *Sebastes* complex may be made during the week of December 30, 1987–January 5, 1988. Twice-weekly trip limit options in effect on December 30, 1987 will continue until revoked as provided in this paragraph.

The state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate state agency, prior to the week in which the rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the *Sebastes* Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless the owner or operator of the fishing vessel has notified the State of Oregon as required by paragraph (5)(b), no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Bay, or fish in one area and possess or land fish in the other area, if more than 3,300 pounds of the *Sebastes* complex is landed from that fishing trip. If fishing is conducted both north and south of Coos Bay, or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply. If fishing is conducted south of Coos Bay only, and fish are possessed or landed north of Coos Bay, then the restrictions on the *Sebastes* complex caught south of Coos Bay apply.

(b) Except as provided in paragraph (5)(c), notification must be submitted to one of the following offices of the Oregon Department of Fish and Wildlife, by telephone or in writing, prior to leaving port on a fishing trip: Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radio telephone. (The radio telephone message must be confirmed in writing by the vessel owner or operator to the address in subparagraph (b) above immediately on return to port; corrections and confirmations must be sent to the same address as the original message.) In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch

Council Recommendation

The Council recommended continuation in 1988 of the coastwide management measures that were in place for Pacific ocean perch POP in 1987. If more than 1,000 pounds of POP are on board, the trip limit for that species is 20 percent (by weight) of all legal fish on board or 5,000 pounds, whichever is less. Landings of POP less than 1,000 pounds per trip are unrestricted, regardless of the percentage on board.

Rationale

Pacific ocean perch is considered to be under long-term stress and has been managed for 8 years under a 20-year rebuilding schedule intended to increase the stock to levels that will produce the MSY. Trip limits have been imposed since the FMP became effective in 1982. Recruitment appears to be improving but at relatively low levels. Recent analysis of length data from the commercial fishery did not indicate any particularly strong year classes entering the fishery. Significant rebuilding of this species probably will not occur until one or more strong year classes recruit to the stock. Even if no POP were harvested in 1988, the desired 20-year rebuilding rate probably would not be met. However, incidental catches of this species in other fisheries are unavoidable, and the trip limit (and OY estimates) is designed to accommodate only these small incidental catches.

Landings of POP in 1987 are expected to be below the 500 mt OY for the Vancouver subarea (47°30′ N. latitude to the Canadian border) and below the 800 mt OY for the Columbia subarea (43° to 47°30′ N. latitude). By maintaining the same OYs and trip limits in 1988 as in 1987, the maximum opportunity for rebuilding will occur, short of prohibiting fishing for all species in the Vancouver and Columbia subareas.

The trip limit is designed to eliminate target fishing for POP in these two northern subareas, and is applied coastwide to discourage those who would exceed the limit and allege the fish were caught legally elsewhere. Because Pacific ocean perch are not abundant south of the Columbia subarea, this trip limit is not expected to restrict fisheries there.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces—

(1) For POP coastwide (Washington, Oregon, and California), no more than 5,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less, may be taken and retained, possessed, or landed, per vessel per fishing trip. This provision applies only when more than 1,000 pounds (round weight) of POP are on board.

(2) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under Subpart B of Part 663, or any regulation or permit promulgated under the Magnuson Act.

(3) This restriction applies to all POP taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All POP possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sablefish

Council Recommendation

The Council recommended that the 1988 fishery be managed for the sablefish ABC of 10,000 mt, the midpoint of the OY range of 10,000 mt plus or minus 8 percent (9,200 mt to 10,800), and that sablefish be allocated 5,200 mt for trawl gear and 4,800 mt for non-trawl gear (predominantly pot and longline fixed gears). The non-trawl allocation is a quota beyond which landings are prohibited. A trip limit was recommended for trawl-caught sablefish of 6,000 pounds of 20 percent (by weight) of all legal fish on board, including sablefish, whichever is greater, with only two landings above 1,000 pounds allowed per vessel per week. This limit will be applied coastwide and is subject to in-season adjustments with the intent of keeping trawl landings at 5,200 mt in 1988. If it appears that trawl landings will exceed 5,200 mt before the end of the year, up to 800 mt may be added to the trawl allocation for incidental catches of sablefish taken unavoidably in fisheries for other species. Should any part of the 800 mt supplement be needed, management measures may be imposed to assure that only incidental catches are landed. This 800 mt could bring landings up to 10,800 mt, the upper limit of the OY range. Landings in excess of 10,800 mt will be prohibited.

The Council also recommended continuation of the coastwide trip limits for sablefish smaller than 22 inches: 5,000 pounds for trawl vessels and 1,500 pounds for non-trawl vessels.

Rationale

Two major gear groups harvest sablefish off Washington, Oregon and California. The non-trawl or fixed gear fleet generally targets on this species with little bycatch. The trawl fleet catches sablefish jointly with other species in its multispecies operations, sometimes encountering 25–30 percent sablefish, but the extent of targeting is not known. As catch and effort by both sectors have increased and OY has declined, the Council has tried several allocation schemes to manage this fishery.

Current regulations at § 663.27(b)(3) require that the last 10 percent of the sablefish OY be allocated equally between trawl and fixed gears, designate these allocations as quotas beyond which landings are prohibited, and place a percentage trip limit on trawl landings to slow that fishery while enabling incidental catches to be landed. This regulation was not successful in 1985 and was not applied in 1986 or 1987. In 1986, an emergency rule was used to allocate a larger proportion of OY, and in 1987, pursuant to § 663.22(a)(3), the entire OY was allocated. The Council is considering an FMP amendment which will delete the obsolete regulation and provide a long-term management strategy for sablefish. In the interim, again pursuant to § 663.22(a)(3), this action adjusts the management measures at § 663.27(b)(3).

In 1987, the OY was lowered from 13,600 (1986) mt to 12,000 mt and allocated 52 percent to trawl gear and 48 percent to fixed gear, approximately the distribution of landings by the two gear types over the previous ten years. This management strategy was based on the concerns expressed by the Council's Groundfish Management Team (Team) that the ABC for sablefish had been exceeded for five consecutive years, and that if landings continued to exceed ABC, the likelihood of biological stress on the stock would be greatly increased. A trip limit on trawl-caught sablefish of 6,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is greater, was imposed on October 2 to lower landings (52 FR 37466, October 7, 1987). The fixed gear quota was reached and that fishery was closed on October 22 (52 FR 41304, October 27, 1987), so when the trawl quota was reached on November 4, landings by all gear types were prohibited (52 FR 42445, November 5, 1987).

Signs of biological stress have become more evident for sablefish. Although a revised stock assessment is not yet complete, trends were noted that suggest that recent landings (averaging 13,600 mt per year from 1980 to 1986) cannot be sustained. Washington-Oregon pot index surveys show a 66 percent decline in catch per unit of effort from 1983 to 1987, which may be due to reduced abundance. Also, the average size of sablefish has declined in the surveys.

The 1987 ABC/OY of 12,000 mt was 12 percent lower than the 13,600 mt average landings in 1980–1986. This decrease is considered to be insufficient to stop the decline in abundance. Therefore, the Council recommended lowering the ABC in 1988 to 10,000 mt, 17 percent below the 1987 ABC and 26 percent below the 1980–1986 average landings, which may be a sufficient decrease to reduce biological stress on the stock. Given the variabilities associated with the data and analyses used to estimate stock size and the difficulties in projecting landings, the Council recommended an OY range of ABC plus or minus 8 percent (9,200 mt to 10,800 mt).

The Council intends to manage the fishery for ABC (10,000 mt), the midpoint of the range, allocating 5,200 mt for trawl gear and 4,800 mt for non-trawl gear. This allocation is based on proportions negotiated by industry representatives for 1987 (52 percent trawl gear; 48 percent non-trawl gear), but applied to the 1988 OY target of 10,000 mt. An allocation scheme for the 1988 fishing year was not agreed upon by the industry groups. The Council recommended that the 1987 proportions be used in 1988 to provide the non-trawl fishermen an opportunity to plan their harvest for their maximum benefit and to allow the trawl fishermen to conduct their mixed-species fishery without having to discard sablefish.

The trip limit on trawl landings of sablefish is intended to manage the trawl fleet so that its allocation of 5,200 mt will not be exceeded, discards will be minimized, and the fishery will last as long as possible during the year. The Team estimated that the trip limit of 6,000 pounds or 20 percent, whichever is greater, would not enable year-round trawl operations; therefore, the Council added a frequency limit of two landings over 1,000 pounds per week to discourage day trips directed on sablefish. The Team will monitor the trawl landings and recommend trip limit changes necessary to meet the trawl allocation. Should these trip limits fail to limit the landings to 5,200 mt for the year, as much as 800 mt may be added to the trawl allocation to minimize the discards of incidentally caught sablefish. Additional fishing restrictions may be imposed if needed to avoid reaching the trawl allocation.

Because the non-trawl fishery is primarily a target fishery for sablefish, incidental catches of that species are not a problem for most fixed gear fishermen. However, the California set net fishery takes minimal amounts of sablefish which must be discarded after the allocation is reached. Also, most fixed gear-caught sablefish are frozen and maintenance of a year-long supply can be achieved even if the fishery is not active. Therefore, the non-trawl allocation will not be adjusted during the year, and non-trawl landings will be prohibited when its allocation is reached. Further landings by all gear types will be prohibited if 10,800 mt is reached.

Trip limits on sablefish smaller than 22 inches (total length) have been imposed since 1983 to reduce the likelihood of biological stress, which is expected if landings of juvenile sablefish are not curtailed. Markets for small sablefish have been strong and the overharvest of juvenile fish which become the future brood stock could occur if no size limit were imposed. Therefore, the trip limits in effect since April 27, 1987 (52 FR 15726) for sablefish smaller than 22 inches are continued in 1988. These limits (5,000 pounds for trawl landings and 1,500 pounds for non-trawl landings) are designed to minimize discards and the likelihood of biological stress. For the trawl fishery, the limit on small sablefish is included in the overall trip limit so that, of the 6,000 pounds or 20 percent (whichever is greater) of sablefish that are landed, no more than 5,000 pounds may be fish smaller than 22 inches.

Secretarial Action

The Secretary concurs with the Council's recommendation and hereby announces:

(1) Gear Allocations

(a) The sablefish fishery will be managed to achieve the ABC of 10,000 mt, the midpoint of the OY range of 9,200 mt to 10,800 mt, which is allocated 5,200 mt to trawl and 4,800 mt to nontrawl landings in 1988.

(b) The non-trawl gear allocation is a quota. If this quota is reached, retention or landings of sablefish by nontrawl gear will be prohibited as provided for in § 663.23.

(c) The trawl allocation may be increased during the year by as much as 800 mt to allow for incidental catches.

(d) If 10,800 mt (the upper end of the OY range) is reached, further landings of sablefish by all gear types will be prohibited until January 1, 1989.

(2) Trip and Size Limits

(a) *Trawl gear.* (i) For trawl-caught sablefish, no more than 6,000 pounds or 20 percent of all legal fish on board including sablefish, whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip. Only two landings of sablefish above 1,000 pounds may be made per vessel in a one-week period. These limits may be modified in-season to achieve the trawl allocation of 5,200 mt.

(A) "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuseday, local time.

(B) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under Subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) Of those sablefish taken with trawl gear under paragraph (2)(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed, per vessel per fishing trip.

(b) *Non-trawl gear.* No more than 1,500 pounds of sablefish smaller than 22 inches (total length) caught with non-trawl gear may be taken and retained, possessed, or landed, per vessel per fishing trip.

(c) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without multilation of the fish or the use of additional force to extend the length of the fish.

(d) For processed ("headed") sablefish,

(i) The minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and

(ii) The product recovery ratio (PRR) established by the State where the fish is or will be landed is used to convert the processed weight to round weight for purposes of applying the trip limit.

Note: The Federal trip limit for processed ("headed") sablefish is based on the product recovery ratios (PRRs) used by Washington, Oregon, or California, as in the past. It should be noted that the State PRRs may differ and fishermen should contact fishery enforcement officials in the State where the fish will be landed to determine that state's offical PRR.

(e) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(3) This restriction applies to all sablefish taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All sablefish possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(4) Pursuant to § 663.22(a)(3), the regulations at § 663.27(b)(3) are adjusted until further notice.

(5) Non-trawl (fixed) gear inlcudes set nets, traps or pots, longlines, commerical vertical hook-and-line gear, troll gear, and trammel nets.

(6) Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(7) All weights and percentages of fish on board are based on round weights. If sablefish are processed, refer to paragraph (2)(d) for conversion to round weight.

In-season Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

These limits for widow rockfish, Pacific ocean perch, the *Sebastes* complex, and sablefish apply to vessels of the United States, inlcuding those vessels delivering groundfish to foreign processors. Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under § 611.70.

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot prawn, and ridgeback prawn fisheries are governed by regulations at § 663.28. If fishing for groundfish and pink shrimp, spot prawn or prawn ridgeback prawn in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If unrestricted, landings unquestionably will result in several ABCs being exceeded in 1988, increasing the likelihood of biological stress of those stocks. Prompt action to limit these fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, Pacific ocean perch, and sablefish stocks and alleviate the necessity for fishery closures before the end of 1988. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective January 1, 1988.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in October and November 1987 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-30217 Filed 12-31-87; 3:33 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

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 910

Lemons Grown in California and Arizona; Suspension of the Compensation Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on suspending, for an indefinite period, a provision of the marketing order for lemons produced in California and Arizona, relating to compensation rates for Lemon Administrative Committee (LAC) members. This action would allow the LAC to recommend an increase in the daily compensation which LAC members or alternates acting as members may receive. Presently, such compensation is limited to $25 per day.

DATES: Comments must be received by February 5, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 910 (7 CFR Part 910), as amended, regulating the handling of lemons grown in California and Arizona. The order is in effect pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to 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 own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons subject to regulation under the lemon marketing order, and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers and producers of lemons may be classified as small entities.

This action would not have a significant economic impact on small producers or handlers. The compensation rate paid to LAC members is derived from the administrative budget which consists of uniform assessments collected from handlers in order for the LAC to operate and carry out its functions each crop year. The LAC does not anticipate that it would be necessary to increase the current assessment rate to cover the additional expense. The compensation rate paid to LAC members is not a substantial portion of the LAC's budget, therefore, we do not expect it to become a substantial item in the budget now or in the future. Thus, there is no significant impact anticipated.

The LAC is responsible for locally administering the marketing order for California-Arizona lemons. The LAC consists of 13 members from three grower districts. Each member has an alternate member and an additional alternate member to act as a member when such member is absent. The LAC meets once a week to consider supply and demand conditions for lemons.

Section 910.29 of the lemon marketing order currently provides that members of the LAC, and their respective alternates when acting as members, be reimbursed for expenses necessarily incurred by them in the performance of their duties. Section 910.29 states that these members and alternates shall receive compensation at a rate to be determined by the LAC, which shall not exceed $25 for each day, or portion thereof, spent in attending meetings of the LAC. This rate has been in effect since 1971.

The LAC believes that this rate is too low under current economic conditions. Many LAC members and alternates commute long distances and spend time away from their own or their employers' businesses in order to fulfill their obligations as LAC members. Therefore, the LAC has recommended that the provision of the order limiting compensation to $25 be suspended indefinitely in order to allow the LAC to recommend to the U.S. Department of Agriculture an increase in the rate. The LAC intends to recommend an increase in compensation consistent with compensation rates paid to members of the Navel and Valencia Orange Administrative Committees. That rate is $50 per day for members or alternates acting as members and $100 per day for the non-industry member or alternate acting as a non-industry member. Any increase in the compensation rate would be subject to approval by the Secretary in the annual LAC budget approval process.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

For the reasons set forth in the preamble, 7 CFR Part 910 is proposed to be amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.29 is amended as follows:

§ 910.29 [Amended]

In § 910.29 remove the phrase ". . . at a rate to be determined by the committee which rate shall not exceed $25 . . .".

Dated: December 30, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-118 Filed 1-5-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1126

[Docket No. AO-231-A55]

Milk in the Texas Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider industry proposals to amend the Texas milk order. The hearing was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial number of diary farmers who supply milk for the market. Others proposals have been submitted by handlers who operate plants in the Texas and other southern Federal milk marketing areas. Under the proposals, handlers would receive transportation credits from pool funds to offset some of the cost incurred in hauling excess milk supplies to distant nonpool plants for surplus disposal. The proposals would establish transportation credits at rates of 2.2 to 3.6 cents per hundredweight per 10 miles on such milk movements during the months of March-June and all or part of December. In addition, alternative pricing points have been proposed for milk produced in certain areas of Texas or southern Oklahoma that is diverted to nonpool plants located outside Texas or southern Oklahoma. Also, because of recent increases in Texas milk production, AMPI has requested that the proposed changes be considered on an expedited basis. Proponents claim that the amendments will promote the orderly marketing of milk that exceeds local manufacturing capacity and offset the cost incurred by handlers for providing services of marketwide benefit.

DATE: The hearing will convene at 9:00 a.m., local time, on February 2, 1988.

ADDRESS: The hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 175061, (214) 399-1010.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

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.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061, beginning at 9:00 a.m., local time, on February 2, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

The hearing is called 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

PART 1126—[AMENDED]

The authority citation for Part 1126 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc.

Proposal No. 1

Amend § 1126.13 by revising paragraph (e)(6) and adding paragraphs (e) (7) and (8) to read as follows:

§ 1126.13 Producer milk.

* * * * *

(e) * * *

(6) Except as provided in paragraphs (e) (7) and (8) of this section, diverted milk shall be priced at the location of the plant to which diverted:

(7) For milk diverted from farms of producers located in Zone 1 or Zone 3 of Order 126 to nonpool plants located outside the State of Texas, such milk shall be priced as if such was received at Dallas, Texas.

(8) For milk diverted from farms of producers located in Zone 1-A of Order 126 or in the following Southern Oklahoma counties in Zone 2 of Order 106: Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, and Tillman to nonpool plants located outside the State of Texas and outside of Zone 2 of Order 106, such milk shall be priced as if received at a plant located in Zone 2 of Order 106.

Proposal No. 2

Amend § 1126.60 by revising paragraph (h) and adding a new paragraph (i) to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof during the months of March, April, May, June, and December subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred from a pool plant or diverted from farms of producers located in Zone 1 or Zone 3 in this order to nonpool plants located outside Texas and which is classified as Class II or Class III milk pursuant to § 1126.42(b) or § 1126.42(d) by the rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 90 miles from the City Hall in Dallas, Texas, as determined by the market administrator.

(i) With respect to milk marketed on and after the effective date hereof during the months of March, April, May, June, and December subtract the amount obtained by mulitiplying the pounds of producer milk that is diverted from farms located in Zone 1-A of this order and the following Southern Oklahoma counties in Zone 2 of Order 106: Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, and Tillman to nonpool plants located outside Texas and outside Zone 2 of Order 106 and which is classified as Class II or Class III milk pursuant to § 1126.42(b) or § 1126.42(d) by the rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 75 miles from the nearest of the following locations: The City Hall in Burkburnett, Texas, or the City Hall in Sulphur, Oklahoma, as determined by the market administrator.

Proposed by the Southland Corporation; Baker and Sons Dairy, Inc.; Borden, Inc.; Blue Bell Creameries, Inc.; Dairy Fresh, Inc.; Dean Foods Company; Hygeia Dairy Company; Kinnett Dairies, Inc.; Malone & Hyde Dairy; and Southern Belle Dairy, Inc.

Proposal No. 3

Amend § 1126.13 by revising paragraph (e)(6) and adding paragraphs (e) (7) and (8) to read as follows:

§ 1126.13 Producer milk.

* * * * *

(e) * * *

(6) Except as provided in paragraphs (e) (7) and (8) of this section, diverted milk shall be priced at the location of the plant to which diverted;

(7) During the months of March, April, May, and June and December 16 through 31, milk diverted from farms of producers located in Zone 1 or 3 of Order 126 to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area shall be priced as if such was received at the plant located in Zone 1.

(8) During the months of March, April, May, and June, and December 16 through 31, milk diverted from farms of producers located in Zone 1-A of Order 126 to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area shall be priced as if such was received at a plant located in Zone 1-A of Order 126.

Proposal No. 4

Amend § 1126.60 by revising paragraph (h) and adding a new paragraph (i) to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed during the months of March, April, May, and June, and December 16, through 31, subtract the amount obtained by the following sentence. Multiply the pounds of bulk fluid milk products classified as Class III milk pursuant to § 1126.42(b) or § 1126.42(d), that were transferred from a pool plant located in Zone 1 or Zone 3 of Order 126, or diverted from farms of producers located in Zone 1 or 3 of Order 126, to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area by the rate for each truck load of milk so moved that is equal to 2.2 cents per hundredweight for each ten miles or fraction thereof that the nonpool plant is located more than 100 miles from the nearer of the Courthouse in Gainesville, Sherman, Paris or Mt. Pleasant, Texas, as determined by the market administrator.

(i) With respect to milk marketed during the months of March, April, May, and June, and December 16 through 31, subtract the amount obtained by the following sentence. Multiply the pounds of bulk fluid milk products classified as Class III milk pursuant to § 1126.42(b) or § 1126.42(d), that are transferred from a pool plant located in Zone 1-A or Order 126 or diverted from farms of producers located in Zone 1-A of Order 126, to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area by the rate for each truckload of milk so moved that is equal to 2.2 cents per hundredweight for each ten miles or fraction thereof that the nonpool plant is located more than 100 miles from the City Hall in Burkburnett, Texas as determined by the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Chapman E. Dunham, P.O. Box 110939, Carrollton, Texas 75011-0939, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Texas Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: December 30, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-117 Filed 1-5-88; 8:45 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-61-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Model BAC 1-11 200 series airplanes, that would have required inspections of the main landing gear (MLG) support structure. This proposal revises the proposed rule by changing certain proposed repetitive inspection procedures, and changes certain actions to be taken if cracks are discovered. This action is taken as a result of recent a investigation of the damage tolerance of the beam, supported by in-service experience, which revealed that the frequency of inspections after crack repair must be increased.

DATE: Comments must be received no later than February 8, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 90100 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspections of the MLG on British Aerospace Model BAC 1-11 200 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 14, 1987 (52 FR 30380). That action was prompted by reports of cracks in the MLG rear pintle support beam. This condition, if not corrected, could lead to the collapse of the MLG.

In its comments to the proposal, British Aerospace, stated that BAe Alert Service Bulletin 57-A-PM5896, Issue 2, as referenced in the proposed rule, has been superseded by Issue 3, dated April 13, 1987. British Aerospace suggested that this least issue be referenced in the rule because of a significant increase in the recommended frequency of inspections after crack repair.

The FAA concurs and has determined it is necessary to revise the NPRM to propose periodic inspections for cracks in the MLG rear pintle support beam, and repair or replacement, if necessary, in accordance with Service Bulletin 57-A-PM5896, Issue 3, dated April 13, 1987. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment.

Paragraph C. of the proposed rule has also been revised to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the proposed AD.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising Notice of Proposed Rulemaking, Docket No. 87-NM-61-AD, as published in the **Federal Register** on August 14, 1987 (52 FR 30380), to read as follows:

British Aerospace: Applies to Model BAC 1-11 200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the collapse of the main landing gear due to cracks in the rear pintle support beam, accomplish the following:

A. Prior to the accumulation of 50,000 landings or within the next 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 3, dated April 13, 1987. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

B. If cracks are discovered during the inspections required by paragraph A., above, accomplish the following:

1. If cracks are less than 0.6 inches on pre-modification PM3070 airplanes, or less than 0.2 inches on post-modification PM3070 airplanes, repair or replace the cracked part prior to further flight, in accordance with paragraph 2.2.1 of the Accomplishment Instructions of British Aerospace BAC1-11 Alert Service Bulletin 57-A-PM5898, Issue Number 3, dated April 13, 1987. If cracks are repaired in accordance with the service bulletin, continue to perform eddy current or dye penetrant inspections at intervals not to exceed 800 landings, providing that, in the case of pre-modification PM3070 airplanes, no cracks are present in the aft half-beam.

2. If cracks exceed 0.6 inches on pre-modification PM3070 airplanes, or exceed 0.2 inches on post-modification PM3070 airplanes, replace the cracked part with an airworthy part prior to further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 29, 1987.

Wayne, J. Barlow, Director,
Northwest Mountain Region.

[FR Doc. 88-78 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 5H467/P441; FRL-3311-9]

Pesticide Tolerances for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a food and a feed additive regulation to permit the plant growth regulator ethephon in molasses (from sugarcane). These regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by Union Carbide Agricultural Products Co.

DATE: Comments must be received on or before February 5, 1988.

ADDRESS: Submit written comments, bearing the identification number [FAP 5H5467/P441], by mail to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Rm. 245, CM#2, Arlington, VA, (703)-577-1800.

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, has submitted a food additive petition (FAP 5H5467) proposing to amend 21 CFR 193.186 and 21 CFR 561.225 by establishing regulations permitting residues of the plant growth regulatory ethephon [(2-chloroethyl)phosphonic acid] in the food commodity and feed item sugarcane molasses at 1.5 parts per million (ppm). Because this food/feed additive request was submitted during the review process of the raw agricultural commodity, these tolerances are being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 4F3142/P442) published elsewhere in this issue of the **Federal Register**.

The pesticide in considered useful for the purpose for which the tolerances are sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). It is proposed, therefore, that 21 CFR Parts 193 and 561 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [FAP 5H5467/P441]. All written comments filed in response to this proposed rule will be available in the product manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subject in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Chapter I be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.186(a) by adding and alphabetically inserting in the table therein the food commodity sugarcane, molasses, to read as follows:

§ 193.186 Ethephon.

* * * * *

Foods	Parts per million
* * * * *	
Sugarcane, molasses	1.5
* * * * *	

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.225(a) by adding and alphabetically inserting in the table therein the feed item sugarcane, molasses, to read as follows:

§ 561.225 Ethephon.

(a) * * *

Feeds	Parts per million
* * * * *	
Sugarcane, molasses	1.5
* * * * *	

[FR Doc. 88–165 Filed 1–5–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-87-1761; FR-2432]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Determination; request for comments.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies, for alleged discriminatory housing practices, that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) ("the Act"). This notice advises that a determination has been made that the fair housing law of the State of Ohio, on its face, is substantially equivalent to the Act. The notice seeks public comment on this determination and on present or past performance of the agency administering and enforcing the State law. The Department will consider all comments submitted in making its determination as to whether the State law provides rights and remedies which are substantially equivalent to the Act.

DATES: Comments due: February 6, 1988.

ADDRESS: Interested persons are invited to submit comments 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 during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wagner D. Jackson, Acting Deputy Assistant Secretary for Enforcement and Compliance, Room 5206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755–6836. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or withdraw recognition of substantially equivalent laws through publication of a notice in the **Federal Register**. The purpose of this notice is to advise the public, in accordance with 24 CFR 115.6(b), that the fair housing law of the State of Ohio has, on its face, been determined to be substantially equivalent.

The evaluation of the Ohio law has been conducted in accordance with 24 CFR 115.3 Under § 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State or local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State of local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the local agency charged with administration and enforcement of the fair housing law of the State of Ohio demonstrates that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

In accordance with 24 CFR 50.20(k), this notice is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Accordingly, public comment is solicited in accordance with 24 CFR 115.6(b) with respect to the fair housing law of the State of Ohio.

Dated: December 22, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-139 Filed 1-5-88; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-167-86]

Minimum Vesting Standards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the minimum vesting standards for qualified employee plans. Changes to the applicable laws were made by the Tax Reform Act of 1986. These proposed regulations amend the current regulations to reflect the changes. In the Rules and Regulations portion of this issue of the **Federal Register** the Internal Revenue Service is issuing temporary regulations relating to the minimum vesting standards. The text of these temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1988. The amendments are proposed to be generally effective for plan years beginning after December 31, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-167-86), 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: V. Moore of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of the Code of Federal Regulations. New §§ 1.410 (a)-3T, 1.410 (a)-8T, 1.410 (a)-9T, 1.411 (a)-3T, 1.411 (a)-4T, and 1.411 (a)-8T are added to Part 1 of Title 26 of the Code of Federal Regulations. When these temporary regulations are promulgated as final regulations, §§ 1.410 (a)-3, 1.410 (a)-5, 1.410 (a)-7, 1.411 (a)-3, 1.411 (a)-4, and 1.411 (a)-8 will be revised to reflect the new provisions. For the text of the temporary regulations, see T.D. 8170 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the amendments to the Income Tax Regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is V. Moore of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel. Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-112 Filed 1-5-88; 8:45 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3312-6]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published November 2, 1987 (52 FR 42019), has been extended to February 5, 1988. This notice proposed to disapprove a revision to the Ohio State Implementation Plan, which would relax the existing emission limits for volatile organic compounds from the Morgan Adhesives Company for 12 paper coating lines (K001-K012) and one vinyl casting line (K013). This source is located in Summit County, Ohio. USEPA is taking this action based on an extension request by a Commentor.

DATE: Comments are now due on or before February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Specialist Air and Radiation Branch (5AR-26) U.S. Environmental Protection Agency, Region V 230 South Dearborn St., Chicago, Illinois 60604 (312) 886-6031

Dated: December 24, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-163 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3312-7]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for the notice of proposed rulemaking published October 27, 1987 (52 FR 41310), proposing disapproval of a revision to the Ohio State Implementation Plan for monthly averaging for volatile organic compound emissions for an architectural aluminum extrusion coating line (K001)

at J&S Aluminum Corporation, in Mahoning County, Ohio, has been extended to February 5, 1988. USEPA is taking this action based on extension requests by J&S Aluminum Incorporation and the State of Ohio.

DATES: Comments are now due on or before February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Specialist, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Dated: December 24, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-162 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6E3457/P440; FRL-3312-9]

Pesticide Tolerance for 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (referred to in this document as "pronamide") in or on the raw agricultural commodity winter peas. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3457/P440], must be received on or before February 5, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm: 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm: 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3457 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Oregon.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide pronamide (3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) and its metabolites (calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the raw agricultural commodity winter peas at 0.05 part per million (ppm). The petitioner proposed that use of pronamide on winter peas be limited to Idaho, Oregon, and Washington based on the geographical representation of the residue submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

EPA issued a notice of Rebuttable Presumption Against Registration (RPAR) on the herbicide pronamide, published in the **Federal Register** of May 20, 1977 (42 FR 25906), on the basis that pronamide had been shown to be oncogenic in male (not female) mice at dosages of 150 milligrams (mg)/kilogram (kg) and 300 mg/kg in the diet. After analyzing the comments and information received in response to the RPAR notice, the Agency evaluated the risks and benefits of use of pronamide and determined that certain modifications must be made to the terms and conditions of registration to achieve a reduction in the risk level. With these label changes, the Agency concluded that the benefits of use of pronamide exceeded the risks of use. (See 44 FR 3083; January 15, 1979—Determination of the Availability of Position Document-Pronamide, and the Final Notice of Determination, published in the **Federal Register** of October 26, 1979 (44 FR 61640).)

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day rat feeding study with a (NOEL) of 1,350 ppm (equivalent to 67.5 mg/kg/day, core supplementary data).

2. A 90-day dog feeding study with a NOEL of 450 ppm (equivalent to 33.75 mg/kg/day).

3. A 2-year dog feeding study with a no-observed-effect level (NOEL) greater than 300 ppm (equivalent to 7.5 mg/kg/day).

4. A 2-year rat feeding/oncogenic study with a NOEL greater than 300 ppm (equivalent to 15 mg/kg/day) and no oncogenic effects observed at feeding levels of 30, 100, and 300 ppm (core supplementary data).

5. An 18-month oncogenicity study using $B_6C_3F_1$ mice (core supplementary data) which indicated that hepatocellular carcinomas were present in male mice tested at the 1,000 (150 mg/kg/day) and 2,000 ppm (300 mg/kg/day) dose levels.

6. A 2-year mouse oncogenicity study (core supplementary data) using $B_6C_3F_1$ mice which indicated an increased incidence of liver tumors (including hepatocellular carcinomas) at feeding levels of 500 (75 mg/kg/day) and 2,500 ppm (375 mg/kg/day).

6. A rabbit teratology study with a maternal NOEL of 5 mg/kg/day and a developmental NOEL of 20 mg/kg/day.

7. A three-generation rat reproduction study with a NOEL of greater than 300 ppm (highest level tested) for systemic and reproductive effects (core supplementary data).

Data considered desirable but lacking include: teratogenicity (rat), chronic feeding oncogenicity study (rat); reproduction; mutagenicity and metabolism.

Pronamide is tentatively classified a Group C carcinogen based on the effects observed in the mouse studies. Data requested by the Agency must be submitted and evaluated before a final classification can be made. An oncogenic risk assessment has been conducted, however, by the Agency based on available information. The potential oncogenic risk from dietary exposure resulting from existing uses of pronamide is calculated to the 10^{-5}. The dietary risk assessment is based on a potency estimator (Q^*_1) of 1.63×10^{-2} $(mg/kg/day)^{-1}$ and dietary exposure to the theoretical maximum residue contribution (TMRC) for established tolerances for pronamide. The potential oncogenic risk associated with the proposed tolerance for winter peas poses a negligible increase in risk (1.5×10^{-7}). In addition, oncogenic risk to applicators is not likely to exceed risks associated with existing uses of pronamide.

The provisional acceptable daily intake (PADI), based on the 2-year dog feeding study (NOEL of 7.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.075 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 4.5 mg/day. The theoretical maximum residue contribution (TMRC) from published tolerances for a 1.5-kg daily diet is calculated to be 0.000660 mg/kg/day; the current action will increase the TMRC by 0.000009 mg/kg/day (1 percent). Published tolerances and the proposed tolerance for winter peas utilize less than 1 percent of the PADI.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas liquid chromatography, is available in the Pesticide Analytical Manual (PAM), Volume II, for enforcement purposes. There is no reasonable expectation of secondary residues since the feeding of treated vines or grazing of livestock in treated areas is prohibited. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.317 will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3457/P440]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, is is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.317 is amended by adding and alphabetically inserting the raw agricultural commodity winter peas in paragraph (b), to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Peas, dried (winter)	0.05
* * * * *	

[FR Doc. 88-164 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3142/P442; FLR-3312-1]

Pesticide Tolerance for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the plant growth regulator ethephon in or on the commodity sugarcane at 0.1 part per million (ppm). This regulation was requested by Union Carbide Agricultural Products Co., Inc., and proposes to establish the maximum permissible level for residues of the growth regulator in or on sugarcane.

DATE: Comments must be received on or before February 5, 1988.

ADDRESS: Submit written comments, bearing the identification number [PP 4F3142/P442], by mail to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Rm. 245, CM#2, Arlington, VA, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 14, 1984 (49 FR

47556), which announced that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 4F3142) to EPA proposing to amend 40 CFR 180.300 by establishing a tolerance for residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity (RAC) sugarcane at 0.02 part per million (ppm).

The use of this commodity is limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition to propose the establishment of a tolerance for residues of the plant growth regulator ethephon on the RAC sugarcane at 0.1 ppm. Because there is a potential increase in risk to humans from the revision, the tolerance of 0.1 ppm is being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include several acute studies, a 2-year chronic feeding/oncogenicity study in rats fed dosages of 0, 1.5, 15, and 150 milligrams/kilogram/day (mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 150 mg/kg/day [highest dose test (HDT)] and a systemic no-observed-effect level (NOEL) of 1.5 mg/kg/day; a chronic feeding study in dogs fed levels of 0, 0.75, and 7.5 and high-dose levels of 75 mg/kg/day [week (wk) 0–3], 50 mg/kg/day (wk 4, 5), 25 mg/kg/day (2w 6–24), and 37.5 mg/kg/day (wk 25–104) with a histopathologic NOEL of 7.5 mg/kg/day and an RBC cholinesterase NOEL of 0.75 mg/kg/day; a teratology study in rats fed dosage levels of 0, 200, 600, and 1,800 mg/kg/day with no teratogenic effects up to and including 600 mg/kg/day (there were no treatment-related teratogenic effects at 1,800 mg/kg/day (HDT), but poor survival in maternal animals limited the usefulness of this group for teratogenic evaluation) with a maternal NOEL of 600 mg/kg/day and a fetotoxic NOEL ⩾ 1,800 mg/kg/day (HDT); and a teratology study in rabbits fed dosages of 0, 50, 100, and 250 mg/kg/day with no teratogenic effects at 50 mg/kg/day (number of litters at termination were insufficient to determine teratogenic effects at 100 and 250 mg/kg); an embryotoxic NOEL of 50 mg/kg/day and a maternal toxic NOEL of 100 mg/kg. There were noticeable signs of systemic toxicity and significant maternal mortality at 250 mg/kg/day. There were fewer live fetuses per litter in the mid- and high-dose groups. Other studies considered include a three-generation reproduction study in rats fed dosage levels of 0, 10, 37.5, and 75 mg/kg/day with a NOEL greater than (>) 75 mg/kg/day; a mutagenicity (Ames) test (technical)—not mutagenic; a mutagenicity (Ames) test (technical)—not mutagenic; a mutagenicity (Ames) test (formulation)—negative; a mutagenicity test—micronucleus (technical)—negative; a mutagenicity test with *Saccharomyces cerevisiae* (formulation), which produced significant increase in the frequency of mitotic conversion at 42 and 45 mg/milliliter (mL); a mutagenicity test with *Saccharomyces cerevisiae* (formulation), which produced an increase in reverse mutation at 42 and 45 mg/mL without metabolic activation; a mutagenic test with *Escherichia coli* (formulation), which did not produce DNA damage; and a dominant lethal mutagenicity test in rats (negative).

The acceptable daily intake (ADI), based on the 2-year chronic feeding study in rats (NOEL of 1.5 mg/kg/day) and using a hundredfold safety factor, is calculated to be 0.015 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.7437 mg/day (1.5 kg diet). The current action of 0.1 ppm on sugarcane will contribute 0.00546 mg/day and the accompanying food/feed additive tolerance of 1.5 ppm on molasses (see FAP 5H5467/P441, which appears elsewhere in this issue of the **Federal Register**) will contribute 0.00069 mg/day or a total of 0.00615 mg/day, or 0.68 percent of the 0.9 mg/day maximum permissible intake (MPI). Published tolerances utilize 82.63 percent [1] of the ADI. These actions would increase the total percentage of ADI utilized to 83.31 percent.[2]

Data lacking are a repeat of the chronic feeding/oncogenicity study in mice. The company has been notified of this deficiency and has agreed to repeat the study. These tolerances are toxicologically supported because the total increase in utilized ADI is less than 1 percent (0.68 percent).

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. This method is listed in the *Pesticide Analytical Manual*, Vol. II. Secondary residues are not expected to increase significantly in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 4F3142/P442]. All written comments filed in response to this proposed rule will be available in the product manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

[1] If a tolerance on carrots of 7 ppm has been published, this value is 88.23 percent.

[2] With the 7 ppm tolerance on carrots this would be 88.92 percent.

PART 180—[AMENDED]

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

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

2. In § 180.300, by designating the existing text and table therein as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.300 Ethephon; tolerances for residues

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n), of 0.1 part per million is established for residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity sugarcane.

[FR Doc 88-166 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

Commercial Driver Testing and Licensing Standards; Public Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FHWA's Office of Motor Carriers announces four public forums to solicit comments from interested persons on its proposal to establish minimum standards for State testing and licensing of commercial motor vehicle drivers. (See 52 FR 47326, December 11, 1987, Docket MC-87-18.) According to the Commercial Motor Vehicle Safety Act of 1986, the proposed standards must be established by the FHWA no later than July 15, 1988. These standards will impact drivers of vehicles in both interstate and intrastate commerce if the vehicle is greater than 26,000 pounds gross vehicle weight rating, designed to carry 15 or more passengers, including the driver, or is placarded for hazardous materials.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350.

SUPPLEMENTATY INFORMATION: The proposed standards include:

(1) Commercial driver licensing and testing procedures to be used by States;

(2) Knowledge, skills, and abilities which drivers of commercial vehicles must possess; and

(3) Information to be recorded on the commercial driver's license.

The standards will also require that drivers of commercial motor vehicles take and pass appropriate knowledge and skills tests by April 1, 1992, in order to be qualified to operate commercial motor vehicles.

The public forums will be held between 1:00 p.m. and 5:00 p.m. (local time) in the following locations.

January 19—Federal Aviation Administration Auditorium, 800 Independence Avenue, SW., Washington, DC 20591

January 21—Georgia International Covention & Trade Center, Holiday Inn Crowne Plaza (at the airport), 1902 Sullivan Road, College Park, Georgia 30337, (Atlanta Georgia)

January 26—Sheraton St. Louis Hotel (neat the airport), 910 North 7th Street, St. Louis, Missouri 63101

January 28—Sheraton Plaza La Reina Hotel (at the airport), 6101 West Century Boulevard, Los Angeles, California 90045

Anyone interested in discussing the proposal at the public forums should contact Mr. Stanley Hamilton at the Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., Room 3103, Washington, DC 20590 (telephone 202-366-0665).

Issued on: December 31, 1987.

Ray Barnhart,

Federal Highway Administrator.

[FR Doc. 88-171 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 71280-7280]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of proposed 1988 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1988. These quotas were selected from a range defined as optimum yield (OY) for each fishery, as adjusted to reflect fishing activity at the end of 1987. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1988.

DATE: Comments will be accepted until February 1, 1988.

ADDRESS: Send comments on the proposed 1988 fishing quotas to Jack Terrill, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930. The information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values proposed in this notice, the Regional Director, Northeast Region, NMFS, considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

As of December 4, 1987, surf clam landings from the Mid-Atlantic Area were 2,333,000 bushels, out of an adjusted quota of 2,600,000 bushels. Surf clam landings from the Georges Bank Area were 114,000 bushels from an adjusted quota of 330,000 bushels. Surf clam landings from the Nantucket Shoals Area were 148,000 bushels from an adjusted quota of 190,000 bushels. Ocean quahog landings were 4,390,000 bushels from a quota of 6,000,000 bushels. Initially, surf clam quotas for 1987 were set at 2,650,000 bushels for the Mid-Atlantic Area, 300,000 bushels for Georges Bank Area, and 200,000 bushels for the Nantucket Shoals Area, and subsequently all three quotas were adjusted for over/under harvests in 1986.

The following quotas are proposed for the surf clam and ocean quahog fisheries for 1988:

Fishery areas	1988 quota (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	6,000,000

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas in the **Federal Register.**

Other Matters

This action is taken under § 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

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

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30218 Filed 12-31-87; 3:30 pm]

BILLING CODE 3510-22-M

50 CFR Part 658

Shrimp Fishery, Gulf of Mexico

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

ACTION: Modification of notice of availability of an amendment to a fishery management plan.

SUMMARY: NOAA announces that Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) has been returned by the Secretary of Commerce to the Gulf of Mexico Fishery Management Council (Council) because it did not meet the requirements of the Magnuson Fishery Conservation and Management Act.

DATE: Amendment 4 was returned on December 31, 1987. The Council may resubmit this amendment.

ADDRESS: A copy of Amendment 4 and its proposed regulations may be requested from Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813-228-2815.

SUPPLEMENTARY INFORMATION: The Council transmitted Amendment 4 to the Secretary on December 4, 1987. It was returned because its analysis of socioeconomic effects of the amendment, if implemented, was inadequate to meet all legal requirements of the Magnuson Act, the Regulatory Flexibility Act, and Executive Order 12291. The Council may revise and resubmit this amendment.

NOAA published a notice of availability (52 FR 47615, December 15, 1987) outlining the purpose of the amendment, which would make the minimum size landing and possession limits of the State where landed apply to white shrimp taken in the exclusive economic zone. The Council may supply adequate documentation for the measure and resubmit the amendment. The public is invited to comment to the Council while it is revising the amendment. When the amendment is resubmitted, another notice of availability will be published, followed within two weeks by the proposed implementing regulations. Under section 304(b)(3)(B)(ii) of the Magnuson Act, the public will then have only 30 days to obtain and comment on the resubmitted amendment.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-136 Filed 1-5-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

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

Meat Import Limitations, First Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1988 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made by the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1988 is 1,386.8 million pounds.
2. The first quarterly estimate of the aggregate of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1988 is 1,475 million pounds.

Done at Washington, DC this 30th day of December, 1987.

Richard E. Lyng,
Secretary of Agriculture.

[FR Doc. 88–114 Filed 1–5–88; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

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

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See "SUPPLEMENTARY INFORMATION" for dates of scheduled meeting.

ADDRESS: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: The United States Commissioner to the International Whaling Commission, c/o NMFS, Room 1011, Universal South Building, 1825 Connecticut Ave., NW, Washington, DC. 20235.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affairs, National Marine Fisheries Service, Department of Commerce, Washington, DC 20235. Phone: (202) 673–5281.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary of State for the preparation and negotiations of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling, and such participation is and shall continue to be a prerequisite to the establishment of U.S. negotiating positions for IWC meetings.

Because the meetings discuss U.S. negotiating positions, the substance of the meetings must be kept confidential. For example, proposed position papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any U.S. citizen with an indentifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of positions papers during 1988 is as follows:

January 21, 1988—Interagency Committee Meeting to continue preparations for the 1988 IWC meetings. Interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, at the above address.

February 1, 1988—Nominations for the U.S. Delegation to the June IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the above address. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations received by this date.

Prospective Congressional advisors to the Delegation should contact the Department of State directly.

February 29, 1988—(approximate date) Anticipated Interagency Committee meeting following receipt of the preliminary agenda for the June IWC meetings which is due to be circulated by the IWC Secretariat on or before March 15. The meeting will review the preliminary agenda and proposed additions to this agenda, all of which will be available at the meeting. The date and location for this meeting will be confirmed as soon as the preliminary agenda is received.

March 7, 1988—Forward United States agenda changes to the IWC Secretariat.

March 30, 1988—Publish in the **Federal Register** the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

April 1, 1988—Due date for circulation of the provisional agenda by the IWC Secretariat. This "second draft" of the agenda reflects any additions submitted by member countries and stands until considered by the Commission at the opening session of its Annual Meeting.

April 10, 1988—Draft position papers to the U.S. Commissioner.

May 2, 1988—Revised position papers due to the U.S. Commissioner.

May 6, 1988—Final Interagency Committee Meeting to consider U.S. position papers and discuss arrangements for the Delegation's work.

May 6–19, 1988—Annual Meeting of the Scientific Committee, San Diego, California.

May 23–27, 1988—Technical Committee subcommittee and working group meetings (on aboriginal/subsistence need for whaling, format of statistics, infractions, humane killings, comprehensive assessment, and such other meetings as may be scheduled), and preliminary meetings of the Finance and Administration Committee, Auckland, New Zealand.

May 29, 1988—Meeting of the U.S. Delegation, Auckland, New Zealand.

May 30–June 3—40th Annual Meeting of the IWC, Auckland, New Zealand.

Persons who would like to be included in IWC Interagency Committee meetings may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and location.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Henry R. Beasley,

Director, Office of International Affairs.

[FR Doc. 88-135 Filed 1-5-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, January 21, 1988 at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, December 23, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 88-170 Filed 1-5-88; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Under OMB Review

Reason for this 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: Application and Authorization for Access to Confidential Information (Industrial); DD Form 48–2; OMB Control No. 0704–0031

Type of Request: Extension.

Annual Burden Hours: 66,600.

Annual Responses: 200,000.

Needs and Uses: The Defense Investigative Service uses this form for those contractors participating in the Defense Industrial Security Program to obtain personal data from a United States citizen being considered for a CONFIDENTIAL personnel security clearance granted by a contractor. The form is prepared jointly by the person being considered for the clearance and by the contractor. Completion of this form is a prerequisite to the granting of a CONFIDENTIAL clearance by a contractor. The form helps save Government resources by decreasing the time it takes to grant a personnel security clearance at the CONFIDENTIAL level.

Affected Public: Individual/Contractor.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

December 31, 1987.

[FR Doc. 88-115 Filed 1-5-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Massachusetts Institute of Technology; Intent To Grant Exclusive Patent License

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces its intention to grant to the Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Massachusetts, a corporation of the Commonwealth of Massachusetts, an exclusive royalty-bearing license under United States Patent Application Serial No. 852,587 filed 16 April 1986 in the names of Wilfrid B. Veldkamp and Gary J. Swanson for "Method of Fabricating High Efficiency Binary Planar Optical Elements".

The license will be granted unless any objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the publication of this notice. Copies of the patent application may be obtained from the same addressee.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324-1000, Telephone No. (202) 475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-169 Filed 1-5-88; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 13, 1988 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Blue Mountain Consolidated Water Company D-77-47 CP

An application to increase ground and surface water withdrawal to augment public water supplies in the Boroughs of Nazareth, Pen Argyl, Wind Gap, Stockerton, and Tatamy and the Townships of Forks, Palmer, Bushkill, Upper Nazareth and Plainfield in Northampton County, and Ross Township in Monroe County, Pennsylvania. The Pennsylvania Department of Environmental Resources has proposed that the increase be limited to 3.0 million gallons per day (mgd) total from Pen Argyl Run, Ross Common Creek, Cherry Creek, plus three springs in Cherry Valley, and nine interspersed wells. The applicant's existing water supply allocation is 2.0 mgd.

2. Upper Hanover Authority D-82-8 CP Renewal.

An application for the renewal of a ground water withdrawal project to supply up to 3.75 million gallons (mg)/30 days of water from Well No. 3. Commission approval on November 23, 1982 was limited to five years and has expired. The applicant requests that the total withdrawal from Well No. 2 remains limited to 3.75 mg/30 days. The project is located in Upper Hanover Township, Montgomery County and is in the Southeastern Pennsylvania Ground Water Protected Area.

3. SES Gloucester Company, LPO D-87-38.

An application to withdraw up to 17.28 mgd of Delaware River water for use as noncontact cooling water in a proposed refuse-to-energy project. The applicant also plans to consumptively use an average of approximately 0.06 mgd of treatment plant effluent from the adjacent oil refinery's ground water decontamination project. Alternate process water supply will be available from the once-through cooling system. The 15-acre project site is adjacent to the Coastal Refinery tank farm, in West Deptford Township, Gloucester County, New Jersey. The proposed facility will have the capacity to process 575 tons/day of municipal and commercial refuse, while generating up to 13.3 MW of electricity. The proposed facility is designed to serve the Gloucester County area through the year 2010. The noncontact cooling water will be returned to the Delaware River through a proposed diffuser.

4. Borough of Catasauqua D-87-60 CP

An application for approval of a ground water withdrawal project to supply up to 23.7 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to limit the withdrawal from all wells to 40 mg/30 days. The project is located in North Catasauqua Borough, Northamption County, Pennsylvania.

5. Mid-Atlantic Shipping and Stevedoring, Inc. D-87-67

An application to dredge at the Salem River Cutoff in order to provide adequate depth of water for vessel access to a proposed cargo relieving facility. The applicant plans to mechanically dredge approximately 8,500 cubic yards of materials to a depth of 15 feet below mean low water. The 20,000-square foot dredged area will not extend beyond 70 feet from the shoreline. The proposed marine terminal will include a ship dock, a dock apron, a warehouse, and a truck loading and unloading facility. The project site is immediately west of the existing port in Salem City, Salem County, New Jersey.

6. Schwenksville Borough Authority D-87-71 CP

An application for a new ground water withdrawal from Well No. 7 to augment existing ground water supplies for the Schwenksville Borough Authority. Approval is requested to pump 6.5 mg/30 days from Well No. 7. The well is located 1500 feet northeast of the intersection of Zieglerville Road and Route 29 in Lower Frederick Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. Texaco Refining and Marketing, Inc. D-87-91

An application for approval of a ground water withdrawal of up to 17.28 mg/30 days of water from an interceptor trench as part of the applicant's oil recovery/ground water decontamination project. The project is located in New Castle County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

December 29, 1987.

[FR Doc. 88-55 Filed 1-5-88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 5, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirements for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 31, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Extension
Title: Demonstration and Compliance with Terms and Conditions of the Bilingual Fellowship Contract
Agency Form Number: ED 4561-3
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 500
Burden Hours: 1000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by any person who has received a Bilingual Education Fellowship to demonstrate compliance with the program regulations. The Department uses this information to determine the recipients' compliance with the terms and conditions of the Bilingual Education Fellowship Agreement.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Case Service Report
Agency Form Number: RSA 911
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 83
Burden Hours: 3464
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Vocational Rehabilitative agencies report client and program data. The Department uses the information collected to assess the accomplishments of program goals and objectives, and prepare the Annual Report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application for the Preschool Grants Program under the Education of the Handicapped Act
Agency Form Number: B20-24P
Frequency: Biennually
Affected Public: State and local governments
Reporting Burden:
Responses: 59
Burden Hours: 354
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to apply for funding under the Preschool Grants Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application for Client Assistance Program
Agency Form Number: B20-1P
Frequency: Triennially
Affected Public: State and local governments
Reporting Burden:
Responses: 59
Burden Hours: 9.8
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to apply for funds under the Client Assistance Program. The Department uses the information to make grant awards.

Office of Vocational and Adult Education

Type of Review: Extension
Title: Reporting Requirements under the Carl D. Perkins Vocational Education Act of 1984
Agency Form Number: C30-1P
Frequency: Biennially
Affected Public: State and local governments
Reporting Burden:
Responses: 4212
Burden Hours: 1,638,712
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: States are required to report on organizations and local educational agencies that participate in the State-administered programs under the Carl D. Perkins Vocational Education Act of 1984, as amended. The Department uses the information to determine compliance with the Act and effectiveness of vocational education programs.

Office of Postsecondary Education

Type of Review: New
Title: Guaranteed Student Loan Pilot Debt Collection Study
Agency Form Number: G477
Frequency: Monthly
Affected Public: State and local governments, non-profit institutions
Reporting Burden:
Responses: 240
Burden Hours: 2280
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect information on defaulted Guaranteed Student Loans from guarantee agencies. The information will be used to determine whether to assign defaulted Guaranteed Student Loans to the Department of Education for collections.

[FR Doc. 88-133 Filed 1-5-88; 8:45 am]

BILLING CODE 400-01-M

[CFDA No. 84.146]

Notice Inviting Applications for New Awards Under Section 722 of Stewart B. McKinney Homeless Assistance Act; Education for Homeless Children and Youth Program

Purpose: To provide assistance under section 722 of the Stewart B. McKinney Homeless Assistance Act to enable State educational agencies to plan and implement programs for the education of homeless children and youth.

Deadline for Transmittal of Applications: April 30, 1988. Applications will be processed as they are received. For applications that are not submitted by the April 30, 1988 deadline, the Secretary may lack sufficient time to review them and may allocate the remaining funds under this program to participating States.

Applications Available: January 6, 1988.

Available Funds Anticipated: $4,600,000 for use in Fiscal Year 1988.

Estimated Range of Awards: $50,000–$406,371, based on the formula distribution of funds mandated by the McKinney Act.

Estimate Number of Awards: 52.

Project Period: 12 months.

Applicable Regulations: The U.S. Department of Education is not issuing regulations under section 722 of the Stewart B. McKinney Homeless Assistance Act. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, and 78 apply to this program. Furthermore, "Nonregulatory Guidance for Implementing Title VII, Subtitle B, Section 722 of the Stewart B. McKinney Homeless Assistance Act: Education of Homeless Children and Youth" has been provided to each State educational agency and may be relied on by those agencies in administering the program.

For Application for Information Contact: Dr. Richard LaPointe, Deputy Assistant Secretary for Elementary and Secondary Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (RM 2198–6257), Washington, DC 20202.

Telephone (202) 732–5113.

Program Authority: 42 U.S.C. 11431–11435

Dated: December 30, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–134 Filed 1–5–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden; i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before February 5, 1988.

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–539.
3. 1902–0062.
4. Gas Pipeline Certificate; Import/Export.
5. Extension.
6. On occasion.
7. Required to obtain or retain a benefit.
8. Businesses or other for profit.
9. 44 respondents.
10. 44 responses.
11. 84,480 hours.
12. Section 3 of the Natural Gas Act requires importers and exporters of natural gas to receive authorization. Under the DOE Act this authority rests with the Secretary of Energy and can be delegated in part to the Commission.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, December 30, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–140 Filed 1–5–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP87-205-000 and CP87-205-001]

Texas Gas Transmission Corp.; Notice To Include Additional Facilities in the FERC Staff's Environmental Assessment and Request for Comments

December 30, 1987.

The staff of the Federal Energy Regulatory Commission (FERC) announced on November 5, 1987, that it was reviewing the potential environmental impact associated with a proposal by Texas Gas Transmission Corporation (Texas Gas) for construction and operation of approximately 131 miles of 16- and 20-inch diameter natural gas pipeline extending between Breckinridge County in northern Kentucky and Johnson County, Indiana. The purpose of this new pipeline would be to transport and sell up to 30 billion cubic feet of natural gas annually to Citizens Gas & Coke Utility (Citizens Gas) of Indianapolis.

In order to accept the new supply of natural gas from Texas Gas, Citizens Gas would also need to construct and operate about 9.5 miles of nonjurisdictional 20-inch diameter pipeline and related facilities extending between the receipt point 1 mile south of the Johnson-Marion County border (west of State Route 37 and south of county road 1000 N) and the corner of Raymond and Harding Streets in Marion County. The proposed route would essentially run parallel with and on the west side of State Route 37. Most of the route would be adjacent to existing overhead electrical transmission power lines. Detailed maps of the proposed route are included as an appendix to this notice.[1]

The facilities which would be needed by Citizens Gas to implement the Texas Gas proposal will be included in the FERC staff's environmental review of the Texas Gas Project. This review will culminate in the preparation of an environmental assessment. Those who wish to provide environmental comments on the facilities proposed by Citizens Gas may send such comments to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should be as specific as possible and should contain supporting documentation or rationale, as appropriate. A copy of the comments should also be sent to Laurence J. Sauter, Jr., Project Manager, Environmental Analysis Branch, Room 7312, Office of Pipeline and Producer Regulation, at the same address. All correspondence must reference Docket Nos. CP87-205-000 and CP87-205-001, and be filed within 30 days of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-144 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[1] These maps have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

Hydroelectric Applications (Union Electric Co. et al.); Filed With the Commission

[Project No. 459-000 et al.]

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 459-022.

c. *Date Filed:* December 18, 1986.

d. *Applicant:* Union Electric Company.

e. *Name of Project:* Osage.

f. *Location:* Osage River in Benton, Camden, Miller and Morgan Counties, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. *Contact Person:* Mr. James J. Cook, Attorney, Union Electric Company, P.O. Box 149, St. Louis, MO 63166, (314) 554-2237.

i. *FERC Contact:* Peter K. Lyse (202) 376-9479.

j. *Comment Date:* February 5, 1988.

k. *Description of Proposed Amendment:* The project license would be amended to revise the prescribed flood control regulation of the project reservoir (Lake of the Ozarks) to reflect changes in the hydrological conditions in the Osage basin due to the construction and operation of the U.S. Army Corps of Engineers' Harry S. Truman Project, located upstream of the Osage Project. (A copy of the amendment application may be obtained by interested parties directly from Union Electric Company).

1. *This notice also consists of the following standard paragraphs:* B & C.

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2854-014.

c. *Date Filed:* November 17, 1987.

d. *Applicant:* Town of Vidalia, Louisiana & Catalyst Old River Hydroelectric Limited Partnership.

e. *Name of Project:* Old River Project.

f. *Location:* On the Mississippi & Old Rivers, in Concordia Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mayor Sam Randazzo, City of Vidalia, P.O. Box 2010, Vidalia, Louisiana 71373, (318) 336-5206.

i. *FERC Contact:* Nanzo T. Coley, (202) 376-9416.

j. *Comment Date:* February 3, 1988.

k. *Amendment of License:* The amendment of license would consist of realigning the transmission line route to lessen the impacts on private lands and to avoid traversing environmentally sensitive wildlife management areas as requested by the State of Louisiana, Department of Wildlife and Fisheries. The approved and revised transmission line routes are both approximately 40-miles long. The revised transmission line would run west of the approved line at variable distances from 200 to 1,500 feet.

l. *This notice is also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Preliminary Permit.

b. *Project No:* 8635-000.

c. *Date Filed:* October 2, 1984, and reinstated on November 6, 1987.

d. *Applicant:* Independence Electric Corporation.

e. *Name of Project:* Cave Run Hydro Project.

f. *Location:* On the Licking River near Farmers, Bath and Rowan Counties, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. G. William Miller, President, Independence Electric Corporation, 1215 19th Street, NW., Washington, DC (202) 783-4141.

i. *FERC Contact:* Ed Lee, (202) 376-9828.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Cave Run Dam and reservoir, and would consist of: (1) The existing outlet works consisting of a trashrack, an enclosed intake structure, a 15-foot-diameter circular tunnel and two service and emergency control gates: (2) a new powerhouse, to be constructed adjacent to and on the south side of the existing spillway basin, and housing two 5-MW generating units for a total installed capacity of 10 MW; (3) a proposed tailrace; (4) a new 69-kV transmission line approximately 1.5-mile-long interconnecting with an existing 69-kV line, owned by Kentucky Utilities Company; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 30,200 MWh, and the cost of the work to be performed under the permit would be $50,000.

l. *Purpose of the Project:* The Applicant anticipates that the power generated will be sold to a nearby utility company.

m. This preliminary permit application was reinstated by Commission Order Denying Appeal, 41 FERC ¶ 61,144, issued November 6, 1987, that also provides no further opportunity for completion by any interested party.

n. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4a. *Type of Application:* Exemption (5MW or Less).

b. *Project No.:* 10442-000.

c. *Date Filed:* July 10, 1987.

d. *Applicant:* The Azure Mountain Power Company.

e. *Name of Project:* St. Regis.

f. *Location:* St. Regis River in Franklin County, New York.

g. *Filed Pursuant to:* Section 408, Energy Security Act of 1980, 16 U.S.C. 2708-2709.

h. *Applicant Contact:* Mr. Matthew W. Foley, P.O. Box 593, Wadhams, NY 12990, (518) 962-4514.

i. *FERC Contact:* Thomas O. Murphy, (202) 376-9829.

j. *Comment Date:* February 3, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing 10-foot-high, 115-foot-long dam; (2) replacement of the existing fixed flashboards with hinged boards creating a spillway crest elevation of 1242.25 feet msl; (3) an existing reservoir with a surface area of 225 acres, and a storage capacity of 800 acre-feet; (4) two proposed generating units with a total rated capacity of 700-kW; (5) a proposed 8-foot-deep, 25-foot-wide, and 125-foot-long tailrace; (6) a proposed 160-foot-long, 480-V transmission line tying into the existing Niagara Mohawk system; and (7) appurtenant facilities. The applicant estimates the average annual energy production will be 3 GWh.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D3a.

5. a. *Type of Application:* Preliminary Permit.

b. *Project No:* 10476-000.

c. *Dated Filed:* September 21, 1987.

d. *Applicant:* White Oak Hydroelectric Corporation.

e. *Name of Project:* White Oak Hydroelectric.

f. *Location:* On the Winnipesaukee River, in the towns of Tilton and Northfield, in Belknap and Merrimack Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act. 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Irvin Tolles, Hydro Dynamics Corporation, 36B Bay Street, P.O. Box 240, Manchester, NH 03105, (603) 669-3822.

i. *FERC Contact:* Thomas O. Murphy (202) 376-9829.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A new dam and spillway with an overall length of 180 feet and a height of 14 feet, to be located at the site of a destroyed dam; (2) a proposed reservoir which will have a surface area of 9 acres and 30 acre-feet of storage capacity at its normal maximum surface elevation of 456.25 feet msl; (3) a proposed powerhouse with an installed generating capacity of 900-kW; (4) a proposed 100-foot-long, 4.16kV transmission line; and (5) appurtenant facilities.

l. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.*

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10496-000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* Big Creek.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on Big Creek, in King County, Washington. Township (T) 24 N Range (R) 8 E, T 24 N R 9 E, T 25 N R 8 E, T 25 N R 9 E, and T 25 N R 10 E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885-3986.

i. *FERC Contact:* Thomas Dean, (202) 376-9275.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,400 feet msl; (2) a 4,000-foot-long, 12-inch-diameter penstock leading to; (3) a powerhouse at elevation 1,420 feet msl containing a single generating unit with a capacity of 1,183 kW operating at 980 feet of hydraulic head; and (4) an 8-mile-long, 115-kV transmission line.

The applicant estimates the average annual energy production to be 5.18 GWh. The approximate cost of the studies under the permit would be $40,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Surrender of License.

b. *Project No.:* 4856-005.

c. *Date Filed:* October 26, 1987.

d. *Applicant:* Utah Board of Water Resources.

e. *Name of Project:* Long Park Hydropower Project.

f. *Location:* On Sheep Creek in Daggett County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* D. Larry Anderson, Director, 1636 West North Temple, Suite 310, Salt Lake City, Utah 84116-3156.

i. *FERC Contact:* Jesse W. Short, (202) 376-9818.

j. *Comment Date:* February 5, 1988.

k. *Description of the Proposed Surrender:* The licensee requests the surrender of the license for Project No. 4856 stating that the project is uneconomical at the present time. Construction of the project has not begun. The project would have consisted of: (1) The applicant's existing earth-filled dam, 110 feet high and 790 feet long; (2) the existing reservoir covering approximately 400 acres with a storage of 13,700 acre-feet; (3) a new 42-inch diameter steel and concrete penstock 9,600 feet long; (4) a new 50- by 42-foot concrete powerhouse containing one 7.0-MW turbine/generator unit operating under a head of 1,025 feet; (5) a new 69-kV transmission line 9.3 miles long; and (6) appurtenant facilities.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10440-000.

c. *Date Filed:* July 6, 1987.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Black Bear Lake.

f. *Location:* On Black Bear Lake in the First Judicial District on Prince of Wales Island, Alaska near the towns of Klawock and Craig. The project will be located within the Tongass National Forest.

T 72 S, R 81 E.,
Sec. 29, 31, 32
T 73 S, R 82 E.,
Sec. 12, 13
T 74 S, R 83 E.,
Sec. 7, 18

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*

Mr. Robert Grimm, President, Alaska Power & Telephone Company, P.O. Box 222, Port Townsend, WA 98368, (206) 385-1733.

Vernon J. Neitzer, Vice President, Alaska Power & Telephone Company, P.O. Box 459, Skagway, AK 99840.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376-9527.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A screened intake structure consisting of four header pipes, approximately 200 feet above the dam at elevation 1,683 feet; (2) a 3-foot-diameter penstock extending from the intake to the dam; (3) a 15-foot-high, 85-foot-long gravity-type dam located at the outlet of the existing Black Bear Lake; (4) the existing 226 acre Black Bear Lake reservoir with a storage capacity of 1,900 acre-feet at a normal surface elevation of 1,696 feet; (5) a 36-inch-diameter diversion bypass conduit; (6) a 30-foot-long spillway crest at elevation 1,696 feet; (7) a concrete valve house containing a 36-inch butterfly valve to be located behind the dam; (8) a 3,400-foot-long penstock transiting from a 36-inch to 24-inch diameter; (9) a powerhouse containing two generating units with a total rated capacity of 3,000 kW, producing approximately 20,900 MWh of energy annually with a provision for an additional unit; (10) a 15-foot-wide tailrace discharging project flows into Black Bear Creek; (11) an aerial tramway to traverse the penstock route; (12) a 14-mile-long, 34.5-kV transmission line tying into the existing Klawock distribution system. No new roads will be constructed for the purpose of conducting these studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $100,000.

l. *Purpose of Project:* Project power would be sold to the City of Klawock.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10494-000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* Lennox Creek.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on Lennox Creek, in King County, Washington. Township (T) 24 N Range (R) 8 E, T 24 N R 9 E, and T 25 N R 10 E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885-3986.

i. *FERC Contact:* Thomas Dean, (202) 376-9275.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,000 feet msl; (2) a 1,200-foot-long, 60-inch-diameter penstock leading to; (3) a powerplant at elevation 1,600 feet msl containing a single generating unit with a capacity of 1,879 kW operating at 400 feet of hydraulic head; and (4) a 13-mile-long, 115-kV transmission line.

The applicant estimates the average annual energy production to be 8.23 GWh. The approximate cost of the studies under the permit would be $40,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10400-000.

c. *Date Filed:* April 27, 1987.

d. *Applicant:* Soldier Canyon Water Company.

e. *Name of Project:* Soldier Canyon Hydroelectric Project.

f. *Location:* On an existing irrigation pipeline in Section 32, T 4 S, R 4 W, SLB&M, near the town of Stockton, in Tooele County, Utah.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823(a)

h. *Applicant Contract:* Mr. Kirk Watkins, P.O. Box E, Stockton, UT 84071 (801) 882-0779.

i. *FERC Contact:* Mr. Ahmad Mushtaq, (202) 376-1900.

j. *Comment Date:* February 5, 1988.

k. *Description of Project:* The proposed project would utilize the flows of the applicant's existing 21,000-foot-long, 18-inch-diameter pressurized irrigation pipeline (to be rehabilitated). The project would consist of a powerhouse with a total installed generating capacity of 1,675 kW operating under a head of 1,820 feet. A 2-mile-long, 12.5-kV transmission line is to connect the project with an existing transmission line owned by a local utility. The applicant estimated average annual energy generation of 7.98 kWh will be sold to the local utility.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B; C, and D3b.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10460-000.

c. *Date Filed:* August 25, 1987.

d. *Applicant:* D.S. Pyle, L.E. Bell, B.G. Butler.

e. *None of Project:* Little Tallapoosa River.

f. *Location:* On the Little Tallapoosa River near Graham, Randolph County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. *Applicant Contact:* Mr. D.S. Pyle, 2605 Regency Drive, East, Tucker, GA 30084, (404) 493-6101.

i. *FERC Contact:* Michael Dees (202) 376-9830.

J. *Comment Date:* February 24, 1988.

k. Description of Projects: The proposed project would consist of: An existing concrete dam 155 feet long and approximately 10 feet high; (2) an existing reservoir; (3) an existing intake trash rack; (4) an existing powerhouse 24 feet by 18 feet; (5) two or three proposed turbine-generators of 300-kW combined capacity; (6) a proposed tailrace 12 feet wide and six feet deep; (7) a proposed 12-kV transmission line one or two miles long; and (8) appurtenant facilities. The estimated annual energy production is 1.7 GWh. Project power would be sold to Alabama Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000. The dam is owned by B.G. Butler.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. *Type of Filing:* Petition Alleging Commitment of Substantial Monetary Resources.

b. *Project No.:* 10490-000.

c. *Date Filed:* October 1, 1987.

d. *Applicant:* Reeds Creek Hydro, Inc.

e. *Name of Project:* Reeds Creek Hydroelectric Project.

f. *Location:* In Clearwater National Forest, on Reeds and Snake Creeks, in Clearwater County, Idaho. Township 38N and Range 4E.

g. *Filed Pursuant to:* Electric Consumers Protection Act (ECPA), Pub. L. 99-495, section 8(b) (1986).

h. *Applicant Contact:* Mr. James R. Morris, Vice President, Reeds Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501, (208) 799-1352.

i. *Comment Date:* February 5, 1988.

j. *FERC Contact:* Thomas Dean, (202) 376-9275.

k. *Description of Project:* The applicant has filed a Petition Alleging Commitment of Substantial Monetary Resources (Petition) for the Reeds Creek Hydroelectric Project, which would consist of two new 8-foot-high diversion structures, two penstocks 31,050 feet long, a powerhouse with a total capacity of 4.8 MW, and a 47,000-foot-long transmission line.

1. *Description of Petition:* On October 16, 1986, Congress enacted ECPA, amending section 210 of the Public Utility Regulatory Policies Act (PURPA) by imposing three environmental conditions that license applicants for hydroelectric projects located at new dams or diversions must meet in order to qualify for PURPA benefits. These conditions are contained in § 292.203(c)(1)(ii) through (iv) of the Commission's regulations which implement section 8(a) of ECPA. A new diversion is a qualifying facility if:

(ii) The Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality, when it issues the license for the project;

(iii) The Commission finds, when it accepts the application for license for the project for filing under section 4.32(e) of this chapter, that the project is not located on any segment of a natural watercourse that:

(A) Is included in (or designated for potential inclusion in) a State or National Wild and Scenic River System, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development; and

(iv) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

Section 292.208(c) of the Commission's regulations provides for exception of a licensed project from the fish and wildlife agency conditions requirement of § 292.203(c)(1)(iv) and also from the payment of fees to reimburse fish and wildlife agencies for setting those conditions, upon the Commission's granting of a Petition Alleging Substantial Commitment of Monetary Resources. The petition must demonstrate that the applicant expended, or committed to spend, at least 50% of the cost of preparing the license application before October 16, 1986.

Section 8(b)(4)(B) of ECPA established a rebuttable presumption that the applicant has made the required showing of monetary commitment if it held a preliminary permit for the project and had completed all of the environmental consultations required by the Commission's regulations before October 16, 1986. The applicant held a permit for Project No. 7851, issued on October 25, 1984. Staff has not yet concluded whether applicant has completed consultations in accordance with § 4.38.

In section 8(e) of ECPA, implementing by § 292.203(c)(2) of the Commission's regulations, Congress imposed a moratorium on the availability, of PURPA benefits to hydroelectric projects located at new dams or diversions. In accordance with § 292.208(d), any project excepted from one or more of the three new environmental requirements is also excepted from the moratorium imposed by section 8(e) of ECPA.

The applicant states that it has made a substantial commitment of monetary resources before October 16, 1986, as shown below:

Total Cost of License Application—$81,243
Cost Expended before 10/16/86—$63,647

The license application has not been accepted for filing. All additional costs incurred or committed up to the acceptance date of the application will be included in the total cost of preparing the license application and will be used in evaluating the petition. No finding on this petition will be made prior to acceptance of the application.

If this petition is granted, the applicant would be eligible to petition the Commission to make an initial finding on whether Project No. 10490 would have substantial adverse effects on the environment pursuant to § 292.203 (c)(ii) of the Commission's regulations above.

The petition will be available for inspection and copying during regular business hours in the public reference room maintained by the Division of Public Information, 825 North Capitol Street NW., Washington, DC.

m. This notice also consists of the following standard paragraphs: B, and C.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10501-000.

c. *Date Filed:* November 4, 1987.

d. *Applicant:* North American Hydro, Inc.

e. *Name of Project:* Delhi Milldam Hydro Project.

f. *Location:* On the Maquoketa River near Delhi, Delaware County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Charles Alsberg, P.O. Box 167, Neshkoro, WI 54960, (414) 293-4628.

i. *FERC Contact:* Ed Lee on (202) 376-9828.

j. *Comment Date:* February 29, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing earth filled dam approximately 58.5 feet high and 700 feet long; (2) an existing reservoir with a surface area of 50 acres and a storage capacity of 880 acre-feet at normal pool elevation of 896 feet m.s.l.; (3) an existing powerhouse containing two 650-kW generating units for a total installed capacity of 1,300 kW; (4) a proposed 1.5-kV or equivalent transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,260 MWh, and the cost of the work to be performed under the preliminary permit would be $30,000. All project structures are owned by the Lake Delhi Recreation Association, R.R.2, Delhi, Iowa 52223.

l. *Purpose of Project:* All energy produced would be sold to a local utility company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10503-000.

c. *Date Filed:* November 9, 1987.

d. *Applicant:* Dover Diversion Hydro Associates.

e. *Name of Project:* Dover Diversion Project.

f. *Location:* On the Sevier River, near Gunnison, in Sanpete County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Michael Graham, Dover Diversion Hydro Associates, P.O. Box N, Manti, Utah 84642.

i. *FERC Contact:* Mr. Don Wilt, (202) 376-9807.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing 5-foot-high, 16-foot-long, wood plank and concrete diversion dam owned by Dover Canal Company; (2) a 60-inch-diameter, 100-foot-long penstock; (3) a powerhouse containing one turbine-generator unit with a rated capacity of 100 kW under a head of 12 feet and a design flow of 150 cfs, and producing an estimated annual generation of 860,000 kWh; and (4) a 5000-foot-long, 12.5-kV transmission line interconnecting the project to an existing Utah Power and Light Company line. The proposed project would be located in Section 24, Township 19 South, Range 1 West, SLB&M, Sanpete County, Utah.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

m. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10495-000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* North Fork Snoqualmie.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on the North Fork Snoqualmie River and the Illinois Creek, in King County, Washington. Township (T) 24N Range (R) 8E, T24N R9E, T25N R8E, T25N R9E, and T25N R10E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885-3986.

i. *FERC Contact:* Thomas Dean, (202) 376-9275.

j. *Comment Date:* March 3, 1988.

k. *Description of Project:* The proposed project would consist of: (1) Two diversion structures with inlet elevations of 2,000 feet msl; (2) a bifurcated penstock 6,000 feet long and 48 inches in diameter leading to; (3) a powerplant at elevation 1,600 feet msl containing a single generating unit with a capacity of 1,580 kW operating at 400 feet of hydraulic head; and (4) a 13-mile-long, 115-kV transmission line.

The applicant estimates the average annual energy production to be 6.9 GWh. The approximate cost of the studies under the permit would be $40,000.

1. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs:

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, 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 "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 31, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-111 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-127-000 et al.]

Transwestern Pipeline Co. et al.; Natural Gas Certificate Filings

December 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP88-127-000]

Take notice that on December 11, 1987, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77001, filed in Docket No. CP88-127-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of an interconnection with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that a number of producers in the production areas serviced by Transwestern's pipeline system have expressed a desire to have their gas transported and to have a choice of transporters with whom they may deal. Transwestern proposes to construct and operate a tap and two ten-inch meters and related facilities at the discharge side to its Red Bluff Compressor Station No. 1, located in Chaves County, New Mexico. Transwestern avers that the authorization requested would provide producers in the production area access to both Transwestern's and El Paso's systems and to the markets these pipelines reach.

It is stated that the facilities would have the capacity to handle deliveries of 125 MMcf per day to El Paso. Transwestern estimates that the facilities would cost $159,800 to construct. The cost of the proposed construction would be financed from funds generated internally, it is explained.

Comment date: January 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP88-129-000]

Take notice that on December 15, 1987, Columbia Gas Transmission (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-129-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and a resale service to a new resale customer, all as more fully set in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (Dth) per day under Applicant's Rate Schedule (CDS). Applicant further states that Elizabethtown Gas Company (Elizabethtown) has requested firm transportation service under Applicant's Rate Schedule FTS of up to 20,000 Dth per day and interruptible transportation service under its Rate Schedule ITS of up to 2,200 MDth on an annual basis. Applicant notes that the transportation services would be performed pursuant to Part 284 of the Commission's Regulations and the blanket certificate issued in its Docket No. CP86-240-000. In order to implement the above resale and transportation services, Applicant proposes to construct approximately 37.9 miles of 12-inch pipeline which would be located in Northampton County, Pennsylvania and Warren, Hunterdon, and Morris Counties, New

Jersey. Applicant also proposes to construct two measuring facilities for Elizabethtown to be located in Warren and Morris Counties, New Jersey; and a measuring facility for NJN to be located in Morris County, New Jersey. Applicant estimates that the total cost of construction would be approximately $20,233,000. It is noted that both letter agreements underlying the proposed sale and contemplated transportation services would include provisions for "deferred aid-in-construction" contribution mechanisms which are keyed to benchmark volumes for both customers and the respective non-gas commodity portions of Applicant's Rate Schedules CDS and FTS which are currently effective and on file with the Commission.

Comment date: January 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-131-000]

Take notice that on December 16, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-131-000, a request pursuant to §§ 157.216(b), and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.216 and 157.212) for permission and approval to abandon and remove the Minneapolis TBS No. 1 located in Dakota County, Minnesota and to establish the St. Paul TBS No. 1-Q as a interruptible delivery point to Minnegasco to be located in the same county under its authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Minneapolis, Minnesota TBS No. 1 measuring station is utilized to deliver natural gas to Minnegasco for resale in Minneapolis, Minnesota. It is stated that Minnegasco is in the process of upgrading its system operating pressure to improve efficiency and, consequently, has requested that Northern abandon the Minneapolis TBS No. 1 as a delivery point and establish the St. Paul TBS No. 1-Q as an interruptible delivery point.

Comment date: February 1, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-141 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-535-000, et al.]

Hamon Operating Co. et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

December 31, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interestate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-145 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-535-000 B, Apr. 27, 1987.	Hamon Operating Company, Republic Bank Tower, 325 North St Paul, Suite 3900, Dallas Texas 75201-3902.	Natural Gas Pipeline Company of America, Balko South Field, Beaver County, Oklahoma.	(1)	
CI77-618-001 D, Dec. 11, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Sun Exploration & Production Co., Amorita Field, Alfalfa County, Oklahoma.	(3)	
CI67-374-000 D, Dec. 11, 1987.	do	Panhandle Eastern Pipe Line Company, Gage N.E. Field, Ellis County, Oklahoma.	(3)	
CI67-324-002 D, Dec. 14, 1987.	do	ANR Pipeline Company, Lovedale and Lookout Fields, Harper and Woods Counties, Oklahoma.	(3)	
G-11174-001 D, Dec. 14, 1987.	do	Colorado Interstate Gas Company, Laverne Field, Harper County, Oklahoma.	(3)	
CI62-322-000 Dec. 11, 1987.	do	Williams Natural Gas Company, Waynoka N.E. Field, Woods County, Oklahoma.	(3)	
CI67-270-000 D, Dec. 11, 1987.	do	ANR Pipeline Company, Luther Hill Field, Ellis County, Oklahoma.	(3)	
G-16139-013 D, Dec. 17, 1987.	do	Transwestern Pipeline Company, Spearman Park & Washita Creek Fields, Hansford & Hemphill Counties, Texas.	(4)	
CI67-851-001 D, Dec. 11, 1987.	Amoco Production Company, P.O. Box 3092 Houston, Texas 77253.	El Paso Natural Gas Company, Gomez Field, Pecos County, Texas.	(5)	
CI88-181-000 (CI67-851) B, Dec. 11, 1987.	do	do	(6)	
CI88-182-000 (CI64-1429) B, Dec. 11, 1987.	do	do	(7)	
CI88-171-000 (CI81-37-000) B, Dec. 7, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Eugene Island Blocks 301 and 322, Offshore Louisiana.	(8)	
CI88-187-000 (CI67-526) B, Dec. 18, 1987.	Amoco Production Company, P.O. Box 800, Room 1754, Denver, Colorado 80201.	Natural Gas Pipeline Company of America, Patterson Unit No. 4, Sec. 45-Block A-5 H&GN RR Survey, Mobeetie Field, Wheeler County, Texas.	(9)	
G-12234-001 D, Dec. 14, 1987.	Kerr-McGee Corporation, P.O. Box 25861 Oklahoma City, Okla. 73125.	Southern Natural Gas Company, S.L. 1268 #6 and S.L. 1268 #8 Wells, Main Pass Block 47, Offshore Louisiana.	(10)	
CI88-183-000 (CI81-83-000) B, Dec. 14, 1987.	do	Transcontinental Gas Pipe Line Corporation, Vermilion Block 37 Field, Offshore, Louisiana.	(11)	
CI88-184-000 (CI77-258) B, Dec. 14, 1987.	do	Phillips 66 Natural Gas Company, Southwest Lipscomb Field, Lipscomb County, Texas.	(12)	
CI62-470-001 D, Dec. 14, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas-Louisiana Gas Company, Manziel Field, Wood County, Texas.	(13)	
CI70-654-001 D, Dec. 14, 1987.	do	Transcontinental Gas Pipe Line Corp., Frost Field, Starr & Jim Hogg Counties, Texas.	(14)	
G-8591-000 D, Dec. 14, 1987.	do	El Paso Natural Gas Company, Noelke, N.E. Field, Crockett County, Texas.	(16)	
G-6649-000 D, Dec. 14, 1987.	do	El Paso Natural Gas Company, Payton Field, Ward County, Texas.	(17)	
CI75-664-000 D, Dec. 21, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, West Winchester Field, Eddy County, New Mexico.	(18)	
CI88-165-000 (CI79-359) B, Dec. 9, 1987.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, Texas 77001.	Williams Natural Gas Company & Zenith Natural Gas Company, Aetna Field, Barber County, Kansas.	(19)	
CI88-169-000 (CI64-1063) B, Dec. 7, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Williams Natural Gas Company, Wakita Trend Field, Grant and Alfafa Counties, Oklahoma.	(20)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI88-168-000 B, Dec. 7, 1987.	Bogert Oil Company, 2601 N.W. Expressway, Suite 1000W, Oklahoma City, Okla. 73112.	Arkla Energy Resources, a division of Arkla Inc., Sec. 4-18N-12W, Carleton N.E. Field, Blaine County, Oklahoma.	([21])	
CI88-163-000 A, Dec. 14, 1987.	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	Texas Gas Transmission Corporation, Blocks 158, 159, 160 and 161, East Breaks Area, Offshore Texas.	([22])	
CI88-180-000 (CI67-1222) B, Dec. 10, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Panhandle Eastern Pipe Line Company, South Bishop Field, Ellis County, Oklahoma.	([23])	
CI80-30-002 D, Nov. 30, 1987.	Mobil Oil Exploration & Producting Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046-0957.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Bell City Field, Calcasieu Parish, Louisiana.	([24])	
G-11049-000 D, Dec. 18, 1987.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., East Cameron and West Cameron Areas, Offshore Louisiana.	([25])	

[1] This application was noticed on May 20, 1987 (52 Fed. Reg. 18942). However, that notice did not include Applicant's additional request received December 22, 1987, to grant Applicant pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

[2] Not used.

[3] Certain acreage has been assigned to Cross Timbers Oil Company, effective 7-1-87.

[4] Certain acreage has been assigned to Atlantic Energy (USA) Corporation, effective 7-1-87.

[5] Applicant requests partial termination of its certificate in Docket No. CI67-851 and partial cancellation of its FERC Gas Rate Schedule No. 494. Effective 11-15-87, the contract term expired for all gas dedicated to El Paso under the Gas Sales Contract dated 12-5-66, *except* for gas produced from the Price Estate, Moore and Blalock Well No. 1-A. Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[6] Applicant requests complete termination of its certificate in Docket No. CI67-851 and complete cancellation of its FERC Gas Rate Schedule No. 494. The contract term for gas produced from the Price Estate, Moore and Blalock Well No. 1-A expires 7-31-92. Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[7] Applicant requests complete termination of its certificate in Docket No. CI64-1429 and cancellation of its FERC Gas Rate Schedule No. 646. The contract term expired 9-28-86. Amoco and El Paso have been unable to agree on terms and provisions of a "Rollover Contract." Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[8] Applicant requests complete termination of its certificate in Docket No. CI81-37-000 and cancellation of its FERC Gas Rate Schedule No. 829. The purchaser desires to discontinue purchasing Amoco's gas at Eugene Island Blocks 301 and 322.

[9] Only well under contract dated 7-15-66 was plugged and abandoned in 1973 due to lack of production.

[10] Wells were plugged and abandoned.

[11] This dual well is now depleted. No recompletion possibilities exist and well was plugged and abandoned.

[12] Applicant wishes to cancel its rate schedule and terminate its certificate. The new contract with Phillips dated 7-30-87, is a percentage-of-proceeds type contract.

[13] Sun assigned its interest in Property No. 671743, Lease No. 33156, Mrs. B. Rogers, *et al.* Gas Unit to Clemco, Inc., effective 5-1-84.

[14] Sun assigned its interest in Property No. 508330, Garcia L&L Co. -C-, Lease No. 27069; and Property No. 644720, Orive A, Lease No. 33771 (B.P. No. 84150) to Cameron Equipment & Salvage Company, effective 6-1-84.

[15] Not used.

[16] Sun assigned its interest in Property No. 690490, Shannon Estate "C", Lease No. 21573 to Edwards Exploration Company, effective 9-1-84.

[17] Sun assigned its interest in Operating Agreement and Blair A Well to William J. Green, effective 12-1-83.

[18] By Assignment effective 1-1-87, ARCO assigned certain acreage to Hondo Oil & Gas Company.

[19] Multistate Oil Properties, N.V. assigned certain acreage to Citation Investment Limited Partnership, effective 8-1-87.

[20] Tenneco assigned certain acreage to Vernon E. Falconer, effective 5-1-84, other leases were surrendered and gas can no longer be delivered from other leases because the compressor has been removed.

[21] Bogert Oil Company recently purchased the Schoonover #1-4 Well and the rights to Sec. 4-18N-12W, Blaine County, Oklahoma, from Arkla. Arkla has released this acreage from its 2-6-74 Gas Contract. The Schoonover #1-4 Well would not produce into Arkla's high pressure line anymore. Bogert Oil Company is going to enter into a low pressure contract concerning the Schoonover #1-4 Well and a new well that is going to be drilled in this section in early 1988. Bogert Oil Company is seeking abandonment of this Arkla gas contract so that they can rework the Schoonover #1-4 Well and drill a new well in this section that will need a low pressure gathering system.

[22] Applicant is filing under Gas Purchase Contract dated 7-23-87.

[23] Union Oil Company of California assigned certain leases under Docket No. CI67-1222 to Vance Production Company, effective 9-1-87.

[24] MOEPSI assigned certain acreage to Sohio Petroleum Company aka Standard Oil Production Company, effective 5-1-87.

[25] Texaco Producing Inc. assigned certain acreage to Koch Exploration Co., effective 6-1-87.

Filing Code: A—Initial Service; B—Abandoment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-145 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2335-002]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the Williams Project No. 2335, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2335 is located on the Kennebec River in the towns of Bingham, Concord, Emden, Solon, and Somerset County, Maine.

The license for Project No. 2335 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2335, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-147 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2531-005]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the West Buxton Project No. 2531, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2531 is located on the Saco River in York County, Maine.

The license for Project No. 2531 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2531, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-148 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2528-002]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the Cataract Project No. 2528, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2528 is located on the Saco River, in the cities of Biddeford and Saco, and the Towns of Dayton and Buxton, York County, Maine.

The license for Project No. 2528 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2528, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-149 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2205-006]

Central Vermont Public Service Corp.; Issuance of Annual License

December 31, 1987.

On May 27, 1987, Central Vermont Public Service Corporation, licensee for the Lamoille River Project No. 2205, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2205 is located on the Lamoille River, in Franklin and Chittenden Counties, Vermont.

The license for Project No. 2205 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Vermont Public Service Corporation.

Take notice that an annual license is issued to Central Vermont Public Service Corporation under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2205, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-150 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-15-000]

Duquesne Light Co.; Filing

December 30, 1987.

Take notice that on December 14, 1987, Duquesne Light Company tendered for filing pursuant to Deficiency Letter dated November 9, 1987, the following:

a. A complete copy of the 1983 Cost of Service Study.

b. A copy of the original rate filing and a copy of the Settlement Agreement, which includes revised Statement D.

c. A copy of the rate increase application for ER85-264 that includes the revenue requirement of $632,641, including the $159,110.75 proposed increase, on Statement D, page III, 5.

d. A copy of the billing determinants used in developing the proposed change are from the enclosed rate application and appear on Schedule D, Page III, 5.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-110 Filed 1-5-88; 8:45 am]

BILLING CODE 1-5-M

[Project No. 2520-000]

Great Northern Paper Co.; Issuance of Annual License

December 31, 1987.

On December 29, 1984, Great Northern Paper Company, licensee for the Mattaceunk Project No. 2520, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2520 is located on the Penobscot River, in the vicinity of Medway and Mattawamkeag, in Penobscot and Aroostook Counties, Maine.

The license for Project No. 2520 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Great Northern Paper Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2520, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-151 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2484-001]

Village of Gresham, Wisconsin; Issuance of Annual License

December 31, 1987.

On July 28, 1986, the Village of Gresham, Wisconsin, licensee for the Upper Gresham Dam Project No. 2484, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2484 in located on the Red River, in the Village of Gresham, Shawano County, Wisconsin.

The license for Project No. 2484 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Village of Gresham, Wisconsin.

Take notice that an annual license is issued to the Village of Gresham, Wisconsin, under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2484, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-152 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-155-000]

Iowa Public Service Co.; Filing

December 31, 1987.

Take notice that on December 22, 1987, Iowa Public Service Company tendered for filing an executed Letter Agreement dated August 3, 1987, whereby Iowa Public Service Company (Iowa) will supply the Northern States Power Company (NSP) with firm electric capacity and associated energy, commencing May 1, 1987 and continuing through October 31, 1987. Iowa requests that the negotiated Agreement be made effective as of May 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-146 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-25-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 31, 1987.

Take notice that on December 23, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing Original Sheet Nos. 4A and 4B to its FERC Gas Tariff, First Revised Volume No. 1 with an effective date of December 1, 1987. South Georgia states that the proposed tariff sheets are being submitted in compliance with Ordering Paragraph (A) of the Commission's December 16, 1987 order in Docket No. RP88-25-000 and reflect the implementation of the interim settlement rates from Docket No. RP87-13-000 as to the transportation services performed by South Georgia pursuant to Section 311 of the NGPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-142 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-000]

Southern Natural Gas Co.; Technical Conference

December 31, 1987.

Pursuant to the Commission order which issued on November 27, 1987 in this docket, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Monday, January 11, 1988, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-143 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1966-001]

Wisconsin Public Service Corp.; Issuance of Annual License

December 31, 1987.

On December 20, 1984, Wisconsin Public Service Corporation, Licensee for the Grandfather Falls Project No. 1966, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1966 is located on the Wisconsin River, in Lincoln County, Wisconsin.

The license for Project No. 1966 was issued for a period ending December 21, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Wisconsin Public Service Corporation.

Take notice that an annual license is issued to Wisconsin Public Service Corporation under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1966, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-153 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-489; FRL-3312-8]

BASF Corp.; Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by the BASF Corp. proposing to establish tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities celery; lettuce, head and lettuce, leaf; and spinach.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 253, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 8F3577 from BASF Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposing to amend 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethyoximino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the parent) in or on the raw agricultural commodities celery at 1.0 part per million (ppm); lettuce, head and lettuce, leaf at 1.0 ppm; and spinach at 3.0 ppm.

The proposed analytical method for determining residues is gas chromatography using a sulfur-specific flame photometric detector.

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

Dated: December 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-167 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59251; FRL-3313-1]

Toxic Substances; Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test

marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-88-1. The test marketing conditions are described below:

EFFECTIVE DATE: December 21, 1987. Written comments will be received until January 21, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS-59251]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Susan Hutcherson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-2259).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently notice of receipt of the application was not published; therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME-88-1. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-88-1.

Date of Receipt: October 30, 1987.

Close of Review Period: December 21, 1987. The extended comment period will close January 21, 1988.

Applicant/Importers: Confidential.

Chemical: (G) acrylated polymer.

Use: (G) A solder masking.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six Months.

Commencing on: December 21, 1987.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 21, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-168 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 24, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634-1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC. 20503, (202) 395-4814.

OMB Number: 3060-0094.

Title: Section 22.501(l)(10)(ii), Common carrier land mobile channel loading measurement.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: Quarterly.

Estimated Annual Burden: 44 Responses; 88 Hours.

Needs and Uses: The Commission has allocated additional spectrum space in 13 urban areas for mobile telephone common carrier use. In these areas authorized carriers share the frequencies. The information collected by the Commission is used to determine whether the authorized number of mobile stations reflects optimum frequency usage. The affected public are radio common carriers licensed to the UHF TV channels for land mobile use.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 88-107 Filed 1-5-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1701]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

December 28, 1987.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed by January 22, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: FCC Regulations Concerning RF Lighting Devices. (Gen Docket No. 83-806) Number of petitions received: 1.

Subject: Investigation of Special Access Tariffs of Local Exchange Carriers. (CC Docket No. 85-166, Phase I). Number of petitions received: 6. Number of applications received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bolivar and Lebanon, Missouri) (MM Docket No. 86-278, RM's 5098 & 5549). Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 88-108 Filed 1-5-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Firstbanc Federal, FSB Gonzales, LA

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Firstbanc Federal, FSB, Gonzales, Louisiana, on December 30, 1987.

Dated: December 30, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-91 Filed 1-5-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200079.

Title: Port of Orange County Texas Service Agreement.

Parties: Orange County Navigation and Port District, Ryan-Walsh Gulf, Inc. (Contractor).

Synopsis: The proposed agreement authorizes the Contractor to unload and load all cargo from and into railroad cars and automobile trucks at the Port of Orange, furnishing all labor relating thereto. All services rendered by the Contractor are to be on the terms and conditions set forth in this agreement. The term of the agreement shall be three years.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 31, 1987.

[FR Doc. 88-120 Filed 1-5-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 30, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Reports

1. *Report title:* Report of Condition for Foreign Subsidiaries

Agency form number: FR 2314

OMB Docket number: 7100-0073

Frequency: Annual

Reporters: Foreign subsidiaries of U.S. member banks, bank holding companies, and Edge or Agreement corporations

Annual reporting hours: 6606

Small businesses are not affected.

General description of report:

This report is required by law [12 U.S.C. 324, 1844(c), 602, and 605] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)].

This report provides the only source of comprehensive and systematic data on the assets and liabilities of foreign subsidiaries of U.S. banking organizations. The data are used to monitor the growth and activities of the subsidiaries and to supervise the overall operations of the parent institution. Its extension is proposed with minor revisions to tailor the forms to each company's reporting requirements, and to request identification of subsidiaries on consolidated reports.

2. *Report title:* Annual Report of Foreign Banking Organizations; Foreign Banking Organization Confidential Report of Operations.

Agency form number: FR Y-7; FR 2068
OMB Docket number: 7100-0125
Frequency: Annual
Reporters: Foreign banking organizations
Annual reporting hours: 10,858
Small businesses are not affected.
General description of reports:

These reports are required by law [12 U.S.C. 1844(c), 3106 and 3108(a)] and are given confidential treatment [5 U.S.C. 552(b)(8)].

These reports request financial and structural information on foreign banking organizations and their U.S. activities in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the Bank Holding Company Act and International Banking Act. They are proposed to be extended with minor technical changes and instructional clarifications, including the incorporation into the forms of items approved in 1986 and currently collected on supplementary sheets.

Board of Governors of the Federal Reserve System, December 30, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-90 Filed 1-5-88; 8:45 am]

BILLING CODE 6210-01-M

First National Massillon Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Massillon Corporation,* Massillon, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Massillon, Massillon, Ohio.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Farmers State Holding Company,* Marion, South Dakota; to become a bank holding company by acquiring 81.1 percent of the voting shares of Farmers State Bank of Marion, Marion, South Dakota.

2. *Norwest Corporation,* Minneapolis, Minnesota; to acquire 100 percent of the voting shares of PB Bancorp of Cedar Rapids, Inc., Cedar Rapids, Iowa, and thereby indirectly acquire Peoples Bank and Trust Company, Cedar Rapids, Iowa. Comments on this application must be received by January 23, 1988.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Logan Bancshares, Inc.,* Logan, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Logan, Logan, Kansas.

2. *Peoples, Inc.,* Ottawa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Savings, Inc., Ottawa, Kansas, and thereby indirectly acquire Peoples National Bank of Ottawa, Ottawa, Kansas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Greater Pacific Bancshares,* Whittier, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Whittier, N.A., Whittier, California.

Board of Governors of the Federal Reserve System, December 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-88 Filed 1-5-88; 8:45 am]

BILLING CODE 6210-01-M

John J. Gleason et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 21, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *John J. Gleason,* Oak Brook, Illinois; to acquire an additional 5 percent of the voting shares of First Cicero Banc Corporation, Oak Brook, Illinois.

2. *Mahaska Investment Company Employee Stock Ownership Trust,* Oskaloosa, Iowa; to acquire 22.12 percent of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa, and First National Bank of Sumner, Sumner, Iowa.

3. *John I. Salk,* Flossmoor, Illinois; to acquire 95.6 percent of cumulative convertible preferred shares of Exchange International Corporation, Chicago, Illinois, and thereby indirectly acquire Exchange National Bank of Chicago, Chicago, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mary Anne Stephens,* Warren Amerine Stephens Trust No. 2, and Wilton R. Stephens Family Trust, all of Little Rock, Arkansas; to collectively acquire an additional 13.7 percent of the voting shares of Worthen Banking Corporation, Little Rock, Arkansas; and thereby indirectly acquire Worthen Bank and Trust Company, N.A., Little Rock, Arkansas; First National Bank, Batesville, Arkansas; First National Bank of Camden, Camden, Arkansas; First State Bank & Trust Company, Conway, Arkansas; First National Bank in Harrison, Harrison, Arkansas; First National Bank of Hot Springs, Hot Springs, Arkansas; Bank of Newark, Newark, Arkansas; National Bank of Commerce of Pine Bluff; Pine Bluff, Arkansas; Peoples Bank & Trust Company, Russellville, Arkansas; and First State Bank, Springdale, Arkansas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dr. William D. Angle,* Omaha, Nebraska; to acquire an additional 1.94 percent of the voting shares of Pathfinder Bancshares, Inc., Fremont, Nebraska, and thereby indirectly acquire Fremont National Bank and Trust, Fremont, Nebraska.

2. *Lonnie M. Jarman,* Oklahoma City, Oklahoma; to acquire 68.75 percent of the voting shares of Mustang Community Ban Corporation, Mustang, Oklahoma, and thereby indirectly acquire Mustang Community Bank, Mustang, Oklahoma.

3. *David L. and Rebecca S. Moritz,* Beloit, Kansas; to acquire 27.17 percent of the voting shares of Guaranty, Inc., Beloit, Kansas, and thereby indirectly acquire Guaranty State Bank and Trust Company, Beloit, Kansas, and The State Bank of Delphos, Delphos, Kansas.

4. *Billy J. Stringer,* Ardmore, Oklahoma, to acquire 2.56 percent; Ardmore Institute of Health, Ardmore, Oklahoma, to acquire 19.23 percent; Keith F. Walker, Ardmore, Oklahoma, to acquire 17.26 percent; Richard L. Howell, Ardmore, Oklahoma, to acquire 2.57 percent; Teresa J. Brown, Ardmore, Oklahoma, to acquire 1.28 percent; Thomas Frederick Dunlap, Trustee, Ardmore, Oklahoma, to acquire 3.33 percent; and Leta M. Brown, Ardmore, Oklahoma, to acquire 1.29 percent of the voting shares of First National Corporation of Ardmore, Inc., Ardmore, Oklahoma, and thereby indirectly acquire First National Bank and Trust Company of Ardmore, Ardmore, Oklahoma.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thomas J. Sively,* Artesia, New Mexico, to acquire 14.49 percent; Harvey E. Yates Company, Roswell, New Mexico, to acquire 6.37 percent; Gilbert Gomez, Hagerman, New Mexico, to acquire 6.39 percent; James B. Runyan, Hope, New Mexico, to acquire 7.26 percent; Brooks E. Holladay, Hobbs, New Mexico, to acquire 6.37 percent; Loyd Hackler, Hope, New Mexico, to acquire 6.37 percent; Marbob Energy Corporation, Artesia, New Mexico, to acquire 6.37 percent; Myco Industries, Inc., Artesia, New Mexico, to acquire 9.55 percent; Charles K. Johnson, Artesia, New Mexico, to acquire 18.85 percent of the voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia.

Board of Governors of the Federal Reserve System, December 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-87 Filed 1-5-88; 8:45 am]

BILLING CODE 6210-01-M

The Sasser Corp., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *The Sasser Corp.,* Carthage, Mississippi, through its subsidiary, First Carthage Corporation, Carthage, Mississippi; to engage in providing credit insurance as principal, agent or broker related to extensions of credit by Carthage and any of its subsidiaries and affiliates and any other extensions of credit by Carthage and any of its subsidiaries and affiliates and any other incidential activities, limited to assuring the repayment of the outstanding balance due on the extensions of credit in the event of death, disability or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Leake County, Mississippi.

Board of Governors of the Federal Reserve System, December 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-89 Filed 1-5-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

American Cyanamid Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by American Cyanamid Co. The NADA provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. The NADA was the subject of a notice of opportunity for hearing proposing that its approval be withdrawn. The sponsor originally requested but later withdrew its request for a hearing, thus waiving the

opportunity for hearing. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation reflecting approval of the NADA in question.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, is the sponsor of NADA 55-025, which provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. The NADA was originally approved on September 13, 1963.

In the **Federal Register** of September 22, 1978 (43 FR 43070), FDA's Center for Veterinary Medicine (CVM) published a notice of opportunity for hearing on a proposal to withdraw approval of the NADA (Docket No. 78N-0248). CVM based the proposed action on section 512(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(e)(1)(C) on the ground that, on the basis of new information with respect to the drug, evaluated together with the evidence available when the NADA was approved, there is a lack of substantial evidence that the drug will have the effect it is purported or represented to have under the conditions of use prescribed, recommended, or suggested in its labeling. The sponsor filed a written appearance requesting a hearing but later withdrew it, thus waiving the opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55-025 and all supplements thereto is hereby withdrawn, effective January 19, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 546.110e, which reflects this approval.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-102 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

J&R Specialty Supply Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by J&R Specialty Supply Co. The NADA provides for the use of pyrantel tartrate Type A medicated articles for making Type C swine feeds. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing and reserving the regulation reflecting approval of the NADA in question.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: J&R Specialty Supply Co., 310 Second Avenue SW., P.O. Box 506, Waseca, MN 56093, is the sponsor of NADA 138-609, which provides for the use of Country Mixer Swine Guard-BN Banminth ® Premixes containing 9.6 or 19.2 grams of pyrantel tartrate per pound. These products are Type A medicated articles used to make Type C medicated swine feeds for use as an aid in the prevention of the migration and establishment of infections of and for the removal and control of certain large roundworm and nodular worm infections. The NADA was approved on December 18, 1985 (50 FR 51516). In a letter dated July 9, 1987, the firm requested withdrawal of approval because the products are no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat., 345-347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 138-609 and all supplements thereto is hereby withdrawn, effective January 19, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing and reserving 21 CFR 558.485(a)(26) which reflects this approval.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-96 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0393]

CdF Chimie SA.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CdF Chimie SA. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or n-butyl acrylate for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B4034) has been filed by CdF Chimie SA., Tour Aurore, Cedex 5 92080, Paris la Defense, France, proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or n-butyl acrylate for food-contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-99 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0387]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the increased use of 1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in propylene copolymers.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20404, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B4047) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of 1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in propylene copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-100 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0408]

Schering Animal Health; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Scherling Animal Health has filed a petition proposing that the food additive regulations be amended to provide for using a 4-month controlled release sodium selenite (Dura Se) bolus for cattle as a nutritional selenium supplement.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2210) has been filed by Schering Animal Health, Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.

The petition proposes that 21 CFR 573.920 *Selenium* be amended to provide for the safe use of a 4-month controlled release sodium selenite (Dura Se) bolus which is designed to provide cattle 3.0 milligrams of selenium per head per day as nutritional selenium supplement.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments from the public are invited. Those comments received within 60 days of this notice will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the rule in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 30, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-101 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86D-0380]

Draft FDA Policy for the Regulation of Computer Products; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the time for submission of comments on the notice of availability of its "Draft FDA Policy for the Regulation of Computer Products." FDA is taking this action in reponse to requests for an extension of the comment period.

DATE: The period for submission of written comments is extended until January 29, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the draft policy should be sent to Charles S. Furfine (address below).

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1987 (52 FR 36104), FDA published for public comment a notice of availability of its "Draft FDA Policy for the Regulation of Computer Products." The notice provided a 60-day comment period to close November 24, 1987. FDA received requests for an extension of the comment period because of the complexity of issues involved and the potential impact on industry. FDA agrees that the issues are complex and potentially far reaching and believes that additional time for the preparation and submission of meaningful and carefully prepared comments is in the public interest. The agency, therefore, finds in accordance with section 520(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(d)(2)) that good cause exists to grant, and is granting, an extension of the comment period to January 29, 1988.

Dated: December 28, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-30208 Filed 12-31-87; 11:19 am]

BILLING CODE 4160-01-M

[Docket No. 87D-0208]

Medical Devices; Diagnostic Ultrasound Guidance Update; Postponement of Applicability Date

AGENCY: Food and Drug Administration.

ACTION: Notice; postponement of applicability date.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the agency is postponing indefinitely the applicability of its guidance on the prescription labeling of transducers intended for use in or with diagnostic ultrasound devices contained in a document entitled "Diagnostic Ultrasound Guidance Update—January 30, 1987." In the **Federal Register** of

August 13, 1987 (52 FR 30252), FDA announced that it would apply such labeling guidance beginning on November 1, 1987, for devices manufactured on or after that date. However, in response to comments received on the August 13, 1987, notice, FDA is postponing the November 1, 1987, date for application of the guidance insofar as it would affect the labeling of transducers to allow the agency to work with affected parties to develop an appropriate policy. The dates for application of other guidance contained in the document remain as announced in the August 13, 1987, notice.

DATE: Comments by March 7, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: On January 30, 1987, FDA's Center for Devices and Radiological Health (CDRH) sent a letter to certain trade associations and to all known manufacturers and distributors of diagnostic ultrasound devices. This letter updated CDRH's guidance on such devices regarding: (1) Premarket notification submissions to the agency to determine where a new or modified device is substantially equivalent to preamendments devices in commercial distribution; and (2) guidance on prescription labeling for ultrasound devices, both systems and transducers. The letter stated that the guidance on labeling was to become effective on August 1, 1987. FDA received several comments on this guidance letter, some of which requested that the effective date of the labeling guidance be delayed.

In a notice published in the **Federal Register** of August 13, 1987 (52 FR 30252), FDA made the document entitled "Diagnostic Ultrasound Guidance Update—January 30, 1987" generally available under the docket number appearing in the heading of this notice, and invited comments on the guidance from interested persons. In that notice, FDA announced that it would delay application of the prescription labeling guidance until November 1, 1987. FDA also announced that its guidance on premarket notification submissions became effective August 1, 1987.

Following the August 13, 1987, **Federal Register** notice, FDA received many comments on the labeling guidance. These comments raised substantial issues regarding its appropriateness, especially with respect to the guidance concerning the labeling of transducers.

Based on a review of these comments, FDA has decided to postpone indefinitely application of its guidance in Section III.B. of the document "Diagnostic Ultrasound Guidance Update—January 30, 1987." Concurrently, the agency is discussing with health professional organizations associated with use of diagnostic ultrasound, and certain industry trade associations a proposal that FDA conduct a joint educational program to make diagnostic ultrasound equipment users aware of potential risks and benefits. The emphasis of such an FDA initiative would be to modify the behavior of diagnostic ultrasound users to reduce unnecessary fetal exposure to ultrasonic energy.

Following development, implementation, and evaluation of the effectiveness of such an educational program, FDA may still issue guidance or promulgate requirements pertaining to presciption labeling of diagnostic ultrasound transducers.

FDA advises that this notice applies only to the agency's guidance respecting labeling of transducers for a diagnostic ultrasound system. The dates for application of the guidance respecting operator manual labeling, on-screen or on-console labeling, and premarket notification submissions remain as announced in the August 13, 1987, notice.

Interested persons may, on or before March 7, 1988, submit to the Dockets Management Branch, written comments on this notice. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-97 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting To Evaluate the National Bone Marrow Registry

Notice is hereby given that the National Institutes of Health (NIH) will hold a meeting of an evaluation panel on Sunday, January 24, 1988, beginning at 7:30 p.m. until 10:30 p.m. and continuing on Monday, January 25, 1988, beginning at 8:30 a.m. until 5:00 p.m. The meeting will be open only to individuals invited by the Office of Program Planning and Evaluation, Office of the Director, NIH.

The purpose of the meeting is to evaluate the National Bone Marrow Registry and to gather information in order to provide the Senate Appropriations Committee with information "* * * about the usefulness of such an informational resource in addressing the need for access to appropriate donors for bone marrow transplants and the possibility of continued Federal support and expansion of such a registry" (p. 188, Senate Report 100-189). The evaluation is required by the Senate Appropriations Committee in Senate Report 100-189.

Additional information may be obtained by calling Dr. Jay Moskowitz at (301) 496-3152 or Dr. Norman Braveman at (301) 496-4418.

Date: December 30, 1987.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 88-94 Filed 1-5-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Plenary Session Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Sheraton Santa Barbara Hotel and Spa, 1111 East Cabrillo Boulevard, Santa Barbara, California 93103 (telephone 805-963-0744), from 8 a.m. to 5 p.m. on February 4, 1988, and from 8 a.m. to 1 p.m. on February 5, 1988.

The agenda for the meeting will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program;
- Discussions with Representatives of California, Washington, and Oregon;
- Discussion on Information Management;

• Hard Minerals Mining in the Hawaiian/Johnston Island EEZ area; and

• Proposals for additional National Academy of Sciences panel.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230 (MS-644), Minerals Management Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; telephone (202) 343-7744.

Date: December 30, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88-109 Filed 1-5-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Decision Not To Review Initial Determination Allowing Intervention

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) granting intervention to Seeq Technology, Inc.

SUMMARY: The Commission has determined not to review the ID of the presiding administrative law judge granting the motion to intervene of Seeq Technology, Inc. for the limited purpose of protecting Seeq's trade secrets. The Commission expects that Seeq will adequately identify the trade secrets it seeks to protect, and that the ALJ will grant Seeq access to the record only to the extent necessary for Seeq to protect its trade secrets.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 10, 1987, Seeq Technology, Inc., filed a motion to intervene as a nonparty for the limited purpose of protecting its trade secrets (Motion No. 276-13). The motion was opposed by respondents Atmel Corporation, Hyundai Electronics America, Inc., Hyundai Electronics Industries Co., Ltd., Cypress Electronics, Inc., All-American Semiconductor, Inc., and Pacesetter Electronics, Inc. It was also opposed in part by the Commission investigative attorney. Complainant did not oppose the motion "so long as the intervention can be structured to avoid interruption and delay in the discovery and procedural schedules."

On December 4, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 13) permitting Seeq to intervene for the limited purpose of protecting its trade secrets. On December 8, 1987, she issued an order (Order No. 14) setting forth the procedure under which Seeq will be allowed to protect its trade secrets during the investigation. No petitions for review of the ID or comments from government agencies were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 31, 1987.

[FR Doc. 88-122 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-260]

Certain Feathered Fur Coats and Pelts, and Process for Manufacture Thereof; Issuance of General Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq. or Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261, 202-523-3395, respectively.

SUMMARY: On September 24, 1987, the Administrative Law Judge (ALJ) issued an initial determination (ID) in this investigation, finding that there is a violation of section 337 in the importation and sale of certain feathered fur coats and pelts. On November 9, 1987, the Commission determined not to review the ID. 52 FR 44231 (November 18, 1987). The Commission requested briefs on the issues of remedy, the public interest, and bonding. Submissions were received from complainants David Leinoff and David Leinoff, Inc., and the Commission investigative attorney. A submission on the matter of infringement, which is no longer at issue, was received from settled respondent Hong Kong Tientsin Fur Co. Ltd., defaulting respondent Peking Fur Store Ltd., and defaulting respondent Asia Fur Company. It was subsequently stricken. No submissions from the public or government agencies have been received.

The exclusion order contains the following substantive provisions:

1. Feathered fur coats that infringe claim 1 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;

2. Feathered fur coats manufactured abroad in accordance with the process set forth in claim 5 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;

3. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 200 percent of the entered value of the imported articles from the day after this Order is received by the President pursuant to subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(g)) until such time as the President notifies the Commission that he approves or disapproves this action, but in any event, not later than 60 days after the date of receipt.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.54-.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.54-.56).

Notice of this investigation was published in the Federal Register on December 29, 1986 (51 FR 46944).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88-123 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Certain Ink Jet Printers Employing Solid Ink; Initial Determination Terminating Respondents on Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Tokyo Juki Industrial Co., Ltd. ("Juki") and Howteck Corporation ("Howteck").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 28, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88-124 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Decision To Review Initial Determination Terminating One Respondent on Basis of Consent Order

AGENCY: International Trade Commission.

ACTION: Review of initial determination terminating respondent ACIC Canada, Inc. in the above-captioned investigation on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 35) issued by the presiding administrative law judge (ALJ) terminating respondent ACIC Canada, Inc. in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 523-3395.

SUPPLEMENTARY INFORMATION: On November 27, 1987, the presiding ALJ issued an ID terminating the investigation with respect to ACIC Canada, Inc. The ID granted the joint motion of complainant The Upjohn Company and ACIC Canada, Inc. to terminate the investigation with respect to ACIC on the basis of a consent order and settlement agreement. No petitions for review of the ID or government agency or public comments were received.

The Commission has determined that there is a question that merits review. The specific question the Commission wishes to address on review is the appropriateness of requiring certifications in consent orders, such as that set out in paragraph 1 of the proposed consent order.

Written Submissions: The Commission encourages written submissions on the question on review from the parties, the Commission investigative attorney, and interested Government agencies. Such submissions must be received by January 19, 1988. Reply submissions are due by January 28, 1988.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53-.56

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 30, 1987.

[FR Doc. 88-125 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-267]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision Not To Review Initial Determination Terminating One Respondent

AGENCY: International Trade Commission.

ACTION: Termination of investigation with prejudice as to respondent S.S.T. Corporation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued in the above-captioned investigation terminating the investigation with prejudice as to respondent S.S.T. Corporation.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-3395.

SUPPLEMENTARY INFORMATION: On December 2, 1987 the presiding administrative law judge issued an ID (Order No. 36) granting the motion of complainant The Upjohn Company to withdraw the complaint with prejudice and to terminate the investigation as to respondent S.S.T. Corporation. No petitions for review of the ID and no government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88-126 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Commission Decision Not To Review Initial Determination Terminating Eight Respondents on Basis of Settlement Agreement

AGENCY: Internationl Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating eight respondents in the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: The Commission has determined not to review an ID (Order No. 49) terminating respondents Meditech Internationl Co., Polycraft Corp., Chung Kong Industrial Co., Ltd., Daewang International Co., Keron Industrial Co., Ltd., Gideons Plastic Industrial Co., Ltd., Lien Bin Plastics Co., Ltd., and Euroweld Distributing Inc. from this investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Paul R. Badros, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 12, 1987, complainant and the eight aforementioned respondents filed a joint motion (Motion No. 263-39) to terminate the investigation as to the eight respondents on the basis of a settlement agreement. The Commission investigative attorney filed a public interest statement supporting the motion. On November 25, 1987, the presiding administrative law judge issued an ID granting the joint motion to terminate the investigation as to the eight respondents on the basis of the settlement agreement. No petitions for review or Government agency comments were received. One public comment and the eight respondents' reply thereto were received.

The Commission notes that the settlement agreement makes reference to certain exclusive import agreements which are not at issue in this investigation. The Commission has treated those import agreements as distinct from the settlement agreement and makes no determination concerning their validity or legality.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 29, 1987.

[FR Doc. 88-127 Filed 1-5-88; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

[BAC: 6820-SK]

Hearing

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of open hearing.

SUMMARY: In accordance with Pub. L. 99-660, notice is given of the first hearing of the National Commission to Prevent Infant Mortality. The title of the hearing is "the role of the private sector in reducing infant mortality".

Date: January, 1988.

Time: 9:30 a.m.-12:30 p.m.

ADDRESS: Vail Auditorium, Southern Bell Center, 975 Peachtree Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Ann D. Mayhew, 202/472-1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88-173 Filed 1-5-88; 8:45 am]

BILLING CODE 6820-SK-M

[BAC: 6820-SK]

Meeting

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Pub. L. 99-660, notice is given of the second meeting of the National Commission to Prevent Infant Mortality. The purpose of the meeting is to begin discussion of Commission recommendations.

Date: January 11, 1988.

Time: 2:00 p.m.-4:00 p.m.

ADDRESS: Conference Room, Southern Bell Center, 975 Peachtree Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rae K. Grad, 202-472-1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88-174 Filed 1-5-88; 8:45 am]

BILLING CODE 6820-SK-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by Feburary 5, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Arts Administration Fellows Program Guidelines FY 1989.

Frequency of Collection: Possible 3 times per year.

Respondents: Individuals or households.

Use: Guideline instructions and applications elicit relevant information from arts administrators, individual artists, and graduate students who apply for funding under a specific program category. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 350.

Estimated Hours for Respondents to Provide Information: 1,350.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-132 Filed 1-5-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

Toledo Edison Company and Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Basse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Safety System Instrumentation and Containment Isolation Valves in accordance with Toledo Edison Company's application dated August 7, 1987. Specifically, the proposed amendment would:

(1) Revise TS section 3/4.3.2, Table 3.3-5, to delete reference to the atmospheric vent values, main steam warmup drain valves, main steam line valves, main feedwater stop valves, and main steam line warmup valves receiving a manual Safety Features Actuation Signal (SFAS),

(2) Revise TS section 3/4.3.2, Table 3.3-5, to delete reference to the atmospheric vent valves and main steam warmup drain valves receiving a high containment pressure SFAS automatic signal,

(3) Revise TS section 3/4.3.2, Table 3.3-5, to delete reference to the main steam line valves, main feedwater stop valves, and main steam warmup valves receiving a high-high containment pressure SFAS automatic signal,

(4) Revise TS section 3/4.3.2, Table 3.3-5, to delete reference to the atmospheric vent valves and main steam warmup drain valves receiving a low reactor coolant system pressure SFAS automatic signal,

(5) Revise TS section 3/4.6.2, Table 3.6-2, to delete from section A, valves FW601 (penetration 37), FW612 (penetration 38), MS100, ICS11A, MS375, and MS100-1 (penetration 39), MS101, ICS11B, MS394, and MS101-1 (penetration 40), MS603 (penetration 57) and MS611 (penetration 60),

(6) Revise TS section 3/4.6.3, Table 3.6-2, to add to section C, valves FW601 (penetration 37), FW612 (penetration 38), MS100, ICS11A, MS375, and MS100-1 (penetration 39), and MS101, ICS11B, MS394, and MS101-1 (penetration 40).

The licensees maintain that the proposed modifications will improve the reliability and availability of the main feedwater system, and minimize challenges to the auxiliary feedwater system.

Prior to 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.

By February 5, 1988, the licensees 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 effected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions 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. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(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 fifteen (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 fifteen (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, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date Petitioner 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—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

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 August 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 29th day of December 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-137 Filed 1-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Company and Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Auxiliary Feedwater System Surveillance Requirements in accordance with Toledo Edison Company's application dated May 4, 1987. Specifically, the proposed amendment would revise paragraph d of TS § 4.7.1.2 to delete the Surveillance Requirement for periodic channel functional tests and channel calibrations for the Auxiliary Feedpump Turbine Inlet Steam Pressure Interlocks.

Prior to 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.

By February 5, 1988, 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 petition for leave to intervene. Request for a hearing and petitions 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. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (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 fifteen (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, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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 witneses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Martin J. Virgilio: (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-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

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 May 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 29th day of December, 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-138 Filed 1-5-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25233; File Nos. SR-Amex-87-28; SR-CBOE-87-52; SR-NYSE-87-36; SR-PSE-87-26; SR-Phlx-87-29 and SR-NASD-87-45]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the American ("Amex"), New York ("NYSE"), Pacific ("PSE"), and Philadelphia Stock Exchanges ("Phlx"), the Chicago Board Options Exchange ("CBOE"), and the National Association of Securities Dealers ("NASD") (collectively, the self-regulatory organizations ["SROs"] or "Exchanges") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described herein.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The SROs have filed with the Commission their enforcement policies regarding certain practices generally referred to as "frontrunning of block transactions." These policies are contained in information circulars that describe the kind of conduct involving the frontrunning of blocks that would be considered to be in violation of Exchange rules. These circulars are distributed to Exchange members.

Generally, the SROs define frontrunning as the practice of trading a security while in possession of material, non-public information regarding an imminent block transaction[2] in the same or a related security. The SROs' circulars state that the use by an Exchange member of such material, non-public information to trade for his own benefit and to the detriment of members of the public as well as other Exchange members is activity inconsistent with just and equitable principles of trade and a violation of Exchange rules.

In 1980, in response to a recommendation in the Report of the Special Study of the Options Market,[3] all of the SROs adopted policies stating that trading in options or in underlying securities while in possession of material, non-public information concerning block transactions in these securities is conduct inconsistent with just and equitable principles of trade in violation of Exchange rules.[4] An explanation of the policies was contained in information circulars that were distributed to Exchange members.[5]

In 1985, the SROs disseminated circulars clarifying that the above frontrunning prohibition applied to trading in index options and options on over-the-counter stocks.[6] In May 1986, the Chairmen of the Federal Regulation and the Derivative Products Committees of the Securities Industry Association ("SIA") submitted a letter to the Interim Chairman of the Intermarket Surveillance Group ("ISG"), addressing certain concerns they believed were raised by the recently-issued frontrunning circulars.[7] Among other things, the letter stated the writers' belief that the circulars constituted rulemaking which must be filed with the Commission, published for public comment, and ultimately approved or

[1] The proposed rule changes were filed on the following dates: Amex, October 29, 1987; CBOE, October 30, 1987; NYSE, October 23, 1987; PSE, October 29, 1987; Phlx, October 26, 1987; and NASD, October 30, 1987.

[2] A transaction involving 10,000 or more shares of an underlying security or options covering such number of shares is conclusively deemed to be a block transaction; a transaction of less than 10,000 shares may also be a block transaction in appropriate cases.

[3] H.R. Rep. No. 1FC-3, 96th Cong., 1st Sess. at 188 (Comm. Print 1978).

[4] The SROs' rules that prohibit conduct by members that is inconsistent with just and equitable principles of trade are: Amex: Article V, Section 4(h); CBOE: Rule 4.1; NASD: Article III, Section 1 of the Rules of Fair Practice; NYSE: Rule 467; PSE: Rule I, Section 12(k); Phlx: Rule 707.

[5] *See, e.g.,* Amex Information Circulars 79-12 and 80-36; CBOE Educational Circular No. 23; and NYSE Information Memo No. 80-38.

[6] *See, e.g.,* Amex Information Circular 85-115; NYSE Information Memo No. 85-36; and Phlx Circular 85-82.

[7] Letter from William R. Harman, Chairman, Federal Regulation Committee and Allan H. Pessin, Chairman, Options and Derivative Products Committee, SIA, to Bertram Riley, Interim Chairman, ISG, dated May 16, 1986. The ISG is a group of SRO surveillance heads that meet to discuss joint surveillance concerns and devise methods to improve intermarket surveillance.

disapproved by the Commission. In its letter responding to the SIA's comments, the ISG stated that the SROs were considering the possibility of filing their frontrunning circulars with the Commission.[8]

In response to the SIA-ISG correspondence, the SROs filed their frontrunning circulars with the Commission pursuant to section 19 of the Act. The SROs stated that the proposals are stated policies, practices and interpretations with respect to the meaning and enforcement of existing Exchange rules. The SROs, accordingly, requested that the proposed rule changes take effect immediately pursuant to section 19(b)(3)(A) of the Act.

The proposed rule changes are stated policies, practices, or interpretations of the SROs with respect to the meaning and enforcement of existing rules. As such they have become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by January 27, 1988.

[8] Letter from Donald J. Solodar, Chairman, ISG, to John C. Harris, Chairman, Options and Derivative Products Committee, SIA, dated April 16, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 30, 1987.

[FR Doc. 88-119 Filed 1-5-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations to be held Friday, January 29, 1988, from 1:00 p.m. to 4:00 p.m. in Geneva, Switzerland, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Michael B. Smith,

Deputy United States Trade Representative.

[FR Doc. 88-84 Filed 1-5-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

University Transportation Centers Program; List of Universities Eligible for Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice lists the universities that are eligible to apply for grants under the University Transportation Centers Program.

FOR FURTHER INFORMATION CONTACT: Gracie Carter, University Transportation Centers Program, P-34, (202) 366-5442, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation will be making grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions. Because only ten centers will be funded it may be useful for the universities to consider forming consortia. The grants will be administered by the University Transportation Centers Program, which is located in the Office of the Assistant Secretary for Policy and International Affairs.

DOT announced the solicitation for pre-applications in the August 14, 1987, **Federal Register**. The Department reviewed the submissions on September 18, 1987, and determined that 68 universities are eligible to apply to participate in the program. The universities that may submit applications are:

Alaska, University of, Fairbanks
Arizona State University
Arkansas, University of, Fayetteville
California, University of, Berkeley
California, University of, Irvine
California Polytechnic State University
Carnegie Mellon University
Central Missouri State University
City University of New York
Colorado, University of, Denver
Colorado State University
Connecticut, University of, Storrs
Cornell University
Duke University
Eastern Illinois University
Florida, University of, Gainesville
Georgia Institute of Technology
Harvard University
Illinois, University of, Chicago
Indiana University, Bloomington
Iowa, University of, Iowa City
Iowa State University
Kansas, University of, Lawrence
Kansas State University
Kentucky, University of, Lexington
Louisiana State University
Maryland, University of, College Park
Massachusetts Institute of Technology
Michigan, University of, Ann Arbor
Michigan State University
Minnesota, University of, Twin Cities
Missouri, University of, Columbia
Morgan State University
Nebraska, University of, Lincoln
Nevada, University of, Reno
North Alabama, University of, Florence
North Carolina, University of, Chapel Hill
North Carolina Agricultural and Technical State University
North Dakota, University of, Grand Forks
North Dakota State University
Northwestern University
Ohio State University
Oregon State University
Pennsylvania, University of, Philadelphia
Pennsylvania State University
Pittsburgh, University of

Polytechnic University (New York)
Portland, University of
Portland State University
Purdue University
Rensselaer Polytechnic Institute
Rice University
Southern California, University of, Los Angeles
Southern University at New Orleans
St. Cloud State University
Syracuse University
Tennessee, University of, Knoxville
Texas, University of, Austin
Texas A&M University
Texas Southern University
Utah State University
Virginia, University of, Charlottesville
Virginia Polytechnic Institute and State University
Washington University in St. Louis
Washington, University of, Seattle
West Virginia University, Morgantown
Wisconsin, University of, Milwaukee
Wyoming, University of, Laramie

A detailed discussion of the program and the application form will be mailed to the eligible universities about the end of December. The Department will only review applications from institutions that have been determined to be eligible in the pre-application process. If consortia are formed the university responsible for each consortium must be eligible to submit an application. The final application will be the sole basis for any grant award.

Issued in Washington, DC, on December 30, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-82 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circulars; Small Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Publication of advisory circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1987. These AC's, listed below, relate to Part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Snitkoff, Manager, Policy & Guidance Section, ACE-111, Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed in response to the needs identified by industry during the FAA Airframe Policy and Program Review Public Meeting held in Wichita, Kansas, on June 8-9, 1983; and to update existing policy information for Small Airplane Certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Subsequent Distribution Unit, M-443.2, Washington, DC 20596.

Advisory Circulars Published:

AC Number	Subject	Date signed
AC 23.841-1 [1]	Cabin Pressurization Systems in Small Airplanes.	12/30/86
AC 23.961-1	Procedures for Conducting Fuel System Hot Weather Operation Tests.	01/14/87
AC 20-118A	Emergency Evacuation Demonstration.	03/09/87
AC 23-7	Substantiation for an Increase in Maximum Weight, Maximum Landing Weight, or Maximum Zero Fuel Weight.	07/01/87
AC 23-8	Flight Test Guide for Certification of Normal, Utility, and Acrobatic Category Airplanes.	10/20/87
AC 23.807-1A	Emergency Exit Shape and Size.	10/29/87

[1] This AC was signed after the Notice of Advisory Circulars issued by the Small Airplane Certification Directorate for the year 1986 was published in the **Federal Register**, therefore, this AC is listed in the year 1987.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 88-81 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Reestablishment and Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public meeting; reestablishment of the Committee.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on January 21 and 22, 1988, in Atlanta, Georgia, at the Holiday Inn Crowne Plaza, 1900 Sullivan Road, near the airport. The meeting will begin at 9:00 a.m. on both days and it is open to the public.

The agenda will include: Various motor carrier safety issues, a report on the status of the National Governors' Association Working Groups' recommendations on Uniform State Motor Carrier Procedures, coordination with State motor carrier advisory committees, the Commercial Drivers' Licensing program, plans for a National Motor Carrier Safety Conference, the image of the industry, the issue of "reasonable access", and the status of various legislative proposals which may affect the motor carrier industry.

This meeting also coincides with a public forum on the FHWA's proposed standards for the testing and licensing of commercial motor vehicle operators. The forum will begin at 1:00 p.m. in the Georgia International Convention and Trade Center, which is adjacent to the Holiday Inn Crowne Plaza. The

Committee will adjourn to attend the forum.

The FHWA also announces the reestablishment of the National Motor Carrier Advisory Committee. The Committee consults with the makes recommendations to the Federal Highway Administrator on matters relating to the activities of the FHWA in areas affecting commercial motor vehicles and operators. Copies of the Committee charter are available on request.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: December 31, 1987.

Ray Barnhart,

Federal Highway Administrator.

[FR Doc. 88-172 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 30, 1987.

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, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8716.

Type of Review: New.

Title: Election To Have a Tax Year That is Not a Required Tax Year as Defined in section 444(e).

Description: Filed by partnerships, S corporations, and personal service corporations under section 444(a), to retain, to change, or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 58,300 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

Clearance Officer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-93 Filed 1-5-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 37-87]

Treasury Notes of January 15, 1995, Series E-1995

Washington, December 30, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of January 15, 1995, Series E-1995 (CUSIP No. 912827 VT 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 15, 1988, and will accrue interest from that date, payable on a semiannual basis on July 15, 1988, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 6, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 5, 1988, and received no later than Friday, January 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secreatry of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, January 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, January 13, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, January 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,
Acting Fiscal Assistant Secretary.

[FR Doc. 88-229 Filed 1-4-88; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: U.S. Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to conduct public opinion surveys abroad in accordance with Executive Order 12048 (dated March 27, 1978). USIA is requesting approval of the extension of OMB 3116-0163, which provides a generic clearance of its public opinion surveys which are conducted abroad.

DATE: Comments must be received by January 15, 1988.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Margaret G. Pape, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC. 20547, telephone (202) 485-1408. OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title "USIA Surveys". Form Number: No form used for this information collection.

Abstract: Executive Order 12048 of March 27, 1978, requires the Director of the U.S. Information Agency to be the principal advisor within the U.S. Government on international educational, informational, and cultural matters. The scope of the USIA Director's advice includes assessments of the impact and conducts public opinion surveys overseas as a means of obtaining such informations. The agency seeks clearance from OMB for these foreign opinion surveys.

Proposed Frequency of Responses:

No. of Respondents—40,000
No. of Responses Per Respondent—20
Recordkeeping Hours—.4
Total Annual Burden—320,000

Dated: December 29, 1987.

Thomas H. Connor,

Deputy Chief, Domestic Support Division.

[FR Doc. 88-128 Filed 1-5-88; 8:45 am]

BILLING CODE 8230-01-M

Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of an institution of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Unversities or colleges in metropolitan Washington, DC., with schools or colleges of education or graduate programs in international studies, located within reasonable proximity of Washington, DC's international gateway airports, are invited to submit project proposals for a cooperative agreement award from the Agency. For application information, please contact Mr. David N. Levin no later than January 15 at the following address: Teacher Exchange Brach (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street,SW., Washington, DC. 20547. Phone: (202) 485-2555.

Dated: December 30, 1987.

Robert R. Gosende,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 88-129 Filed 1-5-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 7, 1988

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. FY88 Budget/Operating Plan

The staff will brief the Commission on issues related to the FY88 Budget/Operating Plan.

Closed to the Public

2. Enforcement Matter OS#3393

The staff will brief the Commission on issues related to Enforcement Matter OS#3393.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
December 31, 1987.

[FR Doc. 88-176 Filed 1-4-88; 9:22 am]

BILLING CODE 6355-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 4, 11, 18, and 25, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 4

Wednesday, January 6

10:00 a.m.
Briefing on status of NRC Internal Drug Program (Public Meeting)

Thursday, January 7

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on Status of Maintenance Program and Policy Statement/Advanced Notice of Proposed Rulemaking (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

No Commission Meetings

Week of January 18—Tentative

Wednesday, January 20

10:00 a.m.
Briefing on Status of Sequoyah Restart (Public Meeting)

2:00 p.m.
Briefing on NRC Technical Training Program (Public Meeting)

Thursday, January 21

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting) (Tentative)

2:00 p.m.
Briefing on Regulation of Transportation of Radioisotopes and Results of the Modal Study (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sesssions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,
Office of the Secretary.
January 4, 1988.

[FR Doc. 88-241 Filed 1-4-88; 3:25 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
January 6, 1988

Part II

Federal Home Loan Bank Board

12 CFR Parts 525, 561, 563, 563c, 571, 583, and 584

Implementation of the Competitive Equality Banking Act of 1987; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 525, 583, and 584

[No. 87-1299]

Qualified Thrift Lender Test; Savings and Loan Holding Company Amendments; Federal Home Loan Bank Advances

Date: December 22, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("the Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is amending its regulations governing savings and loan holding companies to implement the qualified thrift lender test enacted in the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"). The CEBA amends section 408 of the National Housing Act, 12 U.S.C. 1730a, also commonly known as the Savings and Loan Holding Company Act ("the SLHC Act"), to provide that the current exemption from the nonthrift activity restrictions for unitary savings and loan holding companies will be available only where the subsidiary institution meets the new qualified thrift lender test. The CEBA also amends section 10 of the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1430, to reduce the eligibility for advances from the Federal Home Loan Banks ("FHLBanks") of member institutions that do not meet the qualified thrift lender test.

This regulation sets forth the new qualified thrift lender test, which requires that an insured institution must maintain 60 percent of its tangible assets in housing and housing-related investments in order for the institution to have Qualified Thrift Lender ("QTL") status. The regulation also implements the new statutory limitations on eligibility for advances and permissible holding company activities where an institution fails to maintain its QTL status.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel (202-377-6649), Nancy M. Lytle, Attorney (202-377-6077), Regulations and Legislation Division, Kevin Corcoran, Deputy Director for Corporate, Corporate and Securities Division (202-377-6962), Office of General Counsel; Richard C. Pickering, Deputy Director (202-377-6770), Robert Pomeranz, Senior Policy Analyst (202-377-6730), Office of Policy and Economic Research; Thomas Sheehan, Director, Policy Analysis Division, Office of District Banks (202-377-6351); Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Thomas Melo, Deputy Director (202-778-2652), Ben F. Dixon, Policy Analyst (202-778-2519), Office of Regulatory Policy, Oversight and Supervision; Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction; Statutory Authority

Section 104(c)(1) of the CEBA amends section 408 of the National Housing Act (12 U.S.C. 1730a) by adding a new subsection (o) entitled "Qualified Thrift Lender Requirements." CEBA, tit. I, sec. 104(c)(1), section 408(o). This provision sets forth a QTL test for all insured institutions, including both state-chartered institutions and Federal associations.[1]

As stated in the legislative history of the CEBA, Congress' objective in promulgating the QTL provisions was one of "committing insured institutions to the unique, congressionally defined role of providing housing-related finance." H.R. Rep. No. 261, 100th Cong., 1st Sess. 137 (1987). The key component of the QTL test is whether the institution's "actual thrift investment percentage" equals or exceeds 60 per cent of its tangible assets on an average basis over time; that is, whether the institution consistently invests the stated majority of its tangible assets in certain "qualified thrift investments." Generally, these qualified investments are related to domestic real estate or manufactured housing, but they include other assets that are incidental to the thrift's housing-related investments.

In addition to setting forth the QTL test and defining necessary terms, section 104(c) of CEBA provides a special transition period for state-chartered savings banks and a five-year disqualification for any insured institution that fails to maintain its QTL status. Moreover, certain exceptions and exemptions may be granted by the FSLIC. Finally, the CEBA requires the FSLIC to adopt regulations implementing the requirements of the QTL test that must be effective on or before January 1, 1988.

The CEBA provides that an insured institution's ability to qualify as a thrift lender may affect its ability to obtain advances from its FHLBank as well as the ability of any holding company parent and nonthrift affiliates of the institution to engage in certain nontraditional thrift activities. In particular, section 105 of the CEBA provides that member institutions that do not have QTL status will be eligible for advances only to the extent that they hold qualified thrift investments. Moreover, section 104(b) of the CEBA provides that the current exemption for unitary thrift holding companies from the activities restrictions in the Act will now be available only if the subsidiary thrift institution meets the QTL test.

II. Description of the Proposal

On October 2, 1987, the Board proposed a rule to implement the QTL Test. *See* Board Res. No. 87-1041, 52 FR 39076 (Oct. 20, 1987). First, the proposal added to the Board's regulations a new § 583.27 setting forth the QTL test and enumerating a list of investments considered to be "related to domestic residential real estate or manufactured housing" for purposes of the test. Second, the proposal amended the Board's regulations governing permissible activities of savings and loan holding companies to reflect the new limitations under the CEBA on nonthrift activities for such companies. Finally, the proposal amended the Board's regulations governing FHLBank advances to reflect the effect of failure to meet the QTL test on an institution's ability to receive FHLBank advances. The comment period on the proposal expired on November 19, 1987.

In connection with its proposed rulemaking, the Board held two days of public hearings on November 3 and 4, 1987 on the proposed QTL regulation and six other regulations it proposed to implement the CEBA. Twenty-three industry representatives participated in these hearings. The number of witnesses addressing the QTL proposal included four members of an overview panel and four members of the panel specifically concerned with the QTL test. Of these eight witnesses, six represented trade associations, one an insured institution, and one a law firm. Remarks by participants in the hearing are summarized below as part of the public comment summary.

[1] For purposes of the QTL test, an insured institution is defined as a Federal savings and loan association, a Federal savings bank, a building and loan, savings and loan or homestead association or a cooperative bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and includes a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation and a savings bank which is deemed by the Corporation to be an insured institution under 12 U.S.C. 1730a(n). *See* 12 U.S.C. 1730a(a)(1)(A).

III. Discussion of Comments

The Board received a total of 53 public comments in response to the proposal. Thirty-two commenters supported the proposal, twenty of whom suggested modifications. Only seven commenters opposed the proposal, of whom five suggested modifications. Fourteen commenters suggested modifications but took no apparent position on the proposal. The majority of comments (31) were submitted by insured institutions. Of the remainder, seventeen were submitted by industry trade associations, three by law firms, one by an individual, and one by a securities firm. Commenters suggested both technical and substantive modifications to the proposal. Although the comment period ended on November 19, 1987, the Board has considered late-filed and late-received letters in its efforts to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are more fully discussed below, the Board has determined to adopt the amendments substantially as proposed with certain modifications and clarifications.

A. Definition of Qualified Thrift Lender

Section 104(c)(1) of the CEBA provides that an insured institution shall have QTL status if its qualified thrift investments equal or exceed 60 percent of its assets "on an average basis in 3 out of every 4 quarters and 2 out of every 3 years." Section 104(c) defines the term "qualified thrift investments" as the sum of: (1) The aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary thereof) that are "related to domestic residential real estate or manufactured housing;" (2) the value of property used by the institution or its subsidiary in the conduct of the business of the institution or its subsidiary; (3) the types of liquid assets required to be maintained under section 5A of the FHLBank Act, 12 U.S.C. 1425a; and (4) 50 percent of the dollar amount of residential mortgages originated by the institution or its subsidiary and sold within 90 days of origination. CEBA, tit. I, sec. 104(c), section 408(o)(5)(B). The aggregate amount of the assets described in the latter two categories may not exceed 10 per cent of the institution's tangible assets.

As the Board noted in the proposal, Congress left to the Board fairly broad discretion to implement the requirements of the QTL test. The majority of commenters supported the approach taken by the Board in the proposal; however, many suggested various modifications or additions to the list of irems that would count as qualified thrift investments.

1. Housing Related Investments

In the proposal, the Board took a very flexible approach in determining which assets would qualify as housing related investments. The Board attempted to make the list of housing related investments as comprehensive as possible by including all types of investments related to insured institutions' traditional role of encouraging thrift and facilitating private home ownership. Accordingly, the proposal included all forms of home mortgages, home improvement loans, and loans made on the security of residential real estate or manufactured housing (including home equity loans). Similarly, the proposal included all investments acquired by the institution through foreclosure and liquidation of any of the aforementioned investments, as well as any other equity interests held by the institution and its subsidiaries in residential real estate. The proposed list also included stocks, bonds, and other securities issued or guaranteed by the FHLBanks, the newly established Financing Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and obligations issued by the FSLIC.

Further, the Board proposed that all forms of residential mortgage-related securities be included as housing-related investments under the proposal. For example, these securities include pass-through participation type certificates as well as pay-through bonds. Mortgage-related securities also include, but are not limited to, any portion or tranche of a collateralized mortgage obligation or REMIC. They also include any type of derivative product currently existing or hereafter created, such as so-called residual or stripped securities (assuming such instruments are an authorized and permissible part of the institution's portfolio.) This list of securities is meant to be illustrative and not exhaustive of the types of qualifying investments in the continually evolving mortgage-related securities marketplace.

The proposed list also included any investment in a corporation, partnership, or trust whose primary activities include servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other housing-related activities such as domestic residential loan origination or the sale of residential loans. A company is considered to have its primary activity in such activities if it derives more than half its annual gross revenues from such activities. Similarly, the proposal would permit institutions to count land loans, as defined in 12 CFR 561.18, as a housing related investment once actual construction of residential housing begins.

Moreover, as proposed, the regulation would allow an institution to count any investments in state housing corporations and community development projects. Also included in the proposal would be investments in obligations of any state or political subdivision that are issued for the purpose of providing financing for residential housing or incidental services. The term incidental services is intended to include municipal projects that are related to the public financing and maintenance of housing—for example, municipal bonds floated for the purpose of constructing or repairing a neighborhood sewage system.

Finally, the proposal contemplated that the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") could issue T-Memoranda that list particular investments that qualify as housing-related investments under paragraph (c) but are not specifically listed in the regulation. This approach is similar to the approach taken in ORPOS Memorandum No. T-2-3h (April 25, 1985) with respect to liquid assets and permissible investments for Federal associations.

A majority of commenters expressed support for the flexible approach taken by the Board in defining what assets may count as housing-related investments; while a few commenters believed that the list of housing-related investments was too broad. Several commenters suggested various additional investments that they contended should be included as housing-related investments.

A few commenters suggested that FHLBank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the FHLBank System be counted as housing-related investments. Similarly, some commenters suggested that investments in other federally insured thrifts should be included in the list. In response to these commenters, the Board has determined to include all obligations of the FHLBank System as housing-related investments and also to include a thrift's investments and deposits in other insured institutions. In the Board's view, these items promote economical home financing because they strengthen the FHLBank System by encouraging the placement and maintenance of funds in that System. Therefore, they are properly includable as housing-related investments.

Two commenters suggested that institution's shares in the FSLIC secondary reserve should be included as a housing-related investment arguing that the secondary reserve was established to benefit the FSLIC and thus is clearly housing related. While an institution's share in the secondary reserve could arguably be incidentally related to housing, the Board declines to include this item as a housing-related investment.

Several commenters contended that direct obligations of the United States, such as Treasury Bonds, should be included as housing-related investments because they are inherently intertwined with housing-related investments. These commenters argued that such instruments influence the national interest rate and thereby control the availability of affordable home financing. It is, of course, correct that certain obligations of the United States affect interest rates and are therefore related to housing. The CEBA, however, prescribes that they be included as qualified thrift investments not under the housing- related investment category but under the liquid asset category. Direct obligations of the United States, such as Treasury Bills or Bonds, are included as liquid assets in § 523.10 and therefore may be counted, subject to the overall 10 percent limitation, as qualified thrift investments. The Board does not believe it was the intent of Congress to include such obligations as housing-related investments and consequently declines to include them.

A few commenters suggested that commercial loans, consumer loans, savings account loans, overdraft loans, and credit card loans be included as housing related investments. Such commenters advocated counting either the entire amount of these loans or the portion of them that can be statistically linked to housing-related activities such as home improvement or construction. Similarly, one commenter asserted that any home equity loans that are classified as consumer loans should be included. Another commenter suggested including the value of property and materials necessary to successful housing development, *e.g.*, basic infrastructure such as utility and transportation, local shopping areas, local medical facilities, nursing facilities, playgrounds, parks, dedicated school property, and recreational property subject to a test that they are reasonably related to and primarily for the benefit of a specific identifiable project, or subject to a percentage limit.

In response to these suggestions the Board first notes that the regulation as proposed includes home equity loans as housing related investments. Such loans would be included under the category of "loans made on the security of residential real estate or manufactured housing." After careful consideration, the Board has determined not to include specifically in the regulation the other suggestions offered by commenters as housing related investments. The Board notes that the purpose of the QTL test is to commit institutions to the unique, congressionally defined role of providing housing-related finance. The items suggested by commenters are related to housing only in an incidental way, and the Board believes that their relationship to housing is too attenuated to justify inclusion in this prong of the QTL test. Moreover, although the Board recognizes that certain commercial loans, credit card loans, overdraft loans, and other types of consumer loans may be used for home improvement purposes, in the Board's view, the difficulty of calculating and documenting which portion of such loans are in fact used for such purposes outweighs any potential advantage of including them in the rule as housing related investments.

Moreover, the Board does not believe it necessary to add items that are housing related only in a questionable way in order to assist insured institutions in meeting the QTL test. The list of housing related investments is already very broad and flexible; consequently, most institutions should be able to meet the QTL test without great difficulty.

For these reasons, the Board declines to include the loans described above in the regulatory list of housing related investments. If, however, an institution does not have 60 per cent of its assets in qualified thrift investments for any reporting quarter and if it can show with adequate documentation that certain consumer loans or commercial loans in its portfolio are in fact housing related, it may include such loans for purposes of meeting the QTL test pursuant to the guidelines set forth in a Supervisory Memorandum to be issued by the ORPOS.

One commenter, representing the Association of Savings Banks of Puerto Rico, urged the Board to include various investments peculiar to Puerto Rican thrifts as housing-related investments. These investments included Government Development Bank deposits, rates and debentures; Social Housing Mortgage Trust Funds, Puerto Rico Housing Bank obligations; and various other obligations of the Puerto Rican government and its agencies. In the Board's view, several of these investments are already included within the scope of the regulation. The ORPOS will issue a Memorandum that will enumerate those Puerto Rico investments that qualify as housing related investments.

In response to the Board's specific request for comment on the extent to which investments in entities whose primary activities include residential real estate activities should be included as housing related investments, several commenters advocated including proportional amounts of investments in a real estate servicing entity that derives less than 50 per cent of its primary revenue from housing-related investments. For example, if such an entity derives 30 per cent of its primary revenues from housing related investments, then 30 per cent of a thrift's investment in the entity should be includable. One commenter suggested that the entity's "holdings" as well as its revenues should count toward the fifty per cent test. Another commenter asserted that the test should measure a *majority of assets* in housing related investments regardless of the sources of revenues. Failure to include investments on a proportional basis, according to one commenter, would only encourage the formation of additional subsidiaries to separate out nonqualifying revenues. In contrast, one commenter asserted that the 50 per cent threshold was reasonable and investments in an entity that derives less than that from housing-related activities should not be counted.

In response to these commenters, the Board has determined to allow an institution to include as a housing related investment its investment in a corporation, partnership or trust whose activities include servicing residential real estate loan portfolios, developing residential domestic real estate, or any other housing related activities such as domestic residential loan origination or the sale of domestic residential loans. Institutions may include the amount of their investment in such an entity in proportion to the amount of primary revenue the entity derives from housing related investments. For example, if such an entity derives 70 per cent of its primary revenue from housing related investments, an institution may include 70 per cent of its investment in such an entity as a housing related investment. Similarly, if an entity derives 20 per cent of its primary revenue from housing related investments, an institution may include 20 per cent of its investment in such an entity as a housing related investment. The Board cautions, however, that institutions must have adequate documentation to support the inclusion of any such investment.

Accordingly, the Board today is revising the proposal to permit institutions to include the amount of their investment in real estate servicing entities in proportion to the amount of primary revenue the entity derives from housing related activities. Additionally, the Board has amended the proposal to clarify that institutions may only include investments under this subsection in real estate servicing entities that are not subsidiaries of such institutions. As discussed more fully below, the Board has made this amendment in order to eliminate the "double counting" problem that arises where an institution counts its subsidiary's investments as housing related investments and also counts its investment in its subsidiary as a housing related investment.

Many commenters addressed the issue of whether acquisition, development and construction loans ("ADC loans") should be counted as housing related investments before actual construction begins if an insured institution can document the residential purpose of the loan. One commenter recommended that the final regulation clarify that ADC loans for raw land to be improved by construction of the type of structures enumerated in section 5(c)(5) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended (12 U.S.C. 1464(c)(5)), are included within the scope of the regulation. With the exception of one institution that totally opposed including ADC loans as qualified housing-related investments, a large number of commenters favored including preconstruction land loans where sufficient documentation is provided to attest to their residential purpose.

Commenters offered several suggestions with respect to the type of documentation that could be used to show the residential nature of a particular ADC loan. Three commenters recommended that the definition of qualified ADC loans used in the tax code test for a building and loan association be used: "Loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if * * * there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of the land." Internal Revenue Code 7701(a)(19)(c) (1982 & Supp. III 1985). Other commenters suggested the following documentation: (1) Evidence certified by appropriate local or county authorities that the land that is serving as collateral for the loan is in fact zoned for residential purposes at the time the financing is extended; (2) an appraisal used during the loan underwriting process and prepared in accordance with Board regulations that establishes the market value of the property based on its development for residential purposes; (3) a proposed development plan setting forth the nature of the residential development and the budget and schedule for the development; (4) a certification by the institution's management that the land loan was funded on the basis that it would be used for the acquisition and/or development of residential property; and (5) appropriate documentation verifying the availability of utilities, sufficient to service the property once developed for residential purposes.

The Board is persuaded by the arguments offered by the commenters and has determined that land loans that are properly documented to show the residential nature of the loan may be included as housing related investments whether the institution or its subsidiary holds such loans directly or invests in them indirectly through a nonsubsidiary real estate servicing entity. The ORPOS will issue a Supervisory Memorandum before January 1, 1988, that will set forth the documentation needed to support inclusion of residential purpose land loans as a housing related investment.

Several commenters contended that the value of institutions' purchased mortgage loan servicing rights [2] should be included as housing related investments because they are an integral part of the secondary mortgage market. One commenter asserted that including these rights as qualified thrift investments would encourage thrifts to shift their dependence away from interest rate-sensitive investments to fee-based income from mortgage servicing.

One commenter, who favored including the mortgage servicing rights, took issue with the manner in which such servicing rights are treated for purposes of calculating the actual thrift investment percentage ("ATIP"). According to this commenter, the current formulation would include in the numerator purchased servicing rights held by a real estate servicing entity but exclude those rights held directly by the insured institution, thereby discouraging institutions from acquiring such rights directly.

The Board agrees with the commenters and has included in today's final rule purchased residential mortgage servicing rights held by the institution or its subsidiary as a housing related investment. Purchased mortgage servicing rights clearly are an integral part of the secondary market and therefore are properly includable as a housing related investment. Moreover, the final rule also includes excess servicing rights as a housing related investment. Such servicing rights are created when an institution sells a group of loans and retains the right to service those loans. In the Board's view, these excess servicing rights are identical in nature with purchased servicing rights and are therefore also properly includable as housing related investments.

Several commenters urged the Board to clarify that multifamily residential property assets are included in the scope of housing related investments. The Board notes that the list of housing related investments includes home mortgages, which are defined in 12 CFR 521.6 as "a mortgage on real estate * * * which comprises one or more homes or other dwelling units." In the Board's view, this reference clearly includes multifamily residential assets. Similarly, loans made on the security of liens upon domestic residential real estate also include multifamily housing.

Another commenter sought clarification as to whether loans made upon the security of university dormitories, nursing or convalescent homes, and real property on which a mobile home park is situated are considered to be residential real estate for purposes of the QTL test. The Board notes that the purpose of § 583.27(c) is to enumerate those broad categories of investments that, in the Board's view, are housing related. Clearly, there are many items that may not be specifically listed in paragraph (c) that fall within the board categories listed therein. It is the Board's intent that the supervisory memoranda issued by ORPOS will enumerate specific items that fall within the scope of the regulation, similar to the current treatment of liquid assets in Memorandum No. T 2–3h. In response to the specific issues raised by the commenter, the Board historically has considered loans made upon the security of university dormitories, nursing or convalescent homes and real property on which a mobile home park is located as residential real property. *See, e.g.*, ORPOS Memorandum No. T–7 (Aug. 31, 1983) (dormitories generally

[2] A purchased mortgage loan servicing right may be defined as a contractual right to receive fees for servicing mortgage loans or securities backed by mortgage loans held by investors.

classified as residential real estate); 48 FR 23032, 23036 (May 23, 1983) (the term "residential real estate" includes multifamily structures such as dormitories and nursing or convalescent homes). Accordingly, the Board believes that the items mentioned by the commenter clearly fall within the definition of housing related investments.

Additionally, commenters raised several questions with regard to whether certain contra assets are deducted in determining the amount of an institutions qualified thrift investments. The Board takes this opportunity to clarify that the calculation of the aggregate amount of qualified thrift investment is based on the aggregate *net* amount of such investments as reported on an institution's monthly and quarterly reports to the Board. Thus, any such investment would not include contra assets such as valuation allowances or discounts. Accrued interest on an eligible investment, however, would be included.

Although not specifically raised by commenters, the Board wishes to take this opportunity to clarify that investments in housing related assets that are subject to repurchase agreements are included as housing related investments. The Board has amended the proposal to specifically include such investments as housing related investments.

Finally, to assure continued flexibility to take account of the changing marketplace, several commenters proposed establishing a procedure whereby an institution could request qualification of particular assets on a case-by-case basis through a supervisory memoranda. An alternative recommendation was to give the ORPOS the authority to approve new investments without having to resort to the T-memo process, but permit denials only with the concurrence of the Office of General Counsel.

As the Board noted in the proposal, the ORPOS may issue Supervisory Memoranda that list particular investments that qualify as housing related investments under paragraph (c) but are not specifically enumerated therein. The Board has directed the ORPOS to issue the first such Memorandum prior to January 1, 1988, the effective date of this rule. The Board anticipates that the Memorandum will be updated by the ORPOS as is necessary. The Board notes, however, that institutions may request a legal opinion from the Office of General Counsel ("OGC") as to whether a particular investment that is not specifically listed in paragraph (c) or the Memorandum may be included as a housing related investment. The OGC's decision on such opinion requests subsequently would be incorporated into the Supervisory Memorandum. The Board wishes to emphasize that the intent of the Supervisory Memorandum is to clarify whether certain investments not specifically listed fall within the scope of the investments listed in paragraph (c). Similarly, the Board envisions that requests for legal opinions will not be seeking an expansion of the list but instead a clarification as to whether a particular investment fits within the scope of the regulation or the Memoranda issued pursuant thereto. The Board does not view either of those vehicles as routes to expand the scope of housing related investments beyond that of the regulation.

Finally, the Board wishes to emphasize that neither § 583.27(c) nor any Supervisory Memorandum issued pursuant thereto is intended to expand, contract, or otherwise affect an institution's investment authority under relevant statutes and regulations. Specifically, insured institutions may only invest in those assets listed in paragraph (c) to the extent they have independent legal authority, under either law or regulation, to make such investments. To the extent an institution has independent legal authority to make an investment, § 583.27(c) sets forth those investments that may be counted as qualified thrift investments for purposes of meeting the QTL test.

2. Other Types of Qualified Thrift Investments

In addition to the housing related investment component discussed above, the proposal incorporated the other statutory components of qualified thrift investments. First, the book value of business property used by the institution or its subsidiary in the conduct of business was included as a qualified thrift investment. One commenter contended that business property should be interpreted to include furniture, fixtures and equipment. Another commenter, however, believed that investments in business property should be limited, in order to reduce the ability of thrifts to invest in high-risk investments. Another commenter asked whether business property includes appraised equity capital.

The Board takes this opportunity to clarify that business property includes fixed personalty and real property assets at book value. Institutions may *not*, however, include appraised equity capital in calculating the value of its business property. Business property may only be included at book value, *i.e.*, the actual amount paid for the asset at acquisition, less depreciation.

Consistent with the CEBA, the proposal also included as qualified thrift investments: (1) Liquid assets held by the institution (not its subsidiaries) of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a): and (2) 50 per cent of the dollar amount of mortgages originated by the institution or its subsidiary and sold within 90 days of origination. Under the statute, as implemented by today's final rule, the latter two categorizes of investments may be counted as qualified investments only up to a combined aggregate amount not to exceed ten per cent of the institution's tangible assets.

Several commenters expressed concern about the 10 per cent cap applied to the combined amount of liquid assets and mortgage sold within 90 days. Some commenters advocated removing the cap altogether or applying a separate 20 per cent cap to liquid investments, or a separate 10 per cent cap to each subcategory. The 10 per cent cap is mandated by the CEBA, however, and the Board is therefore without the statutory authority to revise it.

3. Calculation of Actual Thrift Investment Percentage

As set forth in the CEBA, the "actual thrift investment percentage" ("ATIP"), which must equal 60% for an institution to qualify as a QTL, consists of a numerator comprised of the sum of an institution's qualified thrift investments (including investments of subsidiaries except in the case of liquid assets) and a denominator comprised of the institution's (but not its subsidiaries') tangible assets.

The Board received several comments on various aspects of the calculation of the ATIP. With respect to the calculation of the numerator, one problem identified is a "double counting" effect that the Board did not intend. As drafted, the proposal could be interpreted to permit an insured institution to count both its own investment in a subsidiary as well as the subsidiary's investment in qualified assets. Thus, the Board wishes to clarify that an institution may count the percentage of its investment in its subsidiaries that is housing related or count its subsidiaries' housing related investments, but not both. The same holds true with respect to the investments of subsidiaries in other subsidiaries ("second tier subsidiaries").

As proposed, the tangible assets denominator would be calculated on an unconsolidated basis, that is, it would include only the assets of the institution itself. The Board has encountered no substantial disagreement with this interpretation of the CEBA and therefore adopts in final form the unconsolidated calculation. Based on its review of comments, however, the Board has decided to alter its proposed definition of tangible assets in one respect. Whereas the proposed definition of tangible assets excluded purchased mortgage loan servicing rights, the Board has decided to include purchased mortgage servicing rights in the tangible assets base for the following reasons. Although there is not a clear consensus in the accounting community as to whether these assets are tangible or intangible, these assets do possess some important characteristics of tangible assets because: (1) An active market exists for the purchase and sale of servicing rights; (2) they are priced according to well-accepted valuation and appraisal techniques; and (3) they generate a measurable yield on investment.

Consequently, the Board believes that purchased mortgage servicing rights should be included in the denominator as tangible assets. The Board notes that its action today in no way affects the definition of "tangible capital" set forth in the Board's equity risk investment regulation. 12 CFR 563.9–8. For purposes of that regulation, purchased mortgage servicing rights are specifically excluded from the definition of tangible capital and will continue to be excluded. Moreover, for purposes of that regulation, tangible capital means equity capital as determined in accordance with generally accepted accounting principles ("GAAP") less intangibles. The Board wishes to take this opportunity to make clear that the tangible assets component of the QTL test is not currently based on GAAP, but instead is defined as the total assets of the institution less intangibles.

The Board wishes to note, however, that on December 21, 1987, as part of its mandate under the CEBA, it adopted a final rule setting forth uniform accounting standards for insured institutions. *See* Board Res. No. 87–1293. That regulation requires that institutions file all financial statements and reports in accordance with GAAP, with the exception of deferred loan losses and gains, for all reporting periods beginning on or after January 1, 1989. This reporting requirement may affect the amount of assets reported by an institution as qualified thrift investments as well as the institution's tangible asset base. Specifically, prior to January 1, 1989, institutions will be reporting some assets on their monthly and quarterly reports to the Board in accordance with regulatory accounting practices, which represent deviations from GAAP. As of January 1, 1989, however, all assets will be reported in accordance with GAAP. Institutions should be aware of this fact and should take into account what effect, if any, GAAP reporting will have on an institution's ability to continue to meet the QTL test.

A few commenters suggested that the calculation of the tangible assets base should include any housing related investments of subsidiaries that are counted in the numerator. The Board has determined not to adopt this recommendation. In the Board's view, the CEBA does not mandate such an approach. Rather, as explained in the proposal, it specifically provides that investments of both the institution and its subsidiaries are included in the numerator as qualified thrift investments (with the exception of liquid assets) and that the tangible assets base is to be calculated on an unconsolidated basis using only the institution's assets and not those of its subsidiaries. Moreover, as noted above, commenters expressed strong support for the Board's interpretation, remarking that it accurately reflects the intent of the statute. The Board therefore is satisfied that the purpose of the QTL test will not be subverted by failure to adopt this change.

4. Effective Date and Implementation

The Board is adopting in substantially the same form as proposed § 583.27(a)(1) and (2) which implements the QTL test and deems all insured institutions to have QTL status as of January 1, 1988.[3] This is the effective date of the QTL regulation and the date from which all relevant data can now be compiled and compliance calculated. As explained in the proposal, the Board believes that as a practical matter, and as a matter of prudent regulation, this approach represents the most fair implementation given the more severe burdens imposed by the "snapshot approach" that the Board has specifically rejected.

As of the January 1, 1988, effective date, then, insured institutions are responsible for tracking data according to new reporting schedules now being prepared by Board staff. The first reports for the new QTL investment schedule will be made for the calendar quarter ending March 31, 1988. Under § 583.27(a)(1) an institution would lose its QTL status at the close of any calendar quarter during which the institution had failed to maintain its actual thrift investment percentage at or above 60 percent, which failure made it mathematically impossible for the institution to meet the 60 per cent test during three out of every four calendar quarters *for each of* two out of every three calendar years. Thus, the earliest point at which an institution would lose its QTL status is June 30, 1989, assuming the institution fails the 60 per cent test in at least two of the four quarters of the first year (1988) and in the first two quarters of the second year (1989).[4]

a. *Averaging Requirement.* In order to prevent evasions of the QTL test, the regulation directs that compliance be monitored on a quarterly reporting basis measured over a calendar year period. Calculation of the ATIP is to be made on an *average basis* by taking the sum of an institution's qualifying thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the institution's total tangible assets at the end of these same four months.

The Board received several suggestions of alternative ways to implement the averaging requirement to calculate compliance with the QTL test.[5] Two commenters suggested using a less burdensome quarter-end snapshot, specifically objecting to including the last month of the previous quarter. Two commenters recommended irrevocable election procedures to permit institutions to use daily or weekly totals instead of the monthly totals and to make their calculations on a fiscal instead of a calendar year basis. A final alternative, suggested as the best technique for preventing evasion of the test, would require calculations based on weekly or bimonthly levels, provided such data is available, or if unavailable, require an annual reconciliation. The Board is not persuaded that these alternative methods will significantly increase the effectiveness of the test. The Board chose to require data from

[3] The Board is also taking the opportunity to revise the definition of insured institution in § 583.6 to conform with the definition in section 408 of the National Housing Act.

[4] In effect, the proposal contemplates a phase-in of the QTL test. In the Board's view, such a phase-in is consistent with the letter and spirit of the CEBA. *See* S. Rep. No. 19, 100th Cong., 1st Sess. 39 (1987).

[5] Section 104(c)(1) of the CEBA provides that an insured institution shall have QTL status if its actual thrift investment percentage continues to equal or exceed 60 percent on an average basis in 3 out of every 4 quarters and 2 out of every 3 years. CEBA, tit. I, sec. 104(c)(1), section 408(o)(1)(B).

the last month of the previous quarter specifically to prevent evasions and last minute manipulation of assets. Moreover, the Board has determined not to give institutions the irrevocable election suggested by the commenters. In the Board's view, such an election would defeat its overall goal of seeking uniformity of reporting QTL data by all insured institutions.

b. *Principal Supervisory Agent ("PSA") Calculation of QTL Status.* Commenters disagreed on whether, as discussed in the proposal, the PSA should be permitted to calculate QTL compliance on dates other than those set forth in the proposal, if he determines that the institution is engaging in transactions to remove certain assets from its books temporarily for purposes of meeting the QTL test. Two commenters approved of such authority, with one calling for 90 days notice before allowing such a calculation. In contrast, four commenters vigorously opposed giving the PSA such authority on the grounds that it would tend to reinforce current perceptions of supervisory arbitrariness, perceptions that have allegedly discouraged investment in the industry; or that it could unduly interfere with business and investment decisions.

After carefully weighing the pros and cons of this issue, the Board has determined not to give specific authorization to the PSA to calculate QTL compliance on dates other than those listed in the regulation. The legislative history of CEBA explicitly states that, in promulgating the QTL regulations, the Board must, to the extent possible, ensure that institutions not attempt to evade the requirements of the test. The Board believes the calculation dates specified in the regulation implement this statutory intent. It notes however, that manipulation of portfolio composition for purposes of attempting to evade the test could give rise to a number of remedial actions by the PSA ranging from a request that the institution recalculate its QTL compliance to invocation of the Board's available enforcement remedies.

c. *De Novo Institutions.* As stated in the proposal, the Board has determined to give *de novo* institutions the same "phase-in" opportunity to meet the QTL test as is afforded to existing institutions. Thus, a *de novo* institution will be required to meet the test in three out of four quarters and two out of three years beginning in the quarter following the point at which such institution becomes an insured institution. For example, if an institution obtains its charter on June 21, 1990, the institution would have the same 6-quarter phase-in provided for existing institutions. That is, the institution would begin reporting its QTL data for the quarter beginning July 1, 1990 and the first point at which the institution could fail the test is the end of the fourth quarter of 1991 (December 31, 1991).

d. *Data Collection and Reporting.* After carefully considering several different ways to collect the necessary data from insured institutions to determine compliance with the QTL test, the Board today is adopting a "Proxy Test" approach that should minimize the reporting burden on institutions. Under this approach, institutions will be screened on the basis of certain line items reported on their end-of-quarter Thrift Financial Report ("TFR") which correspond to the most important components of the QTL test. These component items reported on the current TFR (any future changes to the TFR may change some of these line items) for the QTL numerator are:

1. Residential mortgages (Lines A022+A024+A032+A034)
2. Mortgage-backed pass-though securities (Lines A072 through A084)
3. Home improvement loans (Line A180)
4. Retail mobile home loans (Line A230)
5. Residential property held for development/investment/sale (Line A342)
6. Collateralized mortgage obligations, including REMICs (Line A385)
7. Fixed assets (Lines A410+A420+A440)
8. Liquid assets (Line A900) and one-half of residential mortgages sold during the quarter (Lines F122 + F123) up to 10 percent of tangible assets.

An approximation of the denominator, tangible assets, can also be determined from existing line items on the TFR (Lines A800 - A544). Using this data, the Board will then calculate the ratio each quarter for each institution. Any institution that has a 70 percent ratio will be considered qualified for the quarter without further reporting. Only those institutions with a snapshot ratio below 70 percent would be required to complete a more detailed QTL reporting form and will be so notified by the Board. (See Appendix for a preliminary draft of the form). The Board notes, however, that all institutions should maintain the necessary records to complete the QTL form in the event that they fail the Proxy Test.

In the Board's view, a 70 percent threshold is reasonable and appropriate for the Proxy Test because such a test is based on approximations and not precise data. Specifically, the Proxy Test includes all qualified assets in the numerator at gross, rather than net. Consequently, because the numerator would include contra asset accounts such as valuation allowances and unearned discounts, the numerator could tend to be somewhat exaggerated. Moreover, the Proxy Test is a point-of-time snapshot, not an average of month end data as is the detailed QTL test. Thus, the Board believes that the 10 percent margin sufficiently compensates for any margin of error caused by the use of the Proxy Test. The Board notes that the purpose of the Proxy Test is to minimize to the extent possible the additional reporting requirements which result from implementation of the QTL test. It is not the Board's intent to require institutions to have more than 60 percent of its assets in qualified thrift investments; the Proxy Test is solely for the convenience of institutions.

e. *Disqualification and Requalification.* The CEBA specifies that an institution that fails to maintain its QTL status is disqualified and may not thereafter be a QTL for a period of five years from the close of the quarter in which the institution lost its QTL status. This provision is incorporated into § 583.27(a)(3).

At least one commenter deemed the five year disqualification penalty to be harsh enough to call for some relief such as delaying termination of QTL status until the end of the third year of a measuring cycle, even though failure is mathematically unavoidable at an earlier date. Although the penalty may appear harsh, the Board believes that the penalty comports with the goal the QTL test is intended to promote: assuring the continued commitment of insured institutions to the unique, congressionally defined role of providing housing-related finance. In this regard, the Board is bound by the mandate of the CEBA.

The Board notes, however, that the CEBA does not specify how an institution should be able to regain its QTL status after a 5-year disqualification. The Board believes that a reasonable approach is to require any "disqualified" institution to meet the QTL test at the point it is eligible to regain its QTL status (*i.e.* at the earliest, 5 years after the date of the disqualification). In the Board's view, this approach comports with the spirit of CEBA by requiring a thrift to demonstrate its commitment to home financing by meeting the QTL test during the standard measuring cycle of three years prior to its requalification.

Thus, if the disqualified thrift meets the QTL test during two of the last three years of its five-year disqualification period, it would be eligible to requalify at the end of such period. However, if the institution cannot pass the test at that point, it may not regain QTL status until such time as it demonstrates that it has met the QTL test based on the standard measuring cycle, *i.e.*, three out of four quarters in two out of three years.

5. FSLIC Exceptions; Special Phase-In For Certain Institutions

The CEBA authorizes the FSLIC to grant temporary exceptions from the QTL test due to extraordinary circumstances or to facilitate acquisition or merger of troubled institutions. One commenter requested a temporary exception, subject to periodic review, for Puerto Rican savings banks that, it is asserted, cannot meet the QTL test due to the lack of sufficient housing related investments within Puerto Rico and certain Federal tax benefits limiting their U.S. mainland investment options. Without in any way expressing any opinion on the merits of the recommended exceptions, the Board does not find it necessary to address this request in today's final regulation because the CEBA provides adequate authority to grant limited and temporary exceptions on a case-by-case basis. CEBA, tit. I, sec. 104(c)(1), section 408(o)(3). Thus, the Board will take this issue under advisement.

Two issues were raised with respect to the ten year phase-in to QTL status provided for FSLIC-insured savings banks. One party objected to the benchmark date of August 10, 1987, and suggested substituting an average computed over the period from August 10 to December 31, 1987. The August 10 date, however, is statutorily mandated and thus cannot be altered. The second suggestion is to permit savings banks the same formula for failing the test, *i.e.*, three out of four quarters, in two out of three years. This appears to be simply a matter of properly interpreting the CEBA. In the first place, this is not necessary during the ten-year phase-in period, which sets particular targets for particular dates. Once the ten-year phase-in period ends, of course, savings banks covered by the transition rule would have to meet the QTL test on the same terms as all other insured institutions, *i.e.*, on a measuring cycle of 3 out of 4 quarters in 2 out of every 3 years.

Several commenters asked the Board to provide more guidance on how to utilize the conversion option set forth in CEBA section 104(f) permitting Federal Deposit Insurance Corporation ("FDIC")-insured state savings banks to apply to be treated as insured institutions so that their parent holding companies may be regulated as savings and loan holding companies. The Board intends to address this issue in a separate proposed regulation in the near future which will be published in the **Federal Register**.

B. Holding Company Activities

Section 104(b) of the CEBA completely revises section 408 of the SLHC Act, 12 U.S.C. 1730a(c), which governs the activities of savings and loan ("S&L") holding companies, to account for the effect of the new qualified thrift lender test on S&L holding company activities. The CEBA preserves the current exemption from the nonthrift activity restrictions in the SLHC Act for unitary holding companies (or subsidiaries thereof) if the subsidiary insured institution meets the QTL test. CEBA, tit. I, sec. 104(b), section 408(c)(3). The CEBA also exempts from the nonthrift activity restrictions those S&L holding companies (or subsidiaries thereof) that control more than one insured institution if all, or all but one, of such institutions were acquired pursuant to a supervisory acquisition and all the subsidiary insured institutions meet the QTL test. *Id.* Additionally, the CEBA grandfathers the activities of S&L holding companies that received approval to acquire an insured institution prior to March 5, 1987. Finally, section 104(b) of the CEBA restricts multiple S&L holding companies to those activities that were permissible for multiple S&L holding companies as of March 5, 1987, but permits them to also engage in activities determined by the Federal Reserve Board ("FRB") to be permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act ("BHC Act"), subject to any Board limitations and restrictions.

Only four parties commented on the holding company provisions; three were industry trade associations and one was an insured institution. All commenters generally endorsed the Board's interpretation of the CEBA provisions relating to activities of savings and loan holding companies.

While commenters generally agreed with the proposal's interpretation of the scope of the new bank holding company activities permissible for S&L holding companies, one commenter urged the Board to take a more expansive approach by including, in addition to those activities approved by the FRB under section 4(c)(8), those activities approved under other provisions of section 4(c) of the BHC Act.

After carefully considering this commenter's suggestion, the Board has nevertheless determined to adopt in final its proposal. Thus, today's final rule authorizes as permissible nonbanking activities, those activities approved by the FRB under section 4(c)(8) of the BHC Act, which includes those nonbanking activities set forth in 12 CFR 225.25 as well as those activities approved by order of the FRB under 12 CFR 225.23(d)(2). As noted in the proposal, however, based on its experience in implementing this provision, the Board reserves the right to limit or restrict such activities. Similarly, the Board may, at some later date determine to expand the list of permissible nonbanking activities for S&L holding companies to include those activities approved by the FRB under other provisions of section 4(c) of the BHC Act.

One commenter urged the Board to designate as preapproved all activities identified in § 584.2-1, those previously approved by the Board pursuant to former § 584.2(b)(6), as well as the newly permissible nonbanking activities approved by the FRB. As noted above, under the final rule those nonbanking activities approved by the FRB pursuant to the authority under section 4(c)(8) of the BHC Act are deemed permissible activities for S&L holding companies. The CEBA, however, mandates that the authority for a S&L holding company to engage in such activities is subject to prior approval by the FSLIC. CEBA, tit. I, sec. 104(b), section 408(c)(2)(F)(i). Accordingly, the Board today is implementing the prior approval requirement by adopting the approach outlined in the proposal to grant the PSA's authority to make initial determinations on applications to engage in these activities. The specific procedures and timeframes for this application process are governed by the new guidelines for application processing published on October 2, 1987. *See* 52 FR 39064 (October 2, 1987) (to be codified at 12 CFR 571.12). Furthermore, the Board has determined that the multiple holding company activities identified in § 584.2-1 will remain subject to the existing notice procedures set forth therein.

One commenter sought clarification that any activities in which a multiple S&L holding company was engaged in prior to March 5, 1987 that were specifically authorized by § 584.2-1 or approved pursuant to the regulatory approval process under § 584.2(b)(6) are not subject to termination pursuant to the CEBA. Section 104(b) of the CEBA provides that the FSLIC may require a grandfathered S&L holding company to terminate any activity prohibited by section 408(c)(1)(C) of the SLHC Act if the FSLIC determines that such action is necessary to prevent conflicts of interest or unsafe or unsound practices. *See id.*, sec. 104(b), section 408(c)(6) (B) and (D). In the Board's view, the termination authority granted to the FSLIC under the CEBA does not apply to those activities that continue to be permissible under the CEBA, *i.e.*, those activities in which multiples were authorized, by regulation, to directly engage in on March 5, 1987, as well as those activities deemed permissible by the FRB for bank holding companies under section 4(c)(8) of the Bank Holding Company Act. The Board wishes to note, however, that pursuant to its authority under 12 U.S.C. 1730a(h)(5)(A), the FSLIC may, "whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary insured institution and is inconsistent with the sound operation of an insured savings and loan institution or with the purposes of (section 1730a) or with the Financial Institutions Supervisory Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities * * *." Thus, although the termination authority granted to the FSLIC in the CEBA applies only to those nonthrift activities engaged in by S&L holding companies, the Board clearly has the authority under the SLHC Act to order an S&L holding company to terminate *any* activities such company is engaged in where good cause exists.

Finally, one commenter sought clarification that any activities previously approved by the Board on a case-by-case basis would be deemed permissible for multiple holding companies. Accordingly, the final regulation is amended at § 584.2–1(b)(12) to clarify that all activities previously approved by the Board prior to March 5, 1987, pursuant to its authority under former section 408(c)(2)(F) of the SLHC Act, are permissible activities for multiple S&L holding companies.

C. Advances Eligibility

Although few parties commented on the limitation on eligibility for advances from the FHLBanks imposed on thrifts failing the QTL test, those who did comment, with one exception, argued that the penalty was too severe. One commenter saw no need for the penalty where an institution is in full compliance with all regulations, particularly the Direct Investment and Regulatory Capital Regulations. Several commenters recommended more lenient alternatives for determining the reduction in advances eligibility. One suggestion was to use a fraction with 60 per cent (the required ATIP to qualify as a QTL) as the denominator and the institution's actual ATIP as the numerator, *e.g.* 50/60, or similarly to reduce eligibility by the amount by which the association faces the test. Unfortunately, the Board cannot adopt the proportional reduction approach because CEBA expressly provides that a non-QTL institution's advances are reduced to the level of its actual ATIP, admittedly a much larger reduction.

Although not addressed by commenters, the Board wishes to take this opportunity to clarify that all FDIC-insured state-chartered savings banks and all savings banks subject to the 10-year phase-in rule for QTL status are specifically exempted by the CEBA from the limitations on advances imposed on non-QTL thrifts under new section 525.1. *See id.*, sec. 105, section 10(e)(2); *see also* 12 U.S.C. 1813(g).

IV. Effective Date

The Board is adopting this regulation effective January 1, 1988. While the Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than thirty days before its effective date, the delayed effective date requirement may be waived for "good cause," such as where Congress has prescribed an effective date. *Cf.* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 888 (3d Cir. 1982) (relating to notice and comment procedures). The provisions of the CEBA require that the QTL regulation take effect on January 1, 1988. CEBA, tit. I, sec. 104(c) (2), (3). Accordingly, the Board finds that the statutorily prescribed effective date constitutes "good cause" for dispensing with the APA delayed effective date requirement.

Final Regulatory Flexibility Analysis

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

1. *Need for and Objectives of the Rule.* These elements are incorporated above in the "SUPPLEMENTARY INFORMATION" regarding the proposal.

2. *Issues Raised by Comments and Agency Assessment and Response.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION."

3. *Significant Alternatives Minimizing Small-Entity Impact and Agency Response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

The final rule treats all institutions in the same manner and this would not have a substantial impact on small entities.

Lists of Subjects in 12 CFR Parts 525, 583, and 584

Credit, Federal home loan banks, Government securities, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 525, Subchapter B, Parts 583 and 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. The authority citation for Part 525 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Revise § 525.1 to read as follows:

§ 525.1 Limitation on advances.

(a) *General.* Unless otherwise authorized by the Board, a Bank shall not make advances to any member in excess of the limits set forth in § 563.8(b) of this chapter.

(b) *Reduced eligibility for advances for certain members that are not qualified thrift lenders.* Except as provided in paragraph (c) of this section, a member that is not a qualified thrift lender, as defined in § 583.27 of this chapter, may not receive advances in excess of the amount that is the product of:

(1) The total amount of advances that such member would be eligible to receive without reference to the qualified thrift lender test contained in § 583.27 of this chapter, and

(2) The member's actual thrift investment percentage, as defined in § 583.27 of this chapter.

(c) *Exceptions.* Paragraph (b) of this section does not apply to:

(1) A savings bank as defined in section 3(g) of the Federal Deposit Insurance Act; or

(2) An insured institution that was chartered as a savings bank under State law before October 15, 1982; or

(3) An insured institution that acquired its principal assets from an institution that was chartered before as a savings bank under State law before October 15, 1982; or

(4) Any insured institution whose financial stability the Board finds to be threatened by severe financial conditions.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

3. The authority citation for Part 583 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Revise § 583.6 to read as follows:

§ 583.6 Insured institution.

The term "insured institution" means a Federal association, or interim Federal association, a building and loan, savings and loan, or homestead association or cooperative bank, or an interim state savings and loan association, the accounts of which are insured by the Corporation; any Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings bank which is deemed by the Corporation to be an insured institution under section 408(n) of the National Housing Act (12 U.S.C. 1730a(n)); and an institution that retains insurance accounts by the Corporation pursuant to § 563.29–1 of this chapter.

5. Add a new § 583.27 to read as follows:

§ 583.27 Qualified thrift lender status.

(a) *General test.* For purposes of Parts 525 and 584 of this Chapter an insured institution shall be a qualified thrift lender ("QTL") if the institution's actual thrift investment percentage (as defined in paragraph (b)(1) of this section) equals or exceeds 60 per cent.

(1) As of January 1, 1988, an insured institution shall be deemed to have QTL status and shall maintain its status as a QTL so long as the institution's actual thrift investment percentage continues to equal or exceed 60 per cent during three out of every four calendar quarters in each of two out of every three calendar years. For purposes of this paragraph (a)(1), calculations of the actual thrift investment percentage shall be made on an average basis by taking the sum of an institution's qualified thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the institution's total tangible assets at the end of each of these same four months.

(2) An institution shall lose its QTL status at the close of the quarter during which the institution has failed to maintain its actual thrift investment percentage at or above 60 per cent, which failure makes it mathematically impossible for the institution to meet the 60 per cent actual thrift investment percentage test during three out of every four calendar quarters for each of two out of every three calendar years on a continuous basis.

(3) For purposes of paragraph (a)(1) of this section, a *de novo* institution shall begin a QTL measuring cycle (3 out of every 4 calendar quarters in 2 out of every 3 calendar years) at the beginning of the quarter following the date on which its charter was granted.

(4) An insured institution that fails to maintain its status as a qualified thrift lender may not thereafter be a qualified thrift lender for a period of five (5) years from the close of the quarter on which the institution lost its QTL status.

(b) *Definitions:* For purposes of determining whether an insured institution is a qualified thrift lender, the following terms are defined as stated:

(1) "Actual thrift investment percentage" means the percentage determined by dividing the amount of an insured institution's qualified thrift investments (as defined in paragraph (b)(3) of this section) by the total amount of the institution's tangible assets (as defined in paragraph (b)(2) of this section).

(2) "Total tangible assets" of an institution means the total assets of the insured institution minus goodwill and any other intangible assets, including, but not limited to, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

(3) Subject to paragraph (b)(3)(iv) of this section, "Qualified thrift investments" means, with respect to any insured institution, the sum of:

(i) The aggregate net amount of all investments (including loans, equity positions, or securities) held by such institution (or any subsidiary of such institution) that are related to domestic residential real estate or manufactured housing as defined in paragraph (c) of this section;

(ii) The book value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary: and

(iii) An aggregate amount not to exceed 10 per cent of such institution's tangible assets of: (A) The liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a) and set forth in 12 CFR 523.10 of this Chapter, and (B) 50 per cent of the dollar amount of residential mortgage loans originated by the insured institution or its subsidiary and sold within 90 days of origination, provided that these mortgage loans were sold during the calendar quarter for which the actual thrift investment percentage is being measured.

(iv) In calculating the amount of qualified thrift investments held by an institution and its subsidiaries under paragraph (b)(3) of this section, an institution or its subsidiary may not count their investment in subsidiaries as a qualified thrift investment if they are also including their subsidiaries' investments as qualified thrift investments.

(c) *Housing related investments.* For purposes of the definition contained in paragraph (b)(3)(i) of this section, investments (including such investments held subject to repurchase agreement) that are "related to domestic residential real estate or manufactured housing" including the following:

(1) Any home mortgage, as defined in 12 CFR 521.6, provided that the home or other dwelling unit is located in any State;

(2) Any loan made on the security of liens upon residential real estate located in any State, or any loan made for the repair, equipping, alteration, or improvement of any residential real property located in any State;

(3) Any investment in manufactured home chattel paper and interests therein, where the underlying security is either manufactured, sold, or used in any State. "Manufactured home and "manufactured home chattel paper" shall have the same definitions as contained in § 545.45 (a) and (b) of this chapter;

(4) Any investment in any property acquired through the liquidation or in foreclosure of investments described in paragraphs (c) (1), (2) and (3) of this section; and any other equity interest

investment in residential real estate or residential real property;

(5) Any investment in any state housing corporation as defined in § 571.8 of this chapter; in any obligations of or issued by any State or any political subdivision thereof that is issued for the purpose of providing financing for residential housing or incidental services; and in any community development loans or investments of the type described in § 545.41 of this chapter;

(6) Investments in the stock of a Federal Home Loan Bank, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or obligations issued by the Corporation, the Federal Home Loan Bank System, or the Financing Corporation;

(7) Investments in Federal Home Loan Bank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the Federal Home Loan Bank System.

(8) Investments in the deposits of a Federal association, an interim Federal association, a building and loan, savings and loan, or homestead association, or a cooperative bank, or an interim state savings and loan association, the accounts of which are insured by the Corporation; or in the deposits of a Federal association the accounts of which are insured by the Federal Deposit Insurance Corporation;

(9) Investments in mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454–55);

(10) Investments in obligations, participations, securities, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association;

(11) Investments in any other mortgage-backed securities, including mortgage pass-through certificates, mortgage-backed bonds, and mortgage pay-through bonds, as well as any derivative mortgage-related security that is created by disaggregating and repackaging the cash flows to be received as payments on mortgages and traditional mortgage-backed securities provided that the underlying assets of such securities or bonds are domestic residential real estate assets;

(12) Excess servicing rights resulting from the sale of residential mortgage loans as well as investments in the purchased rights to perform the servicing function for a specific group of residential mortgage loans that are owned by others;

(13) Any investment in a corporation, partnership, or trust in proportion to the amount of gross revenues derived by such entity from servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other domestic housing related activities such as residential loan origination or selling residential real estate loans.

(14) Any investment that the Office of Regulatory Policy Oversight and Supervision hereafter identifies in Supervisory Memoranda as a housing related investment for purposes of this regulation.

For the purposes of this paragraph (c), the terms "State," "residential real estate," and "residential real property" shall have the same definitions that are stated for these terms in section 5(c)(5) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(c)(5). The inclusion of any investment as a "qualified thrift investment" under this regulation is not intended to expand, contract, or otherwise affect the permissibility of investments as determined for any institution under other relevant state and federal statutes or regulations.

(d) *Special phase-in for certain institutions.* (1) Any insured institution that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a state savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have the status of a qualified thrift lender through December 31, 1997, *provided that*:

(i) The institution's actual thrift investment percentage does not decrease below the actual thrift investment percentage calculated for the institution on August 10, 1987; and

(ii) The amount by which—

(A) The actual thrift investment percentage of such institution on the dates indicated in paragraph (d)(2) of this section exceeds

(B) The actual thrift investment percentage of such institution on August 10, 1987,

is equal to or greater than the applicable percentage (as indicated in paragraph (d)(2) of this section) of the amount by which 60 per cent exceeds the actual thrift investment percentage of such institution on August 10, 1987:

(2) The applicable percentages referenced in paragraph (d)(1) of this section are 25 per cent on February 10, 1990; 50 per cent on August 10, 1992 and 75 per cent on February 10, 1995.

(e) *Exceptions.* Notwithstanding paragraph (a) of this section, the Corporation may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in paragraph (a) of this section as the Corporation deems necessary if—

(1) The Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements; or

(2) The Corporation determines that—

(i) The grant of any such exception will facilitate an acquisition under section 406(f) or 408(m) of the National Housing Act, as amended, and

(ii) The acquired institution will comply with the transition requirementsof paragraph (d) of this section.

PART 584—REGULATED ACTIVITIES

5. The authority section for Part 584 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Amend § 584.2 by revising the heading of the section; and by revising paragraphs (b) and (c) to read as follows:

§ 584.2 Prohibited activities.

* * * * *

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not an insured institution shall commence, or continue for more than 2 years after August 10, 1987, or the date on which such company becomes a savings and loan holding company, whichever is later, any business activity other than—

(1) Furnishing or performing management services for a subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary insured institution;

(4) Holding or managing properties used or occupied by a subsidiary insured institution;

(5) Acting as trustee under deed of trust; or

(6) Any other activity—

(i) That is permissible for bank holding companies pursuant to 12 CFR 225.23 and 225.25, subject to the limitations and requirements of § 584.2-2 of this subchapter; or

(ii) Is set forth in § 584.2-1, subject to the limitations therein.

Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e) to acquire control of an insured institution shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Service corporation subsidiaries of insured institutions.* Until further notice by order or regulation, the Corporation hereby approves without application the furnishing or performing of such services or engaging in such activities as are specified in § 545.74 of this chapter, as now or hereafter in effect, if such service or activity is conducted by a service corporation subsidiary of a subsidiary insured institution of a savings and loan holding company and if such service corporation has legal power to do so.

* * * * *

7. Amend Part 584 by adding a new § 584.2a to read as follows:

§ 584.2a Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b) of this part:

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one insured institution, if the insured institution subsidiary of such company is a qualified thrift lender as defined in § 583.27 of this subchapter.

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one insured institution if all, or all but one of the insured institution subsidiaries of such company were acquired pursuant to an acquisition under section 408(m) or 406(f) of the National Housing Act *and* all of the insured institution subsidiaries of such company are qualified thrift lenders as defined in § 583.27 of this subchapter.

(2) Any savings and loan holding company referred to in paragraph (a)(1) of this section whose subsidiary insured institution(s) fails to qualify as a qualified thrift lender pursuant to § 583.27 of this subchapter may not commence, or continue, any service or activity other than those permitted under § 584.2(b) of this part, *except that.* the Corporation may allow, for good cause shown, such company (or subsidiary thereof) up to 3 years to comply with the limitations set forth in § 584.2(b) of this part.

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding § 584.2(b) of this part and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 under 12 U.S.C. 1730a(e) to acquire control of an insured institution may engage, directly or indirectly or through any subsidiary (other than a subsidiary insured institution of such company) in any activity in which it was lawfully engaged on March 5, 1987, *Provided that:*

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional insured institution, other than an insured institution acquired pursuant to section 408(m) or 406(f) of the National Housing Act;

(2) Any insured institution subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those enumerated in § 584.2(b) of this part and in which it was engaged on March 5, 1987;

(4) Any insured institution subsidiary of the holding company does not increase the number of locations from which such insured institution conducts business after March 5, 1987, other than an increase due to a transaction under section 408(m) or 406(f) of the National Housing Act; and

(5) Any insured institution subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the insured institution subsidiary and the affiliate.

(c) *Termination by the corporation of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Corporation may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary—

(1) To prevent conflicts of interest;

(2) To prevent unsafe or unsound practices; or

(3) Is in the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof that is not an insured institution) that controls a single insured institution on August 10, 1987, shall not be subject to the restrictions set forth in § 584.2 of this Part with respect to any activities of such holding company that are conducted exclusively in a foreign country.

8. Amend § 584.2-1 by revising the heading of the section; by revising paragraph (a); and by adding a new paragraph (b)(12) to read as follows:

§ 584.2-1 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 584.2(b)(6)(ii), the activities set forth in paragraph (b) of this section are permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary insured institutions are prescribed by § 584.2(c) of this Part. Notwithstanding and without regard to any other provision of this section other than this sentence, a savings and loan holding company and any noninsured subsidiary thereof, other than a service corporation, may invest in the types of securities specified in §§ 523.10 and 545.71 of this Chapter without regard to any limitation therein as to amount or maturity.

(b) *Prescribed services and activities.*

* * *

(12) Any services or activities approved by order of the Corporation prior to March 5, 1987 pursuant to its authority under former § 408(c)(2)(F) of the National Housing Act.

* * * * *

9. Revise the heading and the text of § 584.2-2 to read as follows:

§ 584.2-2 Permissible nonbanking activities of savings and loan holding companies.

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the nonbanking services and activities permissible for bank holding companies pursuant to 12 CFR 225.23 or 225.25 are deemed to be permissible for savings and loan holding companies, or subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions: *Provided however*, that no such savings and loan holding company or subsidiary thereof shall commence, either *de novo* or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Corporation pursuant to paragraph (b) of this section.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the Principal Supervisory Agent ("PSA") of the Federal Home Loan Bank District in which the insured institution subsidiary is located. Applications shall be addressed to the Office of Regulatory Policy, Oversight and Supervision and to the Supervisory Agent of the district in which the principal office of a subsidiary insured institution is located. The Principal Supervisory Agent (or his designee) shall act upon such application pursuant to the guidelines set forth in § 571.12 of this chapter unless, the PSA, upon notice to the applicant, refers the application to the Corporation because it raises issues of law or policy inappropriate for resolution by the PSA. Where the PSA has referred an application to the Corporation, the Corporation will act on such application pursuant to the guidelines set forth at § 571.12 of the chapter.

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the PSA and the Corporation shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix

Data Required for Qualified Thrift Lender Test

Report in Thousands of Dollars

Average Book Value of Balances Held at the End of the Calendar Quarter and at the End of Each of the Preceding Three Calendar Months

Total Tangible Assets
1. On Books of Reporting Insured Institution ....
Loans, Equity Positions or Securities Related to Domestic Real Estate
2. On Books of Reporting Insured Institution ....
3. On Books of Subsidiaries of Reporting Insured Institution (net of consolidating adjustments) ....
Fixed Assets Used in Business (net of depreciation)
4. On Books of Reporting Institution ....
5. On Books of Subsidiaries of Reporting Insured Institution (net of consolidating adjustments) ....
Liquid Assets of the Type Specified in Regulation 523.10(g)
6. On Books of Reporting Insured Institution ....
Residential Mortgage Loans Sold During Quarter Originated by the Seller Within 90 Days of Sale
7. Sold by Reporting Insured Institution (exclusive of sales to subsidiaries) ....
8. Sold by Subsidiaries or Reporting Insured Institution (exclusive of sales to reporting institutions or to another of its subsidiaries) ....

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12 CFR Parts 561, 563 and 563c

[No. 87-1293]

Uniform Accounting Standards

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is amending its regulations applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions") pertaining to the definition of regulatory capital. First, the final rule delays the effective date of the Definition of Regulatory Capital Regulation, Board Res. No. 87-259, 52 FR 18340 (May 5, 1987) ("DRC Regulation"), from January 1, 1988 to January 1, 1989 in order to implement a phase-in of uniform accounting standards. Second, the rule revises the DRC regulation by eliminating treatment of certain items under risk analysis reporting ("RAR") and substituting treatment under generally accepted accounting principles ("GAAP"). The DRC regulation, as amended by this rule, would begin the phase-in to GAAP on January 1, 1989; such phase-in would end on December 31, 1993, at which time insured institutions would be required to report virtually all components of regulatory capital in accordance with GAAP or the regulatory accounting practices employed by commercial banks.

This rule is part of the revision of the Board's regulations required by the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552. On December 21, 1987, the Board adopted a final rule and a policy statement on the accounting treatment of troubled debt restructurings. *See* Board Res. No. 87-1294, to be published in the final rules section of the **Federal Register**. Additionally, the Board also adopted final amendments to its regulations pertaining to the classification of assets and appraisal standards of insured institutions. *See* Board Res. Nos. 87-1296, 87-1295, also to be published in the final rules section of the **Federal Register**.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649, Jerilyn Rogin, Attorney, (202) 377-7018, Deborah Dakin, Assistant Director, (202) 377-6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The CEBA requires the Board and the FSLIC to issue regulations prescribing "uniformly applicable accounting standards to be used by all insured institutions for the purpose of measuring compliance with any rule or regulation" promulgated by the FSLIC or the Board "to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies." [1] CEBA, tit. IV, secs. 402(b), 415(b)(1).[2] The Board may suspend the application of any such standard with respect to any insured institution or transaction if the standard would result in an institution or its parent being treated differently than a bank and its parent on a consolidated basis and if the transaction was consistent with GAAP when completed. *Id.* The CEBA requires that these regulations "shall take effect on December 31, 1987." *Id.* sec. 402(d). An insured institution that demonstrates to the satisfaction of the Board or the FSLIC that it is not feasible for it to comply with those accounting regulations by that date may submit a plan for compliance at a later date to the Board for its approval. That date would be the earlier of the date the Board determined it would be feasible for the institution to comply with the regulation or December 31, 1993. *Id.* sec. 402(d)(2)(B).

Before the enactment of the CEBA, the Board issued a final regulation that was intended to achieve an objective similar to that set forth by the Congress in the CEBA. This rule, the Definition of Regulatory Capital regulation, was to have taken effect on January 1, 1988. Board Res. No. 87–529, 52 FR 18340 (May 15, 1987).

The DRC Regulation required, first, that for all periods beginning on or after January 1, 1988, all financial statements issued by insured institutions, including statements of condition required pursuant to 12 CFR 545.115, and all financial reports filed with the Board be prepared in accordance with GAAP. Second, the term "regulatory capital" was defined to mean the sum of equity capital as determined in accordance with GAAP plus certain other items based on RAR. Third, the rule eliminated prospectively certain regulatory accounting practices previously permitted by the Board.

In light of the passage of CEBA, the Board reviewed the DRC Regulation and proposed to amend it in certain ways that would cause it to conform with the directives and purposes of that legislation. The final rule adopted today achieves that objective. The Board is aware, however, that today's amendment of a rule that had not yet taken effect may give rise to some uncertainty about when insured institutions are required to implement each of the affected accounting rules. Accordingly, the Board is attaching, as an Appendix to this preamble, a chart that is intended to serve as a guide to implementation dates. Readers of the chart will note that January 1, 1989, is the first date on which insured institutions will be required to alter the accounting rules that are currently in effect.[3]

I. Description of the Proposal

On October 5, 1987, the Board proposed to revise its DRC Regulation in order to implement a phase-in of uniform accounting standards as required by the CEBA. Board Res. No. 87–1047, 52 FR 39145 (Oct. 20, 1987). As discussed in detail in the preamble to that proposal, the Board believes that the legislative history of the CEBA shows a clear congressional intent that the Board promulgate a final regulation by December 31, 1987, but phase in GAAP compliance over a period not to extend beyond 1993. *See* 52 FR at 39147. Further, the legislative history of section 402 of the CEBA makes clear that, in cases where the banking agencies deviate from GAAP in their regulatory requirments,[4] it was Congress' intent to allow the Board discretion to choose either to adopt those same deviations or to adopt GAAP. *Id.*

Accordingly, the Board proposed to delay the effective date of the DRC Regulation from January 1, 1988, to January 1, 1989, in order to phase in uniform accounting standards based on GAAP or Bank RAP as required by the CEBA. The Board also proposed to modify the DRC regulation to comport with the CEBA-mandated treatment of certain items as regulatory capital and to grandfather certain RAR transactions to phase-in the effects of GAAP on thrifts. Finally, the Board proposed procedures whereby an institution that cannot meet the timetable for phase-in of GAAP may file a plan for delayed compliance to a date no later than December 31, 1993. In the Board's view, the phase-in to GAAP with the grandfathering provisions make it feasible for most thrift institutions to comply with both the reporting requirements and those regulations that measure compliance with Board regulations that govern an institution's regulatory capital requirement.

In connection with its proposed rulemaking, the Board held public hearings on November 3 and 4, 1987, during which the public was invited to testify concerning all aspects of the proposed regulations issued pursuant to CEBA. Eight hearing participants addressed accounting issues raised in the proposal by way either of formal prepared oral and written statements or in response to questions and comments by members of the panel. Remarks by participants in the hearing are summarized below as part of the public comment summary.

II. Discussion of Comments

The Board received 70 public comments in response to the proposal. Of these comments, the majority, 32, were submitted by insured institutions; 15 were submitted by industry trade associations; 15 were from members of Congress; 4 were from law firms; 1 was from an individual; 1 was from an investment banking firm; 1 was from a consulting company; and 1 was from the Financial Accounting Standards Board ("FASB").

Thirty-one commenters expressed general support for the proposal, while seven commenters opposed the proposal. The remaining commenters, without expressing support or opposition to the proposal, suggested specific modifications to the proposal. In addition, both supporters and opponents suggested various technical and substantive modifications to the proposal. Although the comment period ended on November 19, 1987, the Board has considered late-filed letters in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are discussed more fully below, the Board has determined to adopt the proposal with certain modifications and clarifications.

A. Delay of Effective Date of DRC Regulation

In light of the enactment of CEBA the Board proposed to delay the effective date of the DRC Regulation until January 1, 1989, for two reasons. First, because amendments to the DRC Regulation were necessary to implement the

[1] For purposes of section 402 of the CEBA, the term "Federal banking agency" is defined to mean the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. *See id.* secs. 402(b), 415(f).

[2] Section 402(a) of the CEBA amended the Home Owners' Loan Act of 1933, 12 U.S.C. 1461 *et seq.*, which governs federally chartered and insured thrifts. Section 402(b) amended the National Housing Act, 12 U.S.C. 1724 *et seq.*, by which the FSLIC regulates state-chartered, federally insured thrifts. Today's rule amends the Board's regulations governing all insured institutions. Thus, these uniform accounting standards apply to both federally and state chartered insured institutions.

[3] The Board notes, however, that effective December 31, 1987, institutions are required to provide for loan loss allowances in accordance with the final classification of assets regulation adopted by the Board today. *See* Board Res. No. 87–1296, to be published elsewhere in the final rules section of the **Federal Register**.

[4] Deviations from GAAP permitted by the Federal banking agencies are referred to herein as Bank regulatory accounting practices or "Bank RAP."

CEBA's accounting provisions, the Board determined that it would be less burdensome for insured institutions to alter their reporting requirements and the manner in which they calculate regulatory capital once, rather than twice, within a fairly short period of time. Second, the Board believed that a more gradual application of new GAAP-based accounting standards comported with the Congressional mandate to minimize the impact of the new requirements on insured institutions' regulatory capital levels.

The majority of commenters were appreciative of the delay of the effective date of the DRC Regulation, noting that it will be helpful in accomplishing the changes in information systems required by the accounting rules, especially for small institutions for which the transition could be more onerous. One commenter suggested that a more appropriate effective date would be December 31, 1993, the end of the overall phase-in period. Two commenters urged that institutions be allowed, at their election, to institute early adoption of components of the regulation in the event they have already expended time and expense preparing to comply with the original January 1, 1988, effective date.

After consideration of the comments, the Board has determined that January 1, 1989, is the most equitable compliance date for the GAAP-based accounting standards embodied in the DRC Regulation about which insured institutions have been on notice since April of 1986 when the DRC was proposed. Board Res. No. 86-427, 51 FR 16542 (May 5, 1986). Accordingly, insured institutions must prepare all financial statements and reports to the Board on a GAAP basis by that date, with the exception for deferred loan losses and gains and shares in open-end mutual funds, discussed more fully below. In this way, the Board is convinced, congressional intent that GAAP accounting standards be phased in as quickly as feasible is best fulfilled. The Board also notes that all insured institutions subject to the Securities Exchange Act of 1934 ("34 Act") (15 U.S.C. 78a *et. seq.*) have already been reporting on a GAAP basis.

In response to the comments requesting that compliance with the DRC Regulation be allowed prior to the January 1, 1989 effective date, the Board notes that it does not object to such early compliance and has amended the rule as proposed to reflect the permissibility of that option. Indeed, the Board emphasizes that compliance by individual insured institutions with the GAAP-based accounting standards as early as feasible only serves to enhance the Board's goal to move toward GAAP, consistent with the accounting system already required by the federal banking agencies.

B. Reporting in Accordance with GAAP

The Board proposed to require insured institutions to prepare their financial statements and reports in accordance with GAAP, with a footnote reconciliation to regulatory capital, effective for all periods ending after January 1, 1989.

Although most commenters expressed support for the eventual implementation of GAAP reporting, the majority of commenters opposed the January 1, 1989, effective date for GAAP reporting. Those commenters who expressed strong support for the 1989 effective date noted that implementation of the GAAP reporting system encourages consistency at the same time as it permits an accurate depiction of the risk to the FSLIC fund. Moreover, those commenters noted that converting to a widely recognized GAAP standard, similar to that required by the federal banking agencies, will foster much needed public confidence in the thrift industry and improve the current regulatory structure. Additionally, these commenters commended the Board for issuing proposals consistent with the CEBA and congressional intent. A few commenters noted that the January 1, 1989 phase-in date would give institutions adequate time to adjust their systems to the new reporting requirements. Many commenters, however, asserted that the 1989 date was too soon for institutions feasibly to implement the new reporting system and to avoid the damage to public confidence in the thrift industry that GAAP capital figures may engender. Several of these commenters urged the Board to phase-in the GAAP reporting requirement over a range of one to five years.

Several commenters expressed deep concerns that GAAP reporting, even with the footnote reconciliation to regulatory capital will reveal poor or negative GAAP capital positions for institutions that were previously reporting positive net worth. Therefore, they feared that GAAP reporting would cause public confusion and damage to individual institutions and the industry. One of these commenters suggested that the public may erroneously interpret the new GAAP figures to mean that a particular association is poorly managed or is engaging in illegal activities. Another commenter suggested that for most reports, a footnote reconciliation serves no useful purpose and may even be confusing to the average reader. Along these lines, a few commenters who supported the proposal asserted that the GAAP-to-regulatory capital reconciliation should not be mandatory since such a reconciliation is unnecessary for those institutions that do not rely on non-GAAP items of capital. Four commenters suggested that an RAR reporting system with a GAAP reconciliation would be more appropriate.

The Board has considered and understands the concerns raised by the commenters. The Board emphasizes, however, that the CEBA mandates the adoption of GAAP-based accounting standards by 1993 and that Congress intended that all financial institutions achieve uniform GAAP-based reporting. *See, e.g.,* S. Rep. No. 19, 100th Cong., 1st Sess. 20, 55 (1987). Moreover, the Board continues to believe, as it has since it proposed the DRC Regulation in April of 1986, that a GAAP call report that includes a footnote reconciliation to regulatory capital is in the best interest of the Board's supervisory efforts, the thrift industry, and the public. Specifically, GAAP reports from all insured institutions will provide the Board with a consistent and comprehensive basis for analyzing and comparing the financial performance and soundness of all insured institutions. The Board also believes that the GAAP reports will not confuse the public or cause damage to the industry, as suggested by some commenters, but will instead provide the public with a uniform basis for analyzing individual institutions. In the Board's view, since insured institutions subject to the 34 Act already report on a GAAP basis, GAAP reporting by all insured institutions will result in less public confusion among reports of insured institutions.

The uniform reporting system also will promote confidence in the thrift industry by dispelling the criticism that certain regulatory accounting practices have permitted misrepresentation of the true financial condition of insured institutions. Further, in response to those commenters concerned that particular institutions may, after January 1, 1989, appear poorly capitalized, the Board reiterates that an approximation of GAAP equity capital can be currently derived from the RAR reports filed with the Board and is available to the public under the Freedom of Information Act.

Moreover, with respect to commenters who objected to the inclusion of a footnote reconciliation to regulatory capital in the reports, or suggested that reports could appropriately be filed on an RAR basis with a GAAP reconciliation, the Board has chosen to resolve these concerns in favor of the overriding principle of uniformity. An overall requirement of GAAP reports with footnote reconciliations to regulatory capital will provide the Board and the public with a standard that can be applied universally. Moreover, the footnote reconciliation provides the Board a measure by which to judge an insured institution's compliance with the Board's regulations—most significantly, its compliance with the Board's minimum regulatory capital requirements.

The Board notes, however, that it has amended the proposal to change the effective date from "all periods ending after January 1, 1989" to "all periods beginning on or after January 1, 1989." As the Board stated in the proposal, it believes that a one year delay of the effective date of the DRC Regulation is appropriate in order to minimize the impact of the requirements on insured institutions. The Board realizes that, given the wording of the proposed effective date, the only institutions that effectively received the benefit of the delay were calendar year filers. Thus, the Board believes this change is appropriate in order to give all insured institutions the benefit of the delay.

The strongest opposition to the effective date for GAAP reporting centered on the treatment of deferred loan losses and gains ("DLL") under a GAAP reporting system. Many commenters asserted that it is inequitable for the Board to suddenly "change the rules of the game," after previous Boards and the Federal Home Loan Banks have actively encouraged institutions to use the DLL regulation, 12 CFR 563c.14 (1987), as a method of ridding themselves of low yielding loans and amortizing the resulting losses into expense over the remaining contractual term of the asset sold. Some of these commenters asserted that the proposed treatment of DLL would cause many institutions to report negative GAAP capital positions which would, thereby, facilitate deterioration of public confidence in the thrift industry. One commenter asserted that insured institutions should, under the CEBA, be allowed to continue to include DLL on their financial statements indefinitely. Many of these commenters urged the Board to permit institutions to continue to report DLL on their balance sheets through 1993, or, in the alternative, to gradually phase-out the amount of DLL reported on the balance sheet through 1993. A few of these commenters contended that including DLL on the balance sheet is clearly within the intent of the CEBA.

The Board has seriously considered the issue of the reporting of DLL and has taken into account the concerns expressed by commenters. It has weighed the benefits of having pure GAAP-based reports by January 1, 1989, against the reliance on previous Board policies that many commenters described. The Board is also cognizant that many insured institutions utilized the device of DLL to restructure their portfolios in the early 1980s and that, assuming an average loan term of 12 to 15 years, much of this accounting treatment, if allowed to continue, will expire in any event in the mid-1990s.

The Board notes that the CEBA provides that insured institutions may continue indefinitely, for purposes of determining regulatory capital, to include the amount of deferred loan gains and losses as a component of regulatory capital. The Board also believes, however, that the CEBA requires it, at least by 1993, to phase out the reporting of DLL on financial statements and reports as part of the general mandate to move toward GAAP reporting. Mindful of reliance by many institutions on the previous Board position with respect to DLL, as well as the fears expressed by many institutions that, absent the ability to report DLL, they will exhibit negative GAAP capital positions, the Board has determined to alter the rule as proposed in the following way. Institutions that had utilized the DLL regulation prior to January 1, 1988, its sunset date,[5] may report on their unaudited financial statements and reports 100 per cent of their DLL for all quarters through the last quarter of 1993. In this way, beginning in January 1, 1994, insured institutions will no longer be permitted to report DLL on their unaudited financial statements. The Board emphasizes, however, that the reporting of DLL until the end of 1993 is permissible only on counterstatements and call reports. Audited financial statements must be prepared on a pure GAAP basis with no deviations.

On a similar issue, a few commenters urged that institutions be permitted to report appraised equity capital ("AEC") on their balance sheets, at least until 1993. In contrast to the rationale surrounding the reporting treatment of DLL, no such argument exists with respect to the reporting of AEC. Insured institutions have known since at least April of 1986, when the DRC Regulation was proposed, that the Board intended to do away with the specialized reporting treatment of AEC. Moreover, the ability of institutions to elect to report AEC expired on December 31, 1986. Additionally, the treatment of AEC is not explicitly singled out in the CEBA legislation as is the treatment of DLL, and no previous Board position existed that encouraged the use of AEC to increase regulatory capital levels. Accordingly, in the interest of the move toward GAAP reporting, the Board has determined that institutions may no longer report AEC on their financial statements and reports effective for all periods beginning on or after January 1, 1989.

The proposal also required insured institutions to file their monthly and quarterly reports with the Board on a consolidated basis, consistent with GAAP and Bank RAP, beginning on January 1, 1989. That proposed provision would have required that, for reporting purposes and as an aid to the Board's supervisory efforts, insured institutions were to consolidate all of their majority-owned subsidiaries, including, but not limited to, service corporations, finance subsidiaries and operating subsidiaries.

Concerning this issue, fifteen commenters responded. Of these commenters, two were in favor of the concept, suggesting that consolidated reports better reflect the true financial condition of the total insured entity than unconsolidated reports. Nine commenters expressed general opposition to the concept, and another described it as the first step toward the undesired result of calculating regulatory capital requirements on a consolidated basis. Five commenters strongly disagreed with the proposed requirement that monthly reports be filed on a consolidated basis, claiming that it would be too burdensome for most institutions. Another four commenters requested the Board provide for extensions of time, ranging from 20 to 45 days, for filing monthly and quarterly reports in order to compensate for the extra burden presented by consolidated reporting, one of these warning that consolidated reports produced on the current time frame may prove inaccurate.

Finally, five commenters addressed an issue that does not arise under these proposals but is suggested by one of the accounting issues—that of the possibility of eventual consolidation for purposes of determining requisite levels of regulatory capital. Four of these commenters argued against such consolidated calculation, asserting, for

[5] The DLL regulation, § 563c.14, provides at subparagraph (f) that authority to utilize DLL ceases as of January 1, 1988. 12 CFR 563c.14(f).

example, that capital positions cannot be monitored on a consolidated basis and that consolidation would inhibit parent institutions from investing in finance subsidiaries engaging in certain activities. One commenter suggested that different sorts of subsidiaries could be treated either on a consolidated or on an unconsolidated basis, depending upon the nature and degree of risk to the FSLIC of the subsidiary's activities.

The Board believes that consolidated reporting is clearly required by the CEBA because it is consistent with GAAP and Bank RAP. However, after consideration of the concerns raised by commenters about the increased burden on institutions due to consolidated reporting, the Board has determined to alter the proposal in the following way. In order to afford sufficient time for insured institutions to develop systems for producing consolidated reports for submission to the Board, the Board has extended for one year the time for compliance with this requirement, so that quarterly consolidated reports must be filed for all periods beginning on or after January 1, 1990. At this time, the Board has decided to take under advisement the issues of whether monthly reports should be filed on a consolidated basis, and whether extensions of the normal filing periods should be granted for consolidated reports. The Board's determinations on these questions will be set forth in the instructions to the Thrift Financial Report.[6]

With respect to those comments that addressed the possibility of eventual consolidation for purposes of the Board's minimum regulatory capital requirement regulation, 12 CFR 563.13 (1987), the Board declines to respond to those comments at this time. As was noted in the proposal, any changes in the way an institution calculates its minimum capital requirements would be implemented in conjunction with any proposed changes to section 563.13, and commenters will have ample opportunity to address that issue at that time.

C. The Components of Regulatory Capital

The majority of commenters supported the proposed amendments to the definition of regulatory capital but suggested several modifications to the proposal.

1. Equity Capital

Under the proposal and the DRC regulation, equity capital would be determined in accordance with GAAP and would represent the difference between the recorded values of an institution's assets and its liabilities, as determined under GAAP. *See* FASB *Statement of Financial Accounting Concepts ("SFAS") No. 6* (Dec. 1985).

In light of the Board's decision today to permit institutions to include deferred loan losses and gains on their unaudited financial statements and reports and to include the difference between investments in shares of open-end management companies accounted for pursuant to GAAP and their historical cost, as discussed more fully below, through 1993, the resulting capital figure would no longer be considered GAAP equity capital. Consequently, today's final rule amends this component of regulatory capital to reflect the inclusion of deferred loan losses and gains on the unaudited financial statements of insured institutions and the specialized treatment of investments in mutual funds. Specifically, this category of regulatory capital is referred to as "modified equity capital" and represents GAAP equity capital plus loan losses and gains deferred pursuant to 12 CFR 563c.14 provided that an institution has elected to defer such losses or gains prior to January 1, 1988, and the difference between investments in shares of open-end management companies accounted for pursuant to GAAP and their historical cost. The Board notes that institutions must refer to this component as "modified equity capital" on their unaudited financial statements and reports, including counter statements, so as not to mislead the public with respect to the institution's financial presentation. The Board emphasizes that beginning on January 1, 1994, equity capital will be determined in accordance with GAAP with no deviations.

2. Definitional Capital

Several commenters addressed the subject of subordinated debt. Four commenters noted that the CEBA's inclusion of subordinated debt in regulatory capital will assist institutions in raising needed additional capital and at the same time protect the FSLIC. One commenter strenuously urged the Board to include subordinated debt in regulatory capital without phasing down its value as it approaches maturity, asserting that Congress never intended such a reductional phase-down and quoting Congressman Hubbard's remarks of August 3, 1987 in support of that proposition.

Section 402 of the CEBA provides that "[n]o provision of this section [404] shall affect the authority of the Corporation to authorize insured institutions to utilize subordinated debt * * * in meeting reserve and other regulatory requirements." CEBA, tit. IV, secs. 402(b), 415(d). Notwithstanding Congressman Hubbard's remarks, the Senate Report accompanying S. 790, which contained the uniform accounting standards provision that was adopted without substantive amendment in the CEBA, explicitly states that the Board has flexibility in determining whether subordinated debt may be included as regulatory capital. While the Board recognizes that subordinated debt affords protection to the FSLIC in the event of insolvency of an insured institution, the Board does not believe that such debt should be treated as the equivalent of retained earnings or capital stock for purposes of complying with the Board's regulatory capital requirements. Accordingly, the Board's current treatment of subordinated debt reflects its views that the use of an amortization schedule that reduces the amount of subordinated debt includable as regulatory capital as that approaches maturity appropriately recognizes that subordinated debt is a liability that must be repaid upon maturity. The Board continues to believe that the amortization schedule takes into account the value of subordinated debt to institutions and the FSLIC and, consequently, the final rule permits institutions to include subordinated debt in regulatory capital pursuant to the current amortization schedule set forth in § 561.13(b)(2).

Also as part of definitional capital, the CEBA authorizes general loss allowances to be included as regulatory capital in the same manner as the federal banking agencies permit. Two commenters supported the Board's proposed treatment of this item, but one maintained that loss allowances should not be treated as a capital item because it would contradict GAAP.

The Board recognizes that general loss allowances are not included as capital under GAAP. However, the CEBA explicitly authorizes such loss allowances to be included as regulatory capital in the same manner permitted by the federal banking agencies. Since the federal banking agencies currently permit general loss allowances to be included as a component of a bank's primary capital, the Board is required by

[6] As discussed in the preamble to the final rule on classification of assets, it should be noted that the consolidated reporting requirement is not meant to foreclose an institution from limiting losses attributable to a subsidiary to its equity investment therein, where the institution establishes that it is legally insulated from the subsidiary under applicable corporation law. *See* Board Res. No. 87-1296 to be published in the final rules section of the Federal Register.

the CEBA to permit insured institutions to include such allowances as regulatory capital at least until the Financing Corporation issues the last obligations under its borrowing authority. *See* CEBA, tit. IV, secs. 402, 415(a)(5); sec. 416(a). As discussed in the proposal, however, the federal banking agencies are currently reconsidering whether general loss allowances should be included as capital.[7] Consequently, the Board may revisit this issue at a later date. For the present, however, the final rule permits institutions to include general loss allowances as a component of regulatory capital.

In the proposal, the Board announced its preliminary decision consistent with Bank RAP to allow limited life preferred stock (also called nonpermanent preferred stock or redeemable preferred stock) with an original maturity of 25 years to be included as a component of definitional capital, discounting such stock as it approaches maturity. Eight commenters addressed this item. Two commenters objected to the minimum maturity term of 25 years, claiming that it would alter the character of the stock and make accessing capital markets extremely difficult. Three commenters requested the Board to consider altering the amortization schedule for these items to conform with that of subordinated debt to which, it is claimed, it is nearly identical. One commenter suggested retaining the current regulatory treatment of limited life preferred stock, and another recommended retaining the current treatment until 1993.

After carefully considering the issues raised by the commenters, the Board has determined not to adopt the treatment of preferred stock outlined in the proposal. As discussed in the proposal, the Board had preliminarily determined to track the treatment of limited life preferred stock that is currently proposed by the federal banking agencies in order to be consistent with Bank RAP. After reconsidering this issue, in light of the comments and fact that the federal banking agencies have not yet adopted their capital proposals as final rules, the Board has determined to retain its current treatment of limited life preferred stock. In the Board's view, its action today is consistent with the intent of the CEBA in that the legislative history makes clear that Congress did not intend for the Board and the federal banking agencies to adopt identical regulatory frameworks; rather it left the Board the discretion and authority to determine the components of capital for insured institutions. *See* S. Rep. No. 19 at 55. Thus, the final rule provides that insured institutions may continue to include as regulatory capital limited life preferred stock pursuant to the requirements set forth in § 561.13(b)(3)(i) and (ii). The Board notes that because it is retaining its current treatment of this item, there is no need to provide for grandfather or sunset provisions.

In response to the Board's specific request for comments concerning whether and to what degree mandatorily convertible securities should be included as a component of definitional capital, four commenters responded. One commenter suggested they be included on the same basis as that permitted by the banking agencies, two others urged that they be included in regulatory capital in the same way that subordinated debt is included. One commenter noted that since this item converts to forms of permanent equity, it should be counted fully as regulatory capital.

One commenter, an investment banking firm that raises capital for thrifts and banks, submitted an extensive comment, arguing that the mandatory convertible debt instruments it manages should be included in regulatory capital even though they carry a maturity of 10 years. This commenter also urged that these instruments should not be discounted as they approach maturity. The rationale presented by this commenter is that these instruments are issued along with mandatory stock purchase contracts. This combination, the commenter asserted, serves as the functional equivalent of capital, a buffer against loss to the FSLIC and a permanent addition to the issuer's capital base.

After carefully considering the commenters' remarks, the Board has determined to permit institutions to include mandatory convertible securities as regulatory capital. Mandatory convertible securities are subordinated debt instruments that are eventually transformed into common or perpetual preferred stock within a specified period of time. Generally, there are two types of mandatory convertible securities: "equity contract notes"—securities that oblige the holder to take common or perpetual preferred stock of the issuer in lieu of cash for repayment of principal, and "equity commitment notes"— securities that are redeemable only with the proceeds from the sale of common or preferred stock.

Under the capital adequacy guidelines of the federal banking agencies, bank holding companies are permitted to include both equity contract notes and equity commitment notes as primary capital, whereas banks are only permitted to include equity contract notes as primary capital but may include equity commitment notes as secondary capital. *See* 12 CFR 225.42 App. A (1987). After carefully considering this issue, the Board has determined to permit insured institutions to include both equity contract notes and equity commitment notes as regulatory capital. In the Board's view, these securities provide the FSLIC and insured institutions the same degree of protection from loss as do other types of subordinated debt. Specifically, they are subordinated to other obligations of the insured institution and their medium-to-long term nature makes them a reliable buffer against loss. Moreover, the Board believes that mandatory convertible securities are an important vehicle for increasing capital and thereby provide greater flexibility to thrifts in meeting capital requirements. The Board also believes, however, that for supervisory purposes it is necessary to provide guidelines by which institutions may issue such securities and include such securities as regulatory capital. Accordingly, the Board has directed the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") to issue a supervisory memorandum that will set forth the criteria which must be met in order for institutions to include mandatory convertible securities as capital. The Board wishes to note that such criteria may include percentage limitations and/or other types of limitations for these types of securities.

Thus, under today's final rule, insured institutions may include mandatory convertible securities as regulatory capital as of January 1, 1989, provided that such instruments meet the criteria set forth by the ORPOS in a supervisory memorandum. The Board notes, however, that institutions may not include mandatory convertible securities as regulatory capital prior to such time as ORPOS issues a supervisory memorandum setting forth the criteria for including such securities as capital or January 1, 1989, whichever is earlier.

The Board also proposed that pledged certificates and other nonwithdrawable accounts be eliminated as a component of regulatory capital as of January 1, 1989, because they are not included as capital under either GAAP or Bank RAP. Three commenters endorsed the Board's proposal to eliminate these items, while affording grandfathering treatment to

[7] *See* 52 FR 5119 (Feb. 19, 1987) (Federal Reserve Board, "FRB"); 52 FR 23045 (June 17, 1987) (Comptroller of the Currency); 52 FR 11476 (Apr. 9, 1987) (Federal Deposit Insurance Corporation).

those included in capital prior to January 1, 1989. One commenter, however, urged that these items not be eliminated because they are buffers against loss and that they should be included, at least partially, in regulatory capital, and another suggested that pledged certificates temporarily be retained as a component of regulatory capital for *de novo* institutions in order to facilitate new services.

After reconsidering this issue, the Board has determined to continue to permit institutions to include pledged certificates and other nonwithdrawable accounts in regulatory capital, without a sunset date. The Board's decision is based, in part, on the fact that these instruments are very similar to subordinated debt and limited life preferred stock in the degree to which they provide a buffer against loss for insured institutions and the FSLIC. Moreover, in the Board's view, inclusion of these instruments in regulatory capital is especially important to mutual institutions whose ability to access the capital markets, short of converting to stock form or issuing subordinated debt at prohibitive costs, is limited. While the Board acknowledges that there have been very few mutual institutions chartered in the past few years, pledged deposits are important to and provide a buffer from loss for newly chartered mutual institutions. Thus, the Board believes that retaining pledged deposits as a component of capital, without requiring that such instruments be eliminated from capital as of 1993, is in the best interests of the FSLIC and the thrift industry as a whole.

3. RAR Components of Regulatory Capital

In the proposal, the Board proposed to eliminate prospectively RAR for loan origination and commitment fees, options transactions, valuation allowances, and uncollectible interest, and to provide grandfathering treatment for certain of these items. Additionally, in the DRC Regulation, the Board eliminated RAR for the sale of real estate by the institution or its subsidiary, for futures transactions, and for the accretion of discounts and the amortization of premiums on securities; it also provided grandfathering treatment for these items. Under the DRC regulation, as modified by the proposal, institutions are permitted to include in regulatory capital the amount representing the cumulative RAR/GAAP differential for those grandfathered items calculated under RAR prior to January 1, 1989. However, institutions would not be permitted to use RAR in calculating these items after January 1, 1989.

Several commenters contended that the inclusion of the RAR/GAAP differential in regulatory capital is unduly burdensome on institutions because the computation of the differential would require institutions to maintain separate RAR and GAAP accounting systems. One commenter asserted that in most cases the differential will be inconsequential and thus urged the Board to require that all transactions after January 1, 1989, be handled on a GAAP basis and all transactions before that date be allowed to run their course under RAR.

The Board continues to believe that all financial statements and reports by insured institutions should be prepared in accordance with GAAP (with the exception for deferred loan losses and gains noted above) on January 1, 1989. While in some cases the RAR/GAAP differentials may in fact be inconsequential, the Board is reluctant to continue to permit institutions to report transactions in accordance with RAR. Moreover, because institutions are currently required to reconcile their RAR capital to GAAP capital, institutions already must keep two sets of books; consequently, this regulation does not impose any additional burden on institutions.

Under the final rule adopted today, institutions are required, effective January 1, 1989, to account for the above-referenced items in accordance with GAAP and to report such items in accordance with GAAP on their financial statements. For purposes of computing regulatory capital, the final rule permits institutions to include the RAR/GAAP differential for those grandfathered items as a component of regulatory capital. The Board notes, however, that institutions are not required to include the RAR/GAAP differential as a component of regulatory capital. Thus, an institution may, prior to January 1, 1989, make an irrevocable election to report all pre-January 1, 1989, transactions in accordance with GAAP and not to compute or add to regulatory capital the RAR/GAAP differential for those transactions. Institutions must make their election with the filing of their first quarterly report for the first quarter of 1989 and will be bound by such election for all reporting periods thereafter. The Board wishes to emphasize, however, that regardless of which option it chooses, an institution may not, after January 1, 1989, report any of these grandfathered items on its financial statements or reports in accordance with RAR.

a. *Loan Origination and Commitment Fees.* With respect to the Board's proposal to require insured institutions to account for loan origination and commitment fees in accordance with GAAP and Statement of Financial Accounting Standards ("SFAS") No. 91 as of January 1, 1989, nine commenters responded. Two commenters urged that, because SFAS No. 91 has an effective date of December 15, 1987, either the Board should give insured institutions the option to account for loan origination and commitment fees in accordance with SFAS No. 91 by that date or it should adopt SFAS No. 91 simultaneously with the FASB. Another commenter stressed the well-conceived basis of SFAS No. 91 and its importance to the industry. However, five commenters strenuously objected to the Board's adoption of a standard that is in accordance with SFAS No. 91, contending, for example, that it will necessitate time-consuming and expensive accounting procedures that will require extra time to implement beyond the January 1, 1989 projected date and that it is a misguided and logically flawed standard that should be resisted by the Board. One commenter suggested that RAR accounting for loan fees be permitted to continue until January 1, 1989, without the elimination of the differential between RAR and GAAP in 1993, because in most cases the differential amount will be inconsequential. Another commenter expressed strong opposition to the inclusion of the RAR/GAAP differential because the computation of that differential would require institutions to maintain separate RAR and GAAP accounting systems, which would be unduly burdensome. This commenter suggested that the Board require that all transactions after January 1, 1989, be handled on a GAAP basis and all transactions before that date be allowed to run their course under RAR. Under this scenario, it is claimed, most RAR loan fees will have run their course by 1993.

While the Board understands the concerns raised by the commenters, it has nevertheless determined to require insured institutions to account for all loan origination and commitment fees incurred after January 1, 1989 in accordance with SFAS No. 91. As the Board discussed in the proposal, it believes that its current regulation for loan fees does not result in as conservative a measure of capital as produced under SFAS No. 91. Moreover, the Board believes its approach today is consistent with that of the other federal banking agencies, who currently require banks to account for loan fees under Pre-SFAS No. 91 GAAP, but who have indicated, based on informal discussions, that they intend to follow SFAS No. 91. Accordingly, the Board believes that its decision is consistent with the intent of the CEBA, which mandates that the Board's accounting requirements follow either GAAP or Bank RAP.

In response to several commenters' concerns, however, the Board will permit institutions to begin to account for loan fees under SFAS No. 91 at a date earlier than January 1, 1989, if they so desire. Moreover, institutions may elect to account for all loan fees transactions currently on their books in accordance with GAAP and not include the RAR/GAAP differential as a component of regulatory capital. The Board wishes to emphasize, however, that regardless of which election an institution makes, it may not, as of January 1, 1989, continue to report loan fees on its financial statements or reports in accordance with RAR.

Finally, the Board notes that it is amending § 563.23-3 to delete paragraphs rendered unnecessary in light of the Board's decision today to require institutions to account for loan fees in accordance with GAAP. Specifically, since SFAS No. 91 defines and prescribes accounting treatment for charges, credits, and sales or payoffs of loans, the current definitions and procedures set forth in § 563.23-3 are no longer necessary.

b. *Options Transactions.* With respect to the Board's proposal to require insured institutions to account for options transactions in accordance with GAAP, six commenters submitted their views. In the proposal, the Board acknowledged that GAAP is still evolving in this area and has not yet been defined by a specific FASB Statement of Financial Accounting Standards. All six commenters suggested that the Board continue its current treatment of options transactions or provide further guidance in this area, until some authoritative pronouncements are issued by the FASB.

In response to the concerns raised by the commenters, the Board has determined to continue to provide guidance to institutions with respect to accounting for options transactions. Thus, institutions may continue to account for options transactions in accordance with the guidelines set forth in 12 CFR 563.17-5(g)(1987). It should be noted that the Board currently has outstanding a proposed rule on accounting for options and that a final rule may change existing accounting procedures in this area. *See* 50 FR 53336 (Dec. 31, 1985). This proposed options rule, if adopted in final form, would effectively eliminate any differences that exist between RAR and GAAP as it is currently evolving. Any final action taken on that proposal would be published in the **Federal Register**. While the Board has determined to continue to provide guidance in this area for the present, it should be noted that, at such time as GAAP is defined by an authoritative body such as the FASB or the American Institute of Certified Public Accountants, the Board will revisit this issue.

The Board notes that because GAAP is undefined for options transactions, the Board, by its action today, is not creating a RAR deviation from GAAP. In fact, as noted above, the treatment of options transactions under the Board's current regulations and the outstanding proposal is very similar to the treatment of such transactions under GAAP, as it is currently evolving. Thus, the Board is not providing for an RAR/GAAP differential for this item since institutions may account for options transactions in accordance with RAR on their financial statements and reports.

c. *Valuation Allowances and Uncollectible Interest.* The Board proposed to eliminate RAR treatment for accounting for uncollectible interest and to delete the RAR/GAAP differential component of regulatory capital for both uncollectible interest and valuation allowances. While no comments address this aspect of the proposal, the Board wishes to take this opportunity to clarify the final rule.

The Board today also is adopting final rules governing classification of assets and appraisal standards consistent with the practices of the other federal banking agencies. *See* Board Res. Nos. 87-1296, 87-1295, to be published in the final rules section of the **Federal Register**. As described in those final rules, there should not be significant RAR/GAAP differentials for establishing loss allowances. Thus, under today's final rule, this component is no longer appropriately included in regulatory capital. Accordingly, institutions will be required to report loan loss allowances on their financial statements and reports in accordance with 12 CFR 561.16c; 563.17-2; and 571.1a, as amended today by Board Res. No. 87-1296. The Board notes that the asset classification regulation also applies to the accrual of interest on delinquent loans which must, in accordance with SFAS No. 5, be reserved when it is probable that the interest will not be received.

4. Accounting Forbearances

On the issue of the continued inclusion of accounting forbearances as a component of regulatory capital, three commenters responded. One commenter approved of the Board's treatment of this item, and the other commenter opposed continued inclusion, claiming that, in order to promote uniformity in accounting, specifically granted forbearances from enforcement should be utilized instead. One commenter suggested that, rather than bind institutions to a 1993 date, the original terms of an accounting forbearance should govern and should be afforded grandfathering treatment.

The Board continues to believe that accounting forbearances should be included as a component of regulatory capital. As the Board noted in the DRC Regulation, the Board believes that such forbearances have often been required to facilitate the acquisition of a troubled institution and consequently are directly relevant to effective supervision and monitoring of risk to the FSLIC. *See* 52 FR at 18347. Thus, the Board believes that its decision to continue to include accounting forbearances as a component of regulatory capital will benefit both the thrift industry and the FSLIC.

The Board wishes to emphasize again that this category of regulatory capital includes only accounting forbearances, *i.e.*, deviations from RAR or GAAP for specific accounting transactions that were previously authorized or that may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Institutions may not include as regulatory capital those forbearances granted by the Board or its designee with respect to an institution's minimum regulatory capital requirement, whether granted under the capital forbearance regulation, pursuant to a merger or acquisition, or by some other means.

Finally, it should be noted that this category of regulatory capital is not subject to a sunset date. Therefore, it is the Board's intent that any accounting forbearances granted by the Board or its designee may continue to be included in regulatory capital until the term of the specific accounting forbearance expires.

5. Sunset Date

The Board proposed that, consistent with the CEBA, permission to include certain items as components of regulatory capital would sunset on December 31, 1993. The Board specifically solicited comment concerning whether, instead of a sudden elimination of these items in 1993, it should gradually phase out these items by a percentage reduction each year until 1993.

Eight commenters responded on this point. Two commenters suggested that a phase-down schedule, implemented at the irrevocable option of each insured institution, would be the most appropriate and the least disruptive alternative. Six commenters expressed general support for the idea of a gradual phase-in of GAAP accounting. Three commenters disagreed with a phase-in, advocating a simple elimination of these items in 1993, one advocating special supervisory oversight of certain institutions to ensure that proper steps to institute GAAP accounting procedures are taken during the 5-year period.

After carefully considering the comments, the Board has determined to permit institutions to make an irrevocable election on January 1, 1989, as to whether they wish to phase-down the amount of grandfathered items includable in regulatory capital through 1993 or whether they wish to include 100 percent of grandfathered items as regulatory capital until 1993. Institutions must make their election with the filing of the quarterly report for the first quarter of 1989 and will be bound by such election for all reporting periods thereafter. Institutions that elect the phase-down approach will be permitted to include 100 percent of grandfathered items in regulatory capital during 1989, 80 percent in 1990, 60 percent in 1991, 40 percent in 1992, 20 percent in 1993 and 0 percent in 1994. In the Board's view, its action today gives management the flexibility to determine which option is most appropriate for a particular institution.

D. Plans for Delayed Compliance

The Board proposed to amend 12 CFR 563.23–3 (1987) to permit institutions to file plans for delayed compliance with the uniform accounting standards that fully explain why compliance will not be feasible within the prescribed timetable. In the preamble to the proposal, the Board cautioned that such plans would be authorized only with respect to particular aspects of the accounting requirements and only on an infrequent basis. Although one commenter acknowledged that the proposed rule sufficiently recognized that institutions may need to request delayed compliance if the imposed time schedule is not feasible, four other commenters urged the Board to adopt a much more liberal and flexible stance in the granting of such plans.

The Board has considered these comments and determined that the final rule in respect of plans for compliance should remain as proposed. The Board does not intend to demonstrate inflexibility in this regard and has indeed liberalized other aspects of the proposed rule by, for example, allowing a reporting of deferred loan losses on unaudited financial statements until the end of 1993. The Board remains convinced, however, that the better course is a requirement of demonstration by an institution of persuasive reasons and genuine need for delayed compliance with respect to specific aspects of the rule. In this way, the Board believes, the mandate of CEBA with respect to the adoption of uniform GAAP-based accounting standards is most faithfully fulfilled.

As the Board stated in the proposal, institutions that file plans seeking delayed compliance not because of an inability to meet the Board requirements but because of an unwillingness to prepare financial statements and reports and to report capital components as required by Board regulations should be aware that such plans will not be approved by the Board. The Board continues to believe that achieving uniform accounting based on GAAP at the earliest possible date is in the best interest of the thrift industry and the public.

E. Miscellaneous Issues

The DRC Regulation provides that insured institutions must record marketable equity securities in accordance with GAAP and SFAS No. 12. Although not actually a part of this proposal, three commenters submitted remarks on this issue. One commenter suggested that the Board clarify that GAAP treatment under SFAS No. 12 for all non-34 Act companies is triggered on January 1, 1989, and not before. Two commenters requested that the Board consider granting a regulatory capital exception for mutual funds, permitting institutions to carry such items at historical cost.

One commenter addressed the treatment of "liquid asset mutual funds." The portfolios of these funds consist entirely of debt obligations, such as U.S. government securities that would qualify as liquid assets pursuant to 12 CFR 523.10(g). An investment in this type of mutual fund also qualifies as a liquid asset under that section. The commenter noted that GAAP permits debt obligations of the United States to be carried at cost if the entity has the intent and the ability to hold the securities to maturity. SFAS No. 12 requires marketable equity securities, such as mutual funds, to be carried at the lesser of cost or market. Thus, while a thrift could invest directly in U.S. government securities and carry that investment at cost, if the thrift were to invest in a mutual fund the portfolio of which consisted entirely of the same U.S. government securities, the investment, under SFAS No. 12, would have to be carried at the lower of cost or market. The commenter argued that this different accounting treatment would cause thrifts to invest directly in U.S. government securities for liquidity purposes rather than diversifying into investments in mutual funds holding U.S. government securities. The commenter asserted that SFAS No. 12 should not apply to such liquid assets mutual funds. The commenter urged the Board either to (1) value investments in such open-end management investment companies at cost instead of in accordance with GAAP, as set forth in SFAS No. 12 or (2) to add the difference, if any, between cost and market value (if lower than original cost) of such investments as a component of regulatory capital.

The Board has thoroughly considered the arguments proferred by these commenters and has determined that all marketable equity securities, except for investments in the shares of open-end management investment companies, as defined in § 523.10 ("liquid asset mutual funds"), shall be accounted for in accordance with GAAP, as set forth in SFAS No. 12.

The Board recognizes that the CEBA mandates that the Board follow GAAP or Bank RAP in determining uniform accounting standards for thrifts. In this regard, both GAAP and Bank RAP require that investments in marketable equity securities, including mutual funds, be accounted for in accordance with SFAS No. 12. However, the CEBA also grants the Board the discretion to phase in GAAP requirements over a period of time ending no later than 1993. After giving careful consideration to the issues raised by these commenters, the Board has amended the final rule in the following way. The Board has determined, as part of the gradual phase-in to GAAP, to permit institutions to include on their unaudited financial reports and statements investments in shares of liquid asset mutual funds recorded at historical cost through year end 1993. This exception applies only to those liquid asset mutual funds that meet the requirements of § 523.10(g)(8); all marketable equity securities, including other types of mutual funds, must be reported in accordance with SFAS No. 12 for all periods beginning on or after January 1, 1989. The Board wishes to emphasize, however, that as of January 1, 1994 institutions must account for shares in these liquid asset mutual funds in accordance with SFAS No. 12.

Three commenters voiced concerns concerning the impact of the Regulatory Flexibility Act on the proposals. One commenter asserted that the CEBA was not intended to grant forbearance from compliance with the Act and that a 30-day comment period was insufficient for small institutions without access to the **Federal Register.** On this point, the Board wishes to clarify that since the enactment of the CEBA on August 10, 1987, all insured institutions have been on notice that the Board had been ordered by Congress to promulgate regulations that would move the industry toward uniform GAAP-based accounting standards and that notice to the industry was reiterated when the Board issued an advance notice of proposed rulemaking. Board Res. No. 87-941, 52 FR 33595 (Sept. 4, 1987). Moreover, the Board was admonished by Congress that these regulations would have an effective date December 31, 1987. Thus, the timetable set by Congress gave the Board no choice but to allow a maximum comment period of 30 days. Two other commenters suggested that the uniform accounting standards pose particular burdens for small institutions, one commenter noting that the standards will be overly taxing of a small institution's limited personnel. The Board's regulatory flexibility analysis responding to this concern appears below.

One commenter asserted that one issue of RAP/GAAP inconsistency was left out of the proposals—that of the conflict between SFAS No. 34 and the Board's memorandum T-59-3a's six-month rule; this commenter advocated the elimination of the T-Memorandum's position. After considering this commenter's remarks, the Board has determined that GAAP as set forth in SFAS No. 34, will apply to capitalization of interest on construction projects.

III. Description of the Final Rule

The final rule requires that all unaudited financial statements issued by insured institutions, including counter-statements, and all financial reports filed with the Board, for all periods beginning on or after January 1, 1989, shall be prepared in accordance with GAAP except that insured institutions may report loan losses and gains deferred pursuant to § 563.14c and liquid asset mutual fund investments at cost in the body of such statements and reports. Audited financial statements must be prepared in accordance with GAAP with no deviations. All financial statements and reports filed on or after January 1, 1989, shall include, in a footnote, a full and fair reconciliation of modified equity capital (or GAAP capital if an audited statement) with regulatory capital.

For all periods beginning on or after January 1, 1990, institutions must file financial statements and reports to the Board on a consolidated basis. The Thrift Financial Report will contain instructions for the format for such consolidated reports.

The final rule defines regulatory capital as the sum of (1) modified equity capital; (2) definitional capital, (3) grandfathered RAR components of capital, and (4) accounting forbearances.

A. Modified Equity Capital

Modified equity capital represents the difference between the recorded values of an institution's assets and liabilities, as determined in accordance with GAAP, plus the amount of loan losses and gains deferred pursuant to § 563c.14, and the difference between investments in liquid asset mutual funds under GAAP and their historical cost.

In computing modified equity capital, institutions may rely on the procedures set forth in 12 CFR 563.17-5 (1987) for options transactions and those set forth at 12 CFR 561.16c, 563.17-2, and 571.1a for establishing loss allowances.

B. Definitional Capital

Definitional capital includes qualifying subordinated debt, qualifying redeemable preferred stock, qualifying mandatory convertible securities, income capital certificates, mutual capital certificates, net worth certificates, accumulated income payments on capital certificates not due and payable, allowances for losses except specific allowances, and pledged deposits and other nonwithdrawable accounts (excluding any treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in modified equity capital.

C. Grandfathered RAR Components of Capital

This component of regulatory capital includes only the components of RAR permitted prior to January 1, 1989, for which further elections cannot be made. Thus, the final rule permits an insured institution to include in regulatory capital the amount representing the cumulative RAR/GAAP differential for specific grandfathered items, provided that the insured institution calculated and reported such items under RAR prior to January 1, 1989. An insured institution may include in its regulatory capital the amount representing the RAR/GAAP differential for the following items: accounting for the sales of real estate by the institution or its subsidiary, futures transactions, appraised equity capital, loan origination and commitment fees, and accretion of discounts and amortization of premiums on securities.

The Board notes that under the final rule an institution may elect not to include the RAR/GAAP differential as a component of regulatory capital if it so desires. Such an election must be made by the filing of the first quarterly report of 1989 and is irrevocable. The Board emphasizes, however, that institutions may not, after January 1, 1989, report these grandfathered items on their financial statements pursuant to RAR. The RAR/GAAP differential is only computed for purposes of regulatory capital.

Finally, the final rule provides that the ability of insured institutions to include the RAR/GAAP differential for these items as a component of regulatory capital sunsets on December 31, 1993. The sunset provisions are described in more detail below.

D. Accounting Forbearances

Insured institutions may also include in their regulatory capital accounting forbearances previously authorized, or that may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Institutions may not include as regulatory capital those forbearances granted by the Board or its designee with respect to an institution's minimum regulatory capital requirements.

E. Sunset Date

The final rule provides that, as of December 31, 1993, insured institutions may no longer include as regulatory capital the RAR/GAAP differential for appraised equity capital, sales of real estate by the institution or subsidiary, futures transactions, loan origination and commitment fees, and amortization of premiums and accretion of discounts on securities. Additionally, the ability to report investments in liquid asset mutual funds at cost sunsets. Under the final rule, an institution must make an irrevocable election upon the filing of its first quarterly report of 1989 as to whether it opts for immediate elimination of these items from regulatory capital on December 31, 1993 or pro rata elimination of these items pursuant to the following schedule: 100 percent includable as regulatory capital in 1989; 80 per cent in 1990; 60 per cent in 1991; 40 per cent in 1992; 20 per cent in 1993; and 0 per cent for 1994 and all years thereafter.

F. Elimination of Certain RAR Procedures

The final rule eliminates altogether prospective authority for insured institutions to rely on the following accounting procedures heretofore permitted by the Board and representing departures from GAAP.

First, the Board's accounting regulations, 12 CFR 563.23–1(f) (1987), are eliminated, and insured institutions and their service corporations must account for the sales of real estate developed by the institution or its service corporation in accordance with GAAP. *See* SFAS No. 66. Second, insured institutions must record marketable equity securities in accordance with GAAP, except that investments in liquid asset mutual funds may be carried at cost through year end 1993. *See* SFAS No. 12. Third, the final rule amends 12 CFR 563.17–4(g) (1987) to require institutions to determine gains or losses arising from futures transactions in accordance with GAAP. See SFAS No. 80. Fourth, 12 CFR 563–23–1 (1987) is amended to require that premiums on securities be amortized and that discounts on securities be accreted in accordance with GAAP. See SFAS No. 65.

Fifth, the final rule eliminates the Board's regulations governing accounting for loan origination and commitment fees, 12 CFR 563.23–1(g), (1987) and requires insured institutions to account for such transactions in accordance with GAAP. *See* SFAS No. 91.

Sixth, the rule eliminates 12 CFR 563c.11 (1987) with respect to accounting for uncollectible interest and requires insured institutions to account for this item in accordance with GAAP. *See* SFAS, No. 5.

G. Plans for Delayed Compliance

The final rule provides that plans for delayed compliance may be filed by insured institutions with their Principal Supervisory Agents. Such plans must be detailed and explicit, and include the specific components of the uniform accounting standards with which it is unable to comply; the date and the method by which it proposes to comply with that component prior to December 31, 1993; and any other information the institution deems relevant. In the event a plan for compliance is disapproved in whole or part, the final rule provides for an appeal to the Corporation within 30 days of the disapproval, which will be acted upon in accordance with the guidelines set forth at 12 CFR 571.12 (1987).

IV. Effective Date of Final Rule

The final rule becomes effective on January 1, 1989, as of which date all insured institutions shall compute their regulatory capital pursuant to § 561.13. With respect to the GAAP reporting requirement, all unaudited financial statements issued by insured institutions, all financial reports required to be filed with the Board, and all counter statements prepared by insured institutions for all periods beginning on or after January 1, 1989 shall be prepared in accordance with GAAP, except that loan losses and gains deferred pursuant to 12 CFR 563c.14 prior to January 1, 1988, may be reported in the body of such financial statements and reports, and investments in liquid asset mutual funds may be carried at cost through year end 1993. Effective for all periods beginning on or after January 1, 1990, institutions shall prepare financial statements and reports on a consolidated basis pursuant to the instructions that will be set forth in the Thrift Financial Report. Additionally, all such financial statements and reports must include a footnote reconciliation of modified equity capital to regulatory capital.

Although the effective date of this final rule is January 1, 1989, insured institutions may if they so desire begin accounting for and reporting all transactions in accordance with GAAP anytime prior thereto. However, such an election is irrevocable.

Final Regulatory Flexibility Analysis

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

1. *Need for and Objectives of the Rule.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION".

2. *Issues Raised by Comments and Agency Assessment and Response.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION".

3. *Significant Alternatives Minimizing Small-Entity Impact and Agency Response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

Because uniformity of accounting practices is the fundamental principle underlying both this rule and the relevant provisions of the CEBA that it implements, to treat small institutions differently would be thoroughly inconsistent with this objective. Therefore, the final rule treats all institutions identically regardless of their size. The final rule incorporates several elements intended to grant flexibility to all institutions as explained more fully in SUPPLEMENTARY INFORMATION.

List of Subjects in 12 CFR Parts 561, 563, and 563c

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 561, 563, and 563c Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for 12 CFR Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Section 561.13 is revised to read as follows:

§ 561.13 Regulatory capital.

Regulatory Capital is the sum of:

(a) Modified equity capital, which is defined as the sum of:

(1) Equity capital as determined in accordance with generally accepted accounting principles;

(2) The amount of unamortized loan gains and losses which were deferred pursuant to § 533c.14 of this subchapter; and

(3) The difference between investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter, accounted for under generally accepted accounting principles and their historical cost;

(b) Definitional capital, which is the sum of:

(1) Income capital certificates, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), outstanding net worth certificates issued in accordance with Part 572 of this subchapter or that the Corporation is committed to purchase by virtue of § 572.1(c), accumulated annual income payments on capital certificates not due and payable, allowances for losses except specific allowances, pledged certificates and any other nonwithdrawable accounts (excluding any Treasury shares held by the institution) to the extent such nonwithdrawable accounts are not included in modified equity capital: *Provided*, that for any nonpermanent instrument qualifying as regulatory capital under paragraph (b)(1) of this § 561.13, either (i) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is not less than one year, or (ii) the redemption or prepayment is only at the option of the issuing insured institution and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter; *Provided further*, that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation when the issuing institution is not the survivor, or a provision permitting a redemption when the funds for redemption are raised by the issuance of permanent stock;

(2) Subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided*, that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year: *Provided further*, that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984: *Provided further*, that, except as otherwise provided in paragraph (b)(2) of this § 561.13 and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory capital only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in regulatory capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

For purposes of determining the principal amount outstanding of an obligation issued at a discount that exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument sold at a discount that exceeds 10 percent and that bears no stated rate of interest, the amount that can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method. For purposes of computing the amount of subordinated debt includable as regulatory capital pursuant to paragraph (b)(2) of this § 561.13, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt that is subject to required sinking fund payments, other required prepayments, and required reserve allocations and calculate the percentage amount of each portion of the principal amount outstanding that may be included pursuant to the schedule set forth in paragraph (b)(2) of this § 561.13;

(3)(i) Preferred stock that is redeemable at the option of the issuer (A) that was issued prior to July 23, 1985, or (B) that was issued on or after July 23, 1985, was approved prior to issuance pursuant to § 563.1 of this subchapter and states that no redemption may be made by the issuing insured institution if, after giving effect to such redemption, the insured institution would fail to meet its regulatory capital requirement under § 563.13 of this subchapter;

(ii) Mandatorily redeemable preferred stock that (A) was issued prior to July 23, 1985 or (B) was issued pursuant to § 563.7–5 of this subchapter on or after July 23, 1985, was approved as to its form prior to issuance pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital, before or after its issuance, pursuant to § 563.7–5: *Provided*; that unless otherwise approved by the Corporation in writing, mandatorily redeemable preferred stock issued on or after July 23, 1985, may be included as regulatory capital only in accordance with the schedule set forth in paragraph (b)(2) of this § 561.13; and

(4) Mandatory convertible securities to the extent not included in modified equity capital, *provided that* such securities meet the criteria set forth by the Office of Regulatory Policy, Oversight and Supervision in Supervisory Memoranda.

(c) The sum of the following items determined in accordance with risk analysis reporting in effect prior to January 1, 1989 that an insured institution has included in computing and reporting its regulatory capital to the Corporation prior to January 1, 1989:

(1) Appraised equity capital (as defined in § 563.13(c) of this subchapter);

(2) The amount of unamortized loan gains and losses which were deferred pursuant to § 563c.14 of this subchapter to the extent such deferred gains and losses are not included in modified equity capital;

(3) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1989, and included in its financial statements prior to January 1, 1989. An institution may include an amount that represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting prior to January 1, 1989:

(i) Sales of real estate developed by the institution or its subsidiary;

(ii) Futures transactions;

(iii) Accretion of discounts and amortization of premiums on securities;

(iv) Loan origination and commitment fees; and

(d) Accounting forbearances permitted under risk analysis reporting, which shall include all accounting forbearances and other accounting practices authorized by the Corporation, the Board, or its Principal Supervisory Agents.

(e) Notwithstanding paragraphs (a), (b), (c), and (d) of this § 561.13, the term "regulatory capital" does not include any capital instrument or security that may be included as regulatory capital pursuant to any of those paragraphs of § 561.13 if such capital instrument or security is held by a service corporation or other subsidiary, regardless of the organizational form of that entity, in which the insured institution directly or indirectly (1) owns, controls, or holds with power to vote, or holds proxies representing 10 percent or more of the voting shares or rights in such entity, or (2) invested in or contributed to such entity more than 10 percent of such entity's capital, unless inclusion of regulatory capital is specifically approved by the Corporation in writing.

(f) *"Sunset"* provisions. Authority to include items listed in paragraphs (a)(2), (a)(3), (c)(1) and (c)(3) of this § 561.13 as a component of regulatory capital will cease as of December 31, 1993. Institutions may make an irrevocable election upon the filing of their first quarterly report for 1989 to phase-out these items over the period beginning January 1, 1989, and ending December 31, 1993, pursuant to the following schedule: 100 percent of these items are includable in regulatory capital for 1989; 80 percent in 1990; 60 percent in 1991; 40 percent in 1992; 20 percent in 1993; and 0 percent in 1994 and all years thereafter.

PART 563—OPERATIONS

3. The authority citation for 12 CFR Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Section 563.23–1 is amended by revising the heading of the section to read as follows; by revising paragraph (b); and by removing paragraphs (c) through (f); to read as follows:

§ 563.23-1 Premiums and discounts with respect to loans.

* * * * *

(b) *Purchase at a discount.* If an insured institution purchases a loan at discount, the discount shall be differed by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles.

5. Section 563.23–3 is amended by revising paragraphs (c) and (d); and by adding a new paragraph (e) to read as follows:

§ 563.23-3 Accounting principles and procedures.

* * * * *

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the Corporation shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such financial statements and reports, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this chapter, may be carried at historical cost in such statements and reports. All such financial statements and reports shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 561.13(a) of this subchapter, to regulatory capital, as defined in § 561.13 of this subchapter. Loan losses and gains deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter, accounted for at historical cost, may be reported on such financial statements and reports only for and until the last reporting period of 1993.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such Statements of Condition, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this chapter, may be carried at historical cost on such Statements of Condition. All such Statements of Condition shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 561.13(a) of this subchapter with regulatory capital, as defined in § 561.13 of this chapter. Loan gains and losses deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this Chapter, accounted for at historical cost, may be reported only for and until the last period of 1993. Each Statement of Condition shall include in bold type in the body of the statement the following language: "Federal Savings and Loan Insurance Corporation ("FSLIC"), an agency of the U.S. government, insures all depositors' savings up to $100,000 in accordance with the rules and the regulations of the FSLIC." In addition, the footnote reconciliation of equity capital to regulatory capital continued in such statements shall include the following language: "Regulatory capital is the basis by which the Federal Home Loan Bank Board determines whether an institution is insolvent and whether an institution is meeting its regulatory capital requirement."

(e)(1) An insured institution seeking to delay its compliance with the uniform accounting standards set forth in this § 563.23–3 or § 561.13 of this subchapter shall file a plan with its Principal Supervisory Agent ("PSA").

(2) The plan shall set forth the following:

(i) The specific components of the uniform accounting standards with which the insured institution is unable to comply ("excepted components");

(ii) A timetable setting forth the date, in no event later than December 31, 1993, by which the insured institution proposes to comply with each excepted component; and

(iii) Any other information that the insured institution believes is relevant to its determination that it is not feasible for the institution to comply with each excepted component.

(3)(i) The Principal Supervisory Agent shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.

(ii) In reviewing a plan, the PSA shall consider all relevant information, including, but not limited to,

(A) The institution's plan submitted pursuant to this section;

(B) Other information available to the PSA regarding the insured institution;

(C) The ability of other institutions in the region to comply with the uniform accounting standards; and

(D) The extent to which any relevant grandfathering or phase-in of the uniform accounting standards affects any excepted component in the institution's plan.

(4) In the event that the PSA disapproves a plan for delayed compliance in whole or in part, the

institution may appeal the disapproval to the Corporation within thirty days of the disapproval. The Corporation shall act on such appeal in accordance with the guidelines set forth at § 571.12 of this subchapter. The Corporation, in reviewing the disapproval, shall take into consideration all relevant factors, including those listed in paragraph (e) of this section.

PART 563c—ACCOUNTING REQUIREMENTS

6. The authority citation for Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 822, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943—48 Comp., p. 1071.

§ 563c.11 [Removed and Reserved].

7. Section 563c.11 is removed and reserved.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[Editorial Note: This appendix will not appear in the Code of Federal Regulations.]

Appendix.—Uniform Accounting Standards Guide to Implementation Dates [8]

I. Reporting Requirements	
A. *General:* insured institutions must prepare all financial statements and reports in accordance with GAAP, except that deferred loan losses and gains may be included in the body of unaudited statements and reports and investments in mutual funds, as defined in § 523.10(g)(8) may be carried at historical cost; must include footnote reconciliation of modified equity capital with regulatory capital.	All periods beginning on or after January 1, 1989.
B. *Deferred Loan Losses and Gains* ("DLL"): insured institutions may continue to report DLL on their unaudited financial statements and reports, through year end 1993.	Insured institutions may report: 100% of DLL for 1989 through year end 1993; 0% of DLL thereafter.
C. *Mutual Funds:* insured institutions may report their investments in shares of open-end management investment companies, as defined in 12 CFR 523.10(g)(8), at historical cost through year end 1993 on unaudited financial statements and reports.	Insured institutions may report investments in liquid asset mutual funds at cost through year end 1993; in accordance with SFAS No. 12 for all years thereafter.
D. *Appraised Equity Capital* ("AEC"): insured institutions may *not* report AEC on their financial statements and reports.	All periods beginning on or after January 1, 1989.
E. *Consolidated Reporting:* insured institutions must file financial statements 1, and reports on a consolidated basis.	All periods beginning on or after January 1, 1990.
II. Components of Regulatory Capital	
A. Modified Equity Capital: equals GAAP capital plus DLL plus the difference between investments in liquid asset mutual funds accounted for under GAAP and their historical cost.	Must be computed for all periods beginning on or after January 1, 1989. For periods beginning on or after January 1, 1994, equity capital must be determined in accordance with GAAP with no deviations.
B. Definitional Capital	
Subordinated debt	May be included now in amounts specified in 12 CFR § 561.13(c); unchanged by amendment to DRC Regulation.
Qualifying redeemable preferred stock	May be included now in amounts specified in 12 CFR § 561.13(d); unchanged by amendment to DRC Regulation.
Qualifying mandatory convertible securities	May be included for all periods beginning on or after January 1, 1989, subject to guidelines to be issued by ORPOS.
Income capital certificates	May be included now; unchanged by amendment to DRC Regulation.
Mutual capital certificates	May be included now; unchanged by amendment to DRC Regulation.
Allowances for losses, except for specific allowances	May be included now; unchanged by amendment to DRC Regulation.
Pledged Deposits and other nonwithdrawable accounts [9]	May be included now; unchanged by amendment to DRC Regulation.
C. RAR Components of Regulatory Capital	
Cumulative RAR/GAAP differential *may be* included for:	Differential *may be* included as a component of regulatory capital from January 1, 1989 through December 31, 1993. Institutions may elect immediate exclusion of differential from regulatory capital on January 1, 1989; must file election to exclude immediately or phase-out by January 1, 1994. Institutions that elect to phase-out the differential must do so in accordance with the following schedule: 100% of differential-1989 80% of differential-1990 60% of differential-1991 40% of differential-1992 20% of differential-1993 0% of differential-1994.

Sales of real estate (by institutions or their subsidiaries)	Institutions may not report all items on their financial statements in accordance with RAR for any period beginning on or after January 1, 1989.
Futures transaction	
Appraised equity capital	
Loan origination and commitment fees	
Accretion of discounts/amortization of premiums on securities	
D. Accounting forbearances	May be included now; unchanged by amendment to DRC Regulation.

[8] This chart is intended as a summary guide for ease of reference. In case of any inconsistency between it and the regulatory language, the regulatory language will control.

[9] Does not include treasury shares held by the institution or nonwithdrawable accounts included as modified equity capital.

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12 CFR Parts 561, 563, and 571

[No. 87-1296]

Classification of Assets

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations governing the classification of assets of insured institutions pursuant to the mandate of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA requires the Board to establish an asset classification system consistent with the asset classification practices of the Federal banking agencies. This final rule broadens the scope of the existing rule and ensures the use of broader, but judicious, examiner discretion in the classification of assets, consistent with the asset classification practices of the bank regulatory agencies.

Specifically, this final rule employs the existing classification categories of Substandard, Doubtful, and Loss, but alters the consequences of these classifications with respect to valuation allowance requirements and their effect on capital.[1] Assets classified Substandard are no longer to be treated as scheduled items. Moreover, under this final rule, the Board no longer requires institutions to establish specific valuation allowances for assets classified Doubtful. With respect to assets classified Substandard or Doubtful, if the examiner concludes that the existing aggregate valuation allowances established by the institution are inadequate, the examiner will determine the need for, and extent of, any increase necessary in the insured institution's general valuation allowances, subject to review by the Principal Supervisory Agent ("PSA") or his designee. For the portion of assets classified Loss, the Board will continue to require institutions either to establish specific allowances for losses of 100 percent of the amount classified, or charge off such amount. Consistent with CEBA, today's final rule deletes the Board's scheduled item regulation, thus broadening the scope of the classification of assets regulation to encompass those assets formerly deemed scheduled items. Today's final rule also requires insured institutions to classify their own assets and to establish prudent general valuation allowances.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Daniel G. Lonergan, Staff Attorney, (202) 377-6458, Andrew Gilbert, Staff Attorney, (202) 377-6441, Karen O'Konski Solomon, Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel; Jane W. Katz, Senior Policy Analyst, (202) 377-6782, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Edward J. Taubert, Associate Director—Policy, (202) 778-2511, Francis E. Raue, Policy Analyst, (202) 778-2517, or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is authorized pursuant to section 403(b) of the National Housing Act ("NHA"), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). 12 U.S.C. 1726(b). *See also* 12 U.S.C. 1730(m); 12 CFR 563.17-1. Pursuant to this authority, the Board has the responsibility to examine and evaluate the assets of insured institutions and their affiliates, to require reporting, and to prescribe the treatment of such assets for regulatory evaluation purposes. In addition, the NHA requires insured institutions to establish and maintain reserves in accordance with Board regulations. 12 U.S.C. 1726(b).

The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, was signed into law on August 10, 1987. Section 402 of CEBA requires the Board to establish an asset classification scheme consistent with the classification practices of the Federal banking agencies.[2] On May 5, 1987, the Board proposed for public comment a revision of the classification of assets regulation "to encourage greater exercise of discretion, judgment, and flexibility by both supervisory and examination staff, to integrate the classification system with other regulations prescribing treatment of problem assets, * * * and to achieve greater conformity with the classification practices of the bank regulators." 52 FR 18369, 18371 (May 15, 1987) ("May proposal"). The Board originally set a 60-day comment period for the May proposal, but extended this comment period until September 1, 1987. *See* 52 FR 27218 (July 20, 1987). Because CEBA became law during that comment period, the Board proposed a Supplemental Notice of Proposed Rulemaking on October 2, 1987, in order to incorporate revisions consistent with CEBA's mandate that the Board adopt a classification scheme consistent with the classification practices of the Federal banking agencies. 52 FR 39087 (Oct. 20, 1987) ("October proposal").

A. Description of the Proposals

In the October proposal, the Board proposed an asset classification scheme consistent with both the requirements of CEBA and the Board's intent to move toward an asset classification scheme more consistent with the classification practices of the Federal banking regulators. This goal was previously stated in the May proposal. Like the May and October proposals, today's

[1] This proposal refers to specific and general "valuation allowances," instead of "reserves," since the former designation is more consistent with accepted accounting terminology.

[2] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

final rule reflects the Board's recognition that methods of evaluating asset quality should be modified in light of significant changes in the investment authority of thrift institutions during the last five years.

Section 325 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469, amended section 5(c)(1)(R) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(c)(1)(R), to authorize federally chartered savings and loan associations and mutual savings banks to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes within specified limits. The Board promptly promulgated regulations in 1983 to implement this new commercial lending authority for federal institutions. *See* 12 CFR 545.46. Moreover, many states subsequently granted to state-chartered institutions the authority to engage in commercial lending activity.

At that time, the Board's existing asset classification system had been designed primarily to address the requirements of home lending, and therefore emphasized the timely receipt of periodic payments and other features inherent in loans secured by residential real estate. Due to Board concern that this system of asset classification was not attuned to the characteristics of these newly authorized types of lending, and thus was not appropriately suited to evaluate the condition of a given asset, the Board sought a better method of analyzing the condition of these loans.

On June 21, 1985, the Board proposed for public comment a new method of classifying certain commercial loans and a revision of its regulation governing examiners' reevaluation of real estate. Board Res. No. 85–504, 50 FR 27290 (July 2, 1985). This June 1985 proposal adopted the basic asset classification concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), which had been issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Conference of State Bank Supervisors. The Board's proposed scheme classified problem assets as Substandard, Doubtful, or Loss, consistent with the Federal banking agencies, and prescribed treatment of each problem asset depending on the category to which it was assigned.[3] The proposal also sought to revise the appraisal provisions in the Board's examinations and audit regulation to provide for the "automatic" classification of assets with no appraisal or a non-conforming one. *See* 12 CFR 563.17–2(b).

On December 9, 1985, the Board adopted as a final rule the proposed classification of assets scheme with some modifications. This regulation employs the classification categories of the Uniform Agreement, *i.e.*, Substandard, Doubtful, and Loss. Assets classified Substandard are treated as scheduled items, thus increasing the contingency component of an institution's minimum regulatory capital requirement under § 563.13 by an amount equal to 20 percent of the dollar amount of the Substandard assets. *See* 12 CFR 563.13(b)(4)(ii)(B). *See also* 12 CFR 561.16c(c)(1). In effect, this classification serves to increase an insured institution's capital requirement by 20 percent of the value of assets classified Substandard, since the contingency component is added to an institution's liability component (minus the maturity matching credit) to determine the minimum regulatory capital requirement. 12 CFR 563.13(b).

Assets classified Doubtful require the establishment of specific allowances for loan losses of up to 50 percent of the amount of the asset so classified. *See* Office of Regulatory Policy, Oversight and Supervision ("ORPOS") Memorandum No. SP 68 (Aug. 14, 1986). Assets classified Loss require the establishment of specific allowances for loan losses of 100 percent of the book value of assets or portions of assets classified Loss. This scheme permits assets to be "split" for classification purposes; different portions of the same asset may be classified under different categories or may remain unclassified. 12 CFR 571.1a.

The Board's December 1985 rule also authorized examiners to reevaluate assets in accordance with the newly adopted classification system, as reflected in 12 CFR 563.17–2(b). Section 563.17–2(b) was amended to provide that a reevaluation of real estate must be based on an appraisal, except in the following instances: (1) If a loan or investment required an appraisal under the Board's rules, but the institution had no appraisal in its files, the asset was to be classified Doubtful; (2) if there was an appraisal in the institution's files that did not conform with the Board's appraisal standards, or if the examiner determined that the assumptions underlying an appraisal (even one that was in compliance when made) were demonstrably incorrect, such asset was to be classified Substandard; and (3) if the examiner and the District Appraiser determined that the assumptions underlying an appraisal were demonstrably incorrect, rendering the appraisal inaccurate, and the asset had an additional weakness inherent in an asset classified Substandard, the asset was to be classified Doubtful. In promulgating the December 1985 final rule, the Board emphasized that in light of supervisory experience, a continued reliance on reappraisals as the sole means for classifying problem real estate assets was not advisable.

The Board also amended § 563.17–2(c) to require adjustments to the book value of assets deemed to be overvalued on the institution's books as a result of asset reevaluation. At the direction of its supervisory agent, an institution must make such an adjustment to the book value by establishing a specific valuation allowance in an amount equal to the overvaluation.

Although the Board adopted the above classification of assets scheme as a final rule, the Board also provided an additional 60-day comment period to solicit further public comment on the general scope of the classification system that, in its final form, encompassed all assets except consumer loans, loans secured by one-to-four family, owner-occupied homes, and securities. These comments are summarized *infra*. *See* "B. Discussion of the Comments."

After over a year of experience with the classification regulation promulgated December 9, 1985, the Board concluded that further revision of the classification regulation was necessary. Thus, on May 15, 1987, the Board proposed revisions to the asset classification scheme that would afford examiners and supervisory staff greater flexibility and discretion and would generally achieve greater conformity with the classification practices of the Federal banking agencies. Specifically, this proposal would have broadened the scope of the regulation to encompass debt and equity securities, and would

[3] These categories are defined in detail in the existing regulation and policy statement. *See* 12 CFR 561.16c(b), 571.1a(a). Generally, assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, and have a well-defined weakness or weaknesses. Assets classified Doubtful have all of the weaknesses inherent in those classified Substandard, with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific allowance for loan losses is not warranted.

have imposed an affirmative duty upon insured institutions to classify their own assets and establish appropriate valuation allowances. Furthermore, the proposal provided that Substandard assets would no longer receive scheduled item treatment, and Doubtful assets would no longer require the establishment of specific reserves Under this proposal, if assets were classified Substandard or Doubtful and the examiner concluded that the general valuation allowances established by the institution were inadequate, the examiner would determine the need for, and extent of, any increase necessary in the insured institution's general valuation allowances. Under the May proposal, assets or portions of assets classified Loss would require the establishment of specific valuation allowances of 100 percent of the value of such asset, or, alternatively, such assets would be charged off.

Because CEBA was enacted during the comment period of the May proposal, the Board had to repropose the classification of assets regulation and incorporate modifications mandated by this recently enacted statute. Because one of the Board's goals in issuing the May proposal was to establish an asset classification system that more closely conformed with the classification practices of the Federal banking agencies, many elements of the May proposal were retained in the October proposal.

The October proposal reiterated the Board's goal of fostering the exercise of greater flexibility and discretion by examiners and supervisory personnel in classifying assets and in establishing valuation allowances, as well as the Board's concern that the existing classification scheme placed undue reliance on the role of appraisals. The October proposal also contained several important revisions to the May proposal. First, in October the Board proposed to delete the scheduled item regulation consistent with the requirements of Section 407 of CEBA. CEBA, tit. iv, section 407(b)(4). Thus, the types of assets deemed scheduled items would be classifiable under 12 CFR 561.16c, to include loans secured by one-to-four family, owner-occupied dwellings, consumer credit, real estate owned ("REO"), and other assets. The Board proposed to require that assets classified Loss be charged off, with no option for an institution to establish a 100 percent specific valuation allowance as an alternative. The Board also clarified that valuation allowances for assets are to be established in accordance with Generally Accepted Accounting Principles ("GAAP"). Moreover, the Board proposed to require that REO be appraised annually, and that losses on such REO be recognized if the subsequent Net Realizable Value ("NRV") of the property fell below the fair market value at acquisition. The October proposal also introduced a Special Mention category for those assets not evidencing sufficient risk of nonpayment to warrant classification, but evidencing potential risk requiring close monitoring by an institution's management.

B. Discussion of the Comments

In promulgating the existing regulation in December 1985, the Board specifically solicited comment on issues related to the scope of the existing rule. In the May and October proposals, the Board indicated that these comments would be considered in issuing today's final rule. In response to this 1985 solicitation, the Board received fifty-six comment letters, of which only thirty addressed the scope of the classification of assets regulation. Forty-four letters were received from insured institutions. Of the remainder, seven letters were received from industry trade associations, two were received from state agencies, one was received from a law firm representing twenty insured institutions, one was received from a mortgage insurance company, and one letter was received from a private citizen. Although these comments were generally supportive, several criticisms and suggestions were offered, which are discussed in greater detail *infra*.

In response to the May proposal, the Board received seventy-four comments, most of which offered qualified support for the proposed revisions. Fifty-four comments were received from insured institutions; nine comments were received from industry trade associations; one comment was received from a securities broker; three comments were received from mortgage insurers; and six other comments were received from interested societies representing financial managers, economists, executives, home builders, and others.

In response to the October proposal, the Board received sixty-five comments, including late-filed comments. The majority of these comments offered qualified support for the October proposal, while offering particular revisions and suggestions. Forty-two comments were received from insured institutions, thirteen were received from trade associations, two were received from law firms, and two were received from consultants. In addition, three comments were received from professional societies, one was received from a securities broker, one was received from a state regulator, and one comment was received from a private citizen. Approximately one-third of the October commenters had submitted comments on the May proposal, although the October comments often differed from the earlier comments given the differences in the two proposals. All comments submitted on the December 1985 final rule, the May 1987 proposal, and the October 1987 proposal have been carefully considered by the Board staff and have been considered in drafting today's final rule.

C. Response to Comments

1. Scope: Securities

In both the May and October proposals, the Board proposed to broaden the scope of the classification of assets regulation to encompass securities (both debt and equity) as defined in § 561.41 of the Board's regulations. Thirty-three May commenters addressed this issue, including five trade associations. An additional sixteen comments addressing this issue were submitted in response to the October proposal. Twenty-seven commenters offered general or qualified support for this proposal.

Twenty-three commenters opposed the inclusion of securities within the scope of the asset classification regulation. These commenters argued that the classification system was designed for an asset-by-asset analysis of loan transactions and is simply not suited for the classification of any and all securities that may be held in an institution's investment portfolio. Some contended that the classification of securities is an unnecessary addition to existing regulatory protections such as rating and marketability requirements, as well as per-issuer and diversification limitations. Moreover, they argued that GAAP already provides sufficient accounting guidance for valuation and loss allowance determinations with regard to securities.

Commenters also argued that the classification of securities would not be feasible since many securities are not actively traded and thus have values that cannot be easily ascertained. Moreover, market price at any given examination may not accurately reflect market value and credit risk. Several commenters asserted that the classification of securities would be an extremely complex matter beyond the expertise of the examination staff, and that an unwise classification in one instance could cause widespread "dumping" of that security nationwide. These commenters believed that classification would inappropriately deter thrifts from investing in so-called "junk bonds" and thus deprive these institutions of higher returns. These commenters noted that junk bonds also provide institutions with enhanced access to commercial loan markets, an area traditionally closed to thrifts.

Thus, these adverse May and October commenters urged the Board to delay the classification of debt and equity securities pending specific study of the issue, the development of examination experience, and the articulation of specific system-wide objectives in this complex area. Some commenters noted that delaying classification would be especially appropriate in the high-yield bond area given the Congressional mandate for a study of high-yield bonds under section 1201 of CEBA. Commenters suggested that, in the meantime, the classification of securities might be limited to the "Special Mention" category with no valuation allowances required. Additionally, commenters suggested that securities already in an institution's portfolio be "grandfathered," regardless of the direction the Board takes in its final rule.

After careful consideration of all the comments on both the May and October proposals, the Board has determined that it is necessary and appropriate at this time to include securities within the scope of the asset classification regulation. The Board first considered the desirability of classifying securities at the time it promulgated the existing classification rule. However, such an expansion of coverage was deferred pending further review. *See* 50 FR 53275, 53279 (Dec. 31, 1985). The Board is of the view that further delay of this proposal, as suggested by the opposing commenters, is not warranted in light of further staff consideration of the issue and the requirements of CEBA. CEBA clearly mandates that the Board prescribe an asset classification system that is consistent with the classification practices of the Federal banking agencies. Through discussions with representatives of these agencies, the Board staff has learned that securities of all types are treated as classifiable assets within each of their respective classification schemes. Thus, consistent with these agencies, the Board is broadening the scope of the existing classification regulation to encompass all types of securities as potentially classifiable assets.

As is the case with all other types of classifiable assets, the Board intends that these assets be classified in accordance with the classification categories Substandard, Doubtful, and Loss, as established under the Uniform Agreement and as set forth under 12 CFR 561.16c. This will include rated and unrated debt securities as well as equity securities. In this regard, the Board once again notes its position that noninvestment grade securities, including so-called "junk bonds," should not automatically be classified merely because the security is unrated or has not been rated within the top four investment grades. *See* 52 FR 39091.

As has been demonstrated by the past experience of both the Board and banking agencies, the classification of securities should be no less feasible than the classification of other assets in an institution's portfolio. Moreover, such classification serves safety and soundness goals that reinforce, and are in addition to, other existing regulatory and accounting measures.

The Board expects that institutions exercising their discretionary authority to invest in various types of securities will also have the ability and expertise to continue monitoring their investments and to apply the classification measures wherever appropriate. Similarly, the Board's commitment to specialized education and training of its examination and supervisory staff is ongoing. In addition, ORPOS is now formulating training and examination guidelines and, as necessary, will issue other supervisory memoranda directed to examiners, supervisory personnel, and insured institutions addressing issues arising in connection with classification of these assets. In this regard, many of the comments supporting the Board's proposal raised a number of specific issues and offered various suggestions for classifying securities.

These supporting commenters generally argued that debt securities are the substantive equivalent of commercial loans (except that a different financial vehicle is used) and should thus be classified on that basis using identical criteria. Thus, no classification should be mandated simply because of market price fluctuations or interest-rate risk. Rather, as is the case with loans generally, classification should be based on the credit risk and collectability of the return of interest and principal for which the investor has contracted and which the institution has booked as an asset. Hence, these commenters argued that classification should be based on a review of underlying asset value and the creditworthiness of any obligated party or guarantor, including credit quality and liquidity, performance and collectibility, underwriting standards and internal control documentation, collateral sufficiency and disposibility, as well as the paying capability of the issuer.

One commenter suggested that it would be useful to focus on the "events of default" that are specified in the bond indentures since these accurately reflect what the market considers to be significant credit impairment. In any case, to avoid confusion and misunderstanding, examiners should be directed to use GAAP valuation principles since these focus on whether an asset has been impaired or a liability incurred and the amount of loss that can be reasonably estimated. Finally, several commenters argued that on-site review by examiners should be limited to closely-held, locally issued securities. These commenters request that widely-held issues be reviewed by a centralized, specially qualified examination group. Similar to the Federal bank regulators' "shared credit" review team, this group would promote and ensure uniform treatment for a security throughout the system.

The Board has referred all of these comments to ORPOS for consideration in its ongoing efforts to train examiners on a system-wide basis and address classification issues in guidelines and supervisory memoranda.

2. Scope: Scheduled Items

Section 407 of CEBA, which requires the Board to issue guidelines providing improvements and flexibility in the supervisory process, specifically requires the elimination of the scheduled item system "except as such system relates to 1-to-4 family residences." CEBA, tit. iv, section 407(b)(4). Consistent with this statutory mandate, the Board first proposed in October to delete the scheduled item regulation, contained in 12 CFR 561.15, and to treat those assets generally deemed scheduled items as assets classifiable under § 561.16c. A large number of October commenters expressed agreement with the proposed deletion of scheduled items, with some expressly supporting the Board's stated rationale. Although not proposed in May, a small number of May commenters recommended the deletion of this regulation. No commenters opposed this proposal, although several commenters addressed the classification treatment for individual assets currently falling within the scheduled item regulation.

The Board also proposed to treat loans on one-to-four family, owner occupied dwellings as classifiable assets under § 561.16c. Although the deletion of scheduled items—which would render loans on the security of one-to-four family, owner occupied dwellings "classifiable"—was not proposed until October, the Board had sought specific comment in its May proposal as to whether such one-to-four family loans should be classifiable. Many May commenters preferred scheduled item treatment for such loans, as did a single October commenter.

Those commenters favoring scheduled item treatment reasoned that due to the high concentration of one-to-fours in most institutions' portfolios, the classification of each such loans would impose significant economic and administrative costs. Furthermore, these commenters asserted that appraisal requirements, underwriting standards, loan-to-value ratios, downpayment requirements, and portfolio diversification adequately protect against the risk of nonpayment for these assets, which historically have posed less risk than most other assets. One commenter urged the Board to exclude all loans secured by one-to-four family properties, not merely those that are owner-occupied. Another commenter suggested that even if such loans are excluded from classification, an institution should nevertheless establish a general "basket" reserve as a matter of prudent practice.

A significant number of October and May commenters urged the Board to classify one-to-fours. These commenters argued that a separate classification system (*i.e.*, scheduled items) is unnecessary, is not consistent with the classification practices of the Federal banking agencies, and discourages home financing by requiring a 20 percent minimum regulatory capital increase when such loans constitute scheduled items. One commenter stated that although such loans should be classifiable, classification should only occur in exceptional circumstances. Several other commenters argued that the Board should only require reserves for classified one-to-fours in exceptional circumstances (*e.g.*, where the portfolio presents a risk to the safety and soundness of the institution). Finally, one commenter suggested that examiners be given discretion to either classify one-to-four family loans or treat them as scheduled items, while a second commenter urged that the slow loan regulation's deliquency-based formula be retained if such assets are classified. *See* 12 CFR 561.16.

Consistent with the deletion of scheduled items and the Board's October proposal, the final rule provides that loans on one-to-fours are classifiable under 12 CFR 561.16c. Prior to 1985, the Board's classification scheme evolved primarily to classify owner-occupied home loans and was thus keyed to the timely receipt of periodic payments. Due to industry experience with such loans and other regulatory protections applicable to an institution's mortgage lending, an objective, timeliness-of-payments classification scheme was determined to be well-suited to loans for one-to-four family, owner-occupied homes, traditional consumer loans, and other specified types of lending. The Board drew a distinction, however, between one-to-four family, owner-occupied dwellings and non-owner occupied dwellings, because the source of payments received on a mortgage from an owner-occupant is derived primarily from earnings of a family member. The risk of nonpayment on owner-occupied dwellings was perceived to be diminished because of the substantial costs, both monetary and psychological, imposed by eviction. Non-owner occupied loans, however, were thought to be more risky since cash flows to service these mortgages could be derived from sources that are less reliable over time. 50 FR 53278 (Dec. 31, 1985). Thus, only one-to-four family, owner-occupied home loans were "classified" under the slow loan-scheduled item treatment of §§ 561.15 and 561.16.[4] In the October proposal, the Board proposed to retain the slow loan regulation despite the deletion of scheduled items. Several October commenters expressed support for the Board's retention of this regulation, with one commenter suggesting that the Board reiterate that one-to-fours constituting slow loans are not automatically classified. One commenter recommended that the Board delete the slow loan regulation.

As the Board noted in its October proposal, discussions with representatives of the Federal banking agencies led the Board staff to conclude that these agencies do not classify home mortgage loans in a manner differing appreciably from either the banking agencies' classification policies for assets generally, or from the slow loan-scheduled item treatment set forth in the Board's regulations. Both the Board and the Federal banking agencies look primarily to payment delinquency and cash flow in examining such assets, although the Board's slow loan regulation is arguably the more specific approach. The Board recognized that the greater specificity of its regulations is explained in large measure by the historically large role played by the savings and loan industry with respect to this type of lending, when contrasted with the more limited role the commercial banking industry has played in the home mortgage area.

As the Board also noted in its October proposal, the specific contractual delinquency standards and other factors set forth in the slow loan regulation have proven to be a rational and effective approach to gauging the risk of nonpayment with respect to the savings and loan industry's high volume of home mortgage loans. Moreover, these standards have been employed with relatively minor revision for many years and are understood by the industry and supervisory personnel.

Cognizant of the Congressional intent in CEBA, that the Board establish classification practices consistent with those of the Federal banking agencies that discourage "automatic" classifications and encourage case-by-case discretion when appropriate, the Board is retaining the slow loan regulation (despite the deletion of scheduled items). The Board wishes to reiterate, however, that although it is not requiring an automatic or mandatory classification approach for those assets constituting slow loans, such loans will obviously require close institution and examiner review with a presumption that they should be classified, at a minimum, Substandard unless a different approach is clearly indicated for the particular assets. Thus, in addition to other factors, examiners will continue to apply the slow loan regulation in examining the 1-to-4 family, owner-occupied home loan portfolio in light of the long-recognized value of the regulation's delinquency-based approach, and assets constituting slow loans will be classifiable under § 563.16c.

For reasons stated in the October proposal, the Board is of the view that the complete deletion of scheduled items—including one-to-four family, owner-occupied home loans—is consistent with section 407 of CEBA. Under the existing classification regulation, Substandard assets and scheduled items receive identical treatment: Both *increase* the minimum regulatory capital requirement by 20 percent of the value of such assets. Under today's final rule, and consistent

[4] Owner-occupied home loans are "classified" under a two-step process under Board regulation. Section 561.15 defines "scheduled item" to include slow loans. Section 561.16 defines slow loans, specifically setting forth at what point a loan secured by an owner-occupied home is deemed "slow."

with CEBA, Substandard assets may require general valuation allowances, which count *toward* regulatory capital. Many assets that were formerly scheduled items will likely be classified Substandard under this final rule. To continue to require one-to-four family, owner-occupied home loans to be treated as scheduled items under a cursory reading of section 407 would actually penalize those institutions engaging in such home lending, in light of the stricter, capital-based treatment for scheduled items relative to the final rule's more flexible general allowance treatment for Substandard assets. In the Board's view, such a penalty could discourage home lending and would be inconsistent with the important and long recognized role of this industry to provide home mortgage lending. The Board believes that this could not have been the intent of Congress. Furthermore, a partial retention of the scheduled item regulation would result in a more fragmented classification scheme. Thus, the Board is deleting its scheduled items regulation completely.

Consistent with the deletion of scheduled items, the Board's October proposal broadened the scope of the classification regulation to encompass "slow consumer credit" (currently a scheduled item under § 561.16a), as well as "slow consumer credit classified as a loss," addressed under § 561.16b. This issue elicited no specific comment. Therefore, the scope of the regulation has been broadened as proposed. As the Board stated in October, the Federal banking agencies adopted a uniform policy for the classification of installment credit based on delinquency status in 1980, pursuant to the recommendation of the Federal Financial Institution's Examination Council ("FFIEC"). On November 18, 1980, the Board promulgated §§ 561.16a and 561.16b for the express purpose of implementing this FFIEC-recommended uniform policy. 45 FR 76104 (Nov. 18, 1980). Consequently, there is no inconsistency between the practices of the Board and those of the Federal banking agencies with respect to the classification of consumer credit; all classify consumer credit on the basis of the same delinquency formula.

Thus, §§ 561.16a and 561.16b have been retained in the final rule, notwithstanding the elimination of scheduled items. Through its discussions with representatives of the Federal banking agencies, the Board staff-has learned that, in applying delinquency standards identical to those contained in the §§ 561.16a and 561.16b slow consumer credit regulations, the Federal banking agencies often classify assets exceeding such limits Substandard or Loss, respectively. However, the banking examiners do make exceptions to this practice where the bank being examined can clearly demonstrate that repayment will occur irrespective of delinquency status (*e.g.*, loans well secured by collateral and in the process of collection, or loans supported by valid guaranties or insurance). Because § 561.16a and § 561.16b already expressly provide for consideration of such mitigating factors, this same level of discretion in classifying slow consumer credit is assured.

Real property acquired by an insured institution by foreclosure or deed in lieu of foreclosure (REO) is presently treated as a scheduled item under § 561.15(c). Consistent with the elimination of the scheduled item regulation, the Board proposed in October to treat REO as a classifiable asset under 12 CFR 561.16c.[5] In light of the October proposal's deletion of scheduled items, no October commenters opposed the possible classification of REO. Clearly, such treatment of REO will make the Board's classification scheme more consistent with the practices of the Federal banking agencies.[6] Therefore, the Board adopts this proposal to treat REO as a classifiable asset under the § 561.16c classification scheme.

Under existing § 563.17-2, institutions must appraise REO when it is treated as a scheduled item under § 561.15. Given the deletion of the scheduled items regulation, the Board is amending § 563.17-2 to remove the scheduled item reference and to require an appraisal of each parcel of REO at the time of an institution's acquisition of such property. The fair market value of the REO at the date of acquisition then becomes the carrying value of the property on the books of the institution. As stated in the October proposal, the institution or examiner must recognize additional losses if, subsequent to the date of acquisition, the NRV is less than the fair market value at acquisition of such properties.[7] Such an approach will ensure that losses are appropriately and consistently recognized as required by Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, as issued by the Financial Accounting Standards Board (SFAS No. 5).

In addition to this technical amendment to § 563.17-2, the Board also proposed to require that REO be appraised annually in order to ascertain whether the property declined in value. This requirement was proposed by the Board in the interest of further consistency with the banking agencies.[8]

A significant number of commenters opposed the October proposal's requirement that REO be appraised on an annual basis. These commenters were particularly troubled by the anticipated expense of the requirement, as well as its implicit emphasis on the value and importance of an appraisal. One commenter urged the Board to require an appraisal only every two years, while another urged the Board to permit such appraisals to be conducted by an in-house appraiser. One commenter believed that the frequency of appraisals should be left to the prudent management discretion of each institution. Finally, several October commenters expressly supported the proposed annual appraisal requirement for REO.

Following consideration of the comments, and upon further reflection, the Board has decided to delete from the final regulation an express requirement that REO be formally reappraised on an annual basis. A subsequent reappraisal is not required in order for an institution to conduct its NRV analysis of the property under GAAP and SFAS No. 5, although it could facilitate such an analysis. Thus, the Board will leave such matters to the prudent discretion of the institution's management, subject to review by the examiner and the PSA. However, consistent with the classification practices of some Federal banking agencies, the Board will leave to its examination and supervisory staff the flexibility to require subsequent

[5] In its May proposal, the Board solicited comment on whether REO, which was one-to-four family, owner-occupied real estate at the time it served as collateral for a loan, should continue to be treated as a scheduled item and excluded from classification. While a significant number of May commenters supported continued scheduled item treatment for such loans, a few May commenters urged the Board to classify these assets.

[6] Through discussions with representatives of the Federal banking agencies, Board staff has learned that the banking agencies generally classify REO as Substandard, absent mitigating circumstances such as the fact that the property is subject to an agreement of sale or is generating sufficient income to carry the asset.µ

[7] "Net Realizable Value" is defined in the American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Savings and Loan Associations.

[8] As proposed, a letter from a qualified appraiser certifying that the property had not declined in value from the value stated in the previous appraisal would satisfy the annual appraisal requirement, subject to examiner review and acceptance. If the examiner, however, determined that the letter was not adequate, he or she could require an appraisal prepared in accordance with the appraisal requirements set out at §§ 563.17-1 and 563.17-2. *See* 52 FR 39093.

appraisals of REO on a case-by-case basis at whatever frequency is appropriate under the particular circumstances.

Today's elimination of scheduled items pursuant to section 407 of CEBA also requires that other assets currently encompassed by § 561.15 be classifiable under § 561.16c. Paragraphs (f) through (j) of § 561.15 pertain to deposits in, or loans to, a bank or savings and loan under the control (or in the possession) of supervisory authorities; assets acquired in an exchange for a scheduled item; assets transferred to a service corporation or other corporation in which the insured institution has an investment; amounts invested in personal property; and the unpaid balances of loans secured by, and any contract for the sale of, personal property, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value. Under the proposal, such assets will be classifiable under the § 561.16c classification scheme. As discussed *infra,* ORPOS is developing, and will soon issue, examination and training guidelines addressing the appropriate classification procedures for these assets.

In discussing these other assets currently encompassed by the scheduled item regulation, the Board's October proposal addressed the issue of risk posed by an affiliate. In May and October, the Board proposed that insured institutions must, incident to their self-classification procedures, examine the assets of affiliates in which the thrift has an investment and establish valuation allowances to adequately protect the institution against the risk posed by the affiliate's assets. Several May commenters addressed this issue, of which a majority opposed the proposal. Two of these commenters reiterated their opposition in additional letters submitted on the October proposal.

Commenters argued that it would be inappropriate to apply the classification system to assets of affiliates since the risk to the insured institution, and to the FSLIC, is limited to the institution's equity investment in, and loans to, the affiliate. Moreover, it was argued that the proposal might undermine the purpose of service corporations and operating subsidiaries, which is to allow thrifts to engage in somewhat riskier investments, subject to strict direct investment limitations, but through the protective device of a legally separate corporation. Thus, commenters believed that it is sufficient to review the investments of the insured institutions themselves, classifying those assets where appropriate. They contended that it was not necessary to scrutinize further and possibly reserve against assets of the affiliate, especially since the equity risk investment and service corporation regulations already adequately address this risk to the insured institution.

A few of the commenters offered qualified support for the proposal. Since assets of majority-owned subsidiaries are consolidated with the parent's assets under GAAP, these commenters acknowledged the propriety of subjecting assets of majority-owned subsidiaries to the same classification review applied to assets of the parent. For other affiliates, however, only the carrying value of the thrift's debt and equity investment in the company should be classifiable, along with possibly other off-ledger liabilities accruing to the thrift as a result. These commenters requested that the Board expressly limit the examiner's ability to classify assets of affiliates such that allowances are limited to the aggregate equity, debt, and guaranty investment obligations of the institution to the subsidiary.

Following consideration of the comments submitted on this issue, the Board continues to believe that in order to protect both insured parent institutions and the FSLIC against risk, institutions must, incident to their self-classification procedure, set aside adequate valuation allowances to the extent an affiliate possesses assets posing a risk to such institution. The Board's statutory authority to make examinations of insured institutions includes the power to make necessary examinations of all affiliates, including service corporations and operating subsidiaries.[9] To protect against such risk of loss, the parent thrift should consider assets of affiliates for the purpose of classifying its own aggregate debt and equity investment in an affiliate, and adequate valuation allowances should be established by the insured institution which appropriately reflect the level of risk posed to the parent institution by investments in an affiliate.[10] The Board recognizes that there may be circumstances where an affiliate may pose risk to an insured institution beyond that represented by a parent institution's aggregate investment in an affiliate. The Board contemplates that it and its supervisory staff may issue future directives and guidelines that more specifically address the issue as to when it is necessary to classify the assets of affiliates in addition to the investments by the insured institution itself.

3. Deletion of Scheduled Items: Transitional Capital Rule

Section 407 of CEBA clearly evidences congressional intent that the Board delete the scheduled item regulation, but it is not clear that Congress intended such deletion to lower significantly the minimum regulatory capital requirements for a relatively large number of insured institutions. To the contrary, an analysis of the legislative history of CEBA, to the extent it sheds any light on the purpose of the scheduled item deletion, suggests that the purposes of the Thrift Industry Recovery Guidelines of Title IV were: (a) To ensure that institutions are treated fairly; (b) to reduce regulatory uncertainty; (c) to maximize the long-term viability of the thrift industry; and (d) to maximize such viability at the lowest possible cost to the FSLIC.

As is clear from both the May and October proposals, the Board was concerned with the interaction of both the classification regulation and institutions' overall asset quality with the supervisory need to ensure that adequate capital levels are maintained, and specifically solicited comment on this issue. *See* 52 FR 18369, 18372, 18375 (May 15, 1987); 52 FR 39087, 39094 (Oct. 20, 1987). This concern of the Board to ensure that required capital levels reflect asset quality is consistent with the Board's broader and more comprehensive attempts to promulgate and revise capital-related regulations and generally raise the industry's capital levels. *See, e.g.,* Board Res. No. 86-857, 51 FR 33565 (Sept. 22, 1986) (minimum regulatory capital requirement).

[9] Section 407 of the NHA provides that examiners appointed by the Board and acting on behalf of FSLIC, have the authority to make such examinations of the affairs of all affiliates of insured institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates, and the effect of such relations upon insured institutions. 12 U.S.C. 1730(m)(1). *See also* 12 CFR 545.75(b)(4).

[10] Other modes of investments taking the form of contingent liabilities of the parent, such as guarantees by the parent of an affiliate's obligations, should be dealt with on the same basis as other other off-balance-sheet items. Thus, consistent with the practices of the Federal banking agencies and the broadened scope of the proposal, insured institutions must establish liabilities for off-balance-sheet items in accordance with GAAP as described in SFAS No. 5. SFAS No. 5 provides that an estimated loss shall be accrued when it is probable that an asset has been impaired or a liability incurred, and the amount of loss can be reasonably estimated. Generally, while valuation allowances are established for assets, liabilities are established for off-balance-sheet items. Institutions shall record liabilities for such items when the off-balance-sheet loss becomes probable and estimable.

Research conducted by Board staff indicates that the deletion of scheduled items from the contingency component of the § 563.13 minimum regulatory capital formula, coupled with the final rule's requirement that only general allowances (which are treated as capital) be required for Doubtful assets, would have a significant impact on both the minimum regulatory capital requirements and capital levels of many institutions. In short, minimum regulatory capital requirements for many institutions would decrease while capital levels would increase. Without some further adjustment to the capital requirement, therefore, today's regulation would enhance the apparent capital position of insured institutions even though the quality of their asset portfolios remained unchanged. The Board wishes to avoid such an artificial inflation of capital position.

As discussed in detail below, the Board will permit institutions to reconsider existing specific allowances for Doubtful assets and redesignate such allowances as general allowances in specified instances. This reconsideration, which can potentially increase many institutions' capital levels, is being permitted in light of the statutory mandate that classification practices be consistent with those of the Federal banking agencies. Neither the statute nor its legislative history, however, indicates that it was the intent of Congress to radically affect the required minimum capital levels of insured institutions through the deletion of the scheduled item regulation. Instead, the apparent legislative intent was to ensure that the Board eliminate its bifurcated classification scheme (§§ 561.16c and 561.15) and adopt a unified classification system consistent with the Federal banking agencies.

The scheduled item system was a means of factoring into the minimum capital calculation those assets whose value may not be fully realizable. Although the Federal banking agencies do not maintain a bifurcated classification of assets scheme, these agencies do consider overall asset quality in setting minimum capital levels. Therefore, it would not be consistent with the Federal banking agencies, nor intended by the statute, to permit minimum regulatory capital levels to drop "overnight" as a result of the deletion of scheduled items. In light of the great amount of industry capital posted solely on account of scheduled items, it is inconceivable that Congress could have intended such an effect without any mention in the statute or its legislative history.

For this reason, the Board intends—on an interim basis—to require institutions to continue to include a factor of their reported scheduled items as of September 30, 1987, in calculating their minimum regulatory capital requirement under § 563.13. Specifically, although scheduled items are being deleted, the § 563.13(b)(4) contingency component will include the "scheduled item factor" which is defined under new paragraph (b)(4)(i) of § 563.13 as 20 percent of an insured institution's reported scheduled items as of September 30, 1987.[11] This in effect will freeze the scheduled item element of each institution's contingency component as of September 30, 1987. If any item scheduled as of September 30, 1987, however, has since been classified Loss under § 561.16c and the institution has charged off, or maintains a 100 percent specific allowance for, such an asset, it need not be included in the scheduled item factor. This latter exception is to ensure that Loss assets for which the institution has established a 100 percent specific reserve (or has charged off) are not "double counted." [12]

The Board wishes to emphasize that this continued inclusion of a scheduled item factor in the calculation of minimum regulatory capital is incorporated in the final rule to prevent any sudden, significant reductions in required minimum capital that were not intended by Congress' elimination of scheduled items. It must also be emphasized that the "scheduled item factor" in the final rule is an interim, transitional device to be implemented until the Board completes its review, analysis and consideration of an appropriate revision of the § 563.13 minimum regulatory capital regulation, as well as its review of the seventeen other Board regulations which employ the value currently represented by the term "scheduled items."

The Board believes that the inclusion of a scheduled item factor in the capital regulation is the least restrictive solution to a potentially detrimental complication generated by the statute. The implementation of the scheduled item factor will ensure that all institutions receive uniform treatment that takes into consideration the differing levels of scheduled items in each institution's portfolio. Moreover, as drafted, this factor will not include those scheduled items for which the institution has subsequently established a specific allowance (or has charged off), and thus prevents "double-counting." In ensuring that required capital levels do not experience a sudden, unintended decrease, the Board is ensuring the continued viability of the industry and is reducing the potential risk and cost to the FSLIC. Thus, this transitional measure is consistent with the intent of Title IV of CEBA. ORPOS will issue more detailed instructions on the implementation of the scheduled item factor within 120 days. Interested persons are invited to submit written comments on the scope and substance of these instructions within 60 days following publication of today's final rule in the **Federal Register**.

4. Effect of Classification

Consistent with the October proposal's deletion of scheduled items, as well as the objectives of the May proposal, the Board proposed in May and October no longer to afford scheduled item treatment to Substandard assets. Thus, Substandard assets will only necessitate, in appropriate circumstances, the establishment of general valuation allowances which can be treated as capital.

Many commenters on both the October and May proposals expressed unqualified support for requiring (when appropriate) only general valuation allowances for Substandard assets. A few May commenters recommended that the Board provide institutions with the option either to treat Substandard assets as scheduled items or to apply the general allowance treatment set forth in the proposal. One commenter urged, however, that if the former option is chosen, no additional general or specific valuation allowances should be required. Another May commenter expressed serious reservations about the proposal, specifically expressing concern that the overall effect of the change in treatment for Substandard assets, coupled with the changed treatment for Doubtful assets and the proposed ability of the PSA to increase capital requirements on a case-by-case basis, could have the effect of increasing the capital requirements of many institutions. This commenter favored the retention of the existing treatment of Substandard assets and recommended that these assets be excluded from

[11] This rule becomes effective on December 31, 1987. Therefore, scheduled items are deleted as of that date and an insured institution would not report scheduled items for the fourth quarter of this year. For that reason, the scheduled item factor incorporates scheduled items as of the last quarter for which they were required to be reported, the third quarter of 1987.

[12] Although some of the September 30, 1987, scheduled items will undoubtedly be subsequently classified Substandard or Doubtful under today's final rule in light of the deletion of scheduled items, such assets will only require the establishment of general allowances, which can be treated as capital.

consideration in an examiner's or PSA's establishment of additional general loss allowances.

The Board has determined that it is appropriate at this time to treat Substandard assets as proposed in October, and thus require institutions to establish general valuation allowances for such assets in appropriate circumstances. The Board believes that it would not be prudent to continue to afford scheduled item treatment to such assets in light of the mandated deletion of the latter regulation. Moreover, the proposed treatment of Substandard assets is consistent with the practices of the Federal banking agencies and was broadly supported by commenters to both proposals.

In addition to the proposed general allowance treatment for Substandard assets, the Board proposed. in May and October to require general allowances (not specific valuation allowances as presently required) for Doubtful assets. Thus, general valuation allowances would be required for both Substandard and Doubtful assets where appropriate. A large number of commenters on both proposals expressed support for the Board's overall shift to general allowances. Some believed the proposed approach to be more realistic than the allegedly arbitrary allowance percentages required under the current rule. Another commenter favoring the proposed shift to general allowances noted that requiring institutions to establish specific allowances can result in their unwillingness to take immediate steps to deal with a problem asset due to the adverse effect on capital levels. One commenter suggested that the proposal is an important step in stabilizing the earnings streams of institutions. Another commenter recommended that in setting allowance requirements, examiners and supervisory personnel consider the trend of classified assets over a series of exams, the track record of management in recognizing and addressing asset problems with timely and appropriate action, the quality and stability of earnings, and the presence of factors artificially inflating the institution's balance sheet.

One commenter believed the shift to general allowances to be appropriate, provided guidelines for allowance determinations are implemented. A few May commenters recommended that the Board place limits of 20 percent and 50 percent for Substandard and Doubtful assets, respectively, on the amount of general allowances that can be required, while another commenter suggested that institutions be given the option to established specific or general allowances for assets classified Doubtful. One October commenter expressed serious doubts regarding the overall shift to general allowances, arguing that if this change is implemented quickly, it might lead to a substantial increase in institutions' allowances and have a negative impact on earnings.

Again, the Board has determined to require in appropriate circumstances the establishment of general valuation allowances for assets classified Doubtful, as proposed in May and October. The Board agrees that a more discretionary, general allowance treatment is preferable to a more rigid, specific allowance treatment. More importantly, the proposed general allowance treatment is consistent with the classification practices of the Federal banking agencies, and thus meets the requirements of CEBA. The Board does not believe it prudent at this time to establish maximum general allowance limits of 20 and 50 percent for assets classified Substandard and Doubtful, respectively.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. The examiner will also examine those assets classified and the allowances for loan losses established pursuant to the institution's self-classification. This review, in addition to other factors, will assist the examiner in determining the effectiveness of, and the institution's adherence to, its classification procedures and methods of evaluation and determine the need to require additional valuation allowances.

As was noted in both proposals, the significance of the shift from specific to general valuation allowances is reflected in the minimum capital requirements. In short, specific allowances do not count as regulatory capital, whereas general allowances are included in regulatory capital, consistent with the practices of the Federal banking agencies (although inconsistent with GAAP). *See* 12 CFR 561.13 (definition of regulatory capital). A significant number of commenters on both proposals expressly supported the treatment of general allowances established for Substandard and Doubtful assets as capital, with one October commenter arguing that specific allowances should also be treated as capital. A few commenters strongly opposed treating any valuation allowances as regulatory capital, arguing that allowances represent definite losses of value and possess no more future value than any other type of loss incurred by an institution. These commenters believed that treating such allowances as capital is inconsistent with GAAP and artificially inflates an institution's capital position while masking the deterioration of net worth caused by deteriorating asset quality and poor underwriting.

Although the Board recognizes that treating general allowances as capital is not consistent with GAAP (technically, GAAP does not differentiate valuation allowances in terms of "general" or "specific"), CEBA specifically provides that such allowances shall be included in regulatory capital. *See* CEBA, tit. iv, section 402(a). Currently, the Federal banking agencies treat general allowances as capital for purposes of determining minimum regulatory capital. Accordingly, the Board will continue to permit insured institutions to treat general valuation allowances as regulatory capital.

Commenters also addressed the Board's proposed treatment of Loss assets. The May proposal provided that assets classified Loss would require either a specific allowance in the amount of 100 percent of the portion of the asset so classified, or a charge off of such amount, at the institution's option. The October proposal deleted the option of establishing a 100 percent specific allowance, and instead required that institutions charge off all Loss assets.

A large number of May commenters supported the provision of the May proposal granting institutions the option to either charge off or establish specific allowances, while only two May commenters urged the Board to permit only a charge-off. One May commenter urged the Board to require only general allowances for Loss assets, arguing that GAAP does not require that there be a specific allowance for these assets. Although one October commenter expressly supported the requirement to charge off Loss assets, a small number of other October commenters supported the May approach of giving institutions an option. One trade association commenter recommended that a specific allowance be required when an asset is initially classified Loss, with a charge-off to be required subsequently if the asset has not improved by the next examination. One commenter completely opposed any charge-off requirement.

Upon further consideration, and in light of commenters' suggestions, the Board has decided to incorporate in today's final rule the May proposal's approach of permitting institutions either to charge off Loss assets or to establish a 100 percent specific valuation allowance. Although the Federal banking agencies charge off Loss assets, the establishment of a 100 percent specific allowance has the same net effect on an institution's balance sheet. Thus, providing institutions with an option of treatments is not inconsistent with the classification practices of the Federal banking agencies. Moreover, the establishment of a 100 percent specific reserve will enable an institution to adjust an asset if, in the future, the quality of that asset should improve.

The October proposal provided that valuation allowances for assets are to be established in accordance with GAAP. Several May commenters and a significant number of October commenters favored the use of GAAP in establishing loss allowances. One such commenter urged the Board to require the use of "Bank GAAP," which would not require the discounting of future cash flows in its NRV calculation. A few October commenters urged the Board to emphasize in the final rule that GAAP is to be used in valuing and establishing loss allowances for classified assets.

The Board notes that it has implemented the CEBA's directives by incorporating GAAP into the classification system adopted today. Moreover, as it has noted in a separate final rule governing troubled debt restructuring, institutions will be required to apply "Thrift GAAP," as set forth in the *AICPA's Audit and Accounting Guide for Savings and Loan Associations. See* Board Res. No. 87-1294, to be published in the final rules section of the **Federal Register.**

5. Examiner/PSA Discretion.

The issue of greatest concern to commenters was the nature and degree of examiner/PSA discretion in classifying assets and in the setting of requisite valuation allowances. Approximately half of the commenters on each of the two proposals expressed serious concerns and reservations about the nature and degree of discretion afforded examiners and supervisory personnel. Generally, commenters felt this need to be particularly acute in view of what they alleged to be past inconsistency, arbitrariness, negligence, and system-wide nonuniformity in the asset classification process. These commenters agreed that although the Federal banking agencies' asset classification practices rely in large measure on the informed exercise of discretion, the Board's examination and supervisory staff lack the necessary level of skill and experience, and evidence a clear need for further training before a comparable level of informed discretion can realistically be expected. Thus, many commenters suggested that the Board adopt written classification and allowance guidelines to address these concerns.

Many commenters also suggested that the Board provide a procedure establishing an appeal from the classification and allowance determinations of examiners and PSAs. One commenter suggested that merely providing PSA review of examiner determinations is not an adequate review mechanism since it is perceived that the PSA will be reluctant to reverse an examiner's determination. This appropriate appeal process, it is recommended, should provide for personal or written input from the affected institution and could provide for an independent panel to review such determinations. More importantly, many May and October commenters stressed the need for uniformity and the need for the Board to reiterate that an examiner's determinations are not effective until reviewed by the PSA or his designee.

A few commenters offered other, more varied recommendations. Several commenters recommended that examiners place greater emphasis on an institution's internal controls, while another recommended that the Board not permit PSAs or examiners to modify the classifications or allowance levels approved by an institution's independent auditors. One trade association commenter requested that the final rule provide for a right of appeal to the Board for disputed classification and allowance determinations. A significant number of October commenters suggested that the Board require examiners to discuss classification and allowance determinations with the institution's management. Two commenters recommended that examiners should consult with appropriate state regulators regarding classification matters. Finally, a small number of May and October commenters praised the proposals' objectives of encouraging the use of broader discretion, judgment, and flexibility without stating objections or suggested revisions.

The Board clearly recognizes that in order for a more discretionary classification system to succeed, both examination and supervisory personnel must be adequately trained to ensure the application of informed discretion and sound judgment. Although the Board does not believe that the existing classification scheme encourages arbitrariness and negligence as alleged by some commenters, the Board recognizes that nonuniform treatment must be eliminated if discovered, and that its classification scheme cannot be implemented successfully absent system-wide training and uniform guidance as to both asset classification and the establishment of appropriate valuation allowances.

For this reason, the Board and ORPOS have begun development of an ambitious training program incorporating uniform instructional materials, field training, and examination guidelines. Specifically, ORPOS and the Federal Home Loan Bank System ("Bank System") Office of Education are developing Training Seminars for all Bank System supervisory and examination personnel regarding major CEBA regulations. This training, which will commence in each of the twelve Federal Home Loan Bank districts during the first quarter of 1988, will focus on describing the major provisions of the CEBA regulations, comparing the new regulations with the previous requirements, describing key issues, and providing answers to critical questions arising from the application of the new regulations. At the completion of this training, ORPOS anticipates that participants will have gained a good working understanding of the new requirements that can be applied on a consistent, uniform basis throughout the system.

Moreover, ORPOS is developing a Regulatory Handbook setting forth programs and procedures addressing major issues affecting the safety and soundness of thrift institutions. This handbook is being designed to promote system-wide consistency and to address the general level of risk in an institution. ORPOS anticipates that this handbook will be completed during 1988.

The Board wishes to reiterate that, under today's final rule, an examiner's classification or valuation allowance determinations will *not* be effective until reviewed and approved by the PSA or a designee. Moreover, section 407 of CEBA has mandated that the Board establish an informal review procedure under which an insured institution may obtain a review by the PSA (and an independent arbiter appointed by the PSA) of any decision by an examiner or supervisory agent with respect to the classification of any loan or any allowance requirement. *See* CEBA, tit. iv, section 407(d). The Board intends to implement this section of the CEBA in the near future. The Board believes that its implementation, in conjunction with the aforementioned review before an examiner's determination becomes effective, will provide institutions with a meaningful and appropriate appeal procedure. The Board does not believe that a right of appeal to the Board itself is either necessary or feasible. Moreover, CEBA expressly provides that the appeal process outlined under section 407 *cannot* be subject to review by the Board. *Id.* The Board wishes to reiterate that under either "appeal" process, institutions have the opportunity to submit any and all relevant information to the examiner, the PSA, the PSA's designee, or an appointed independent arbiter.

6. Case-by-Case Capital Requirement

In the May proposal, the Board proposed to provide the PSA with the ability to increase an institution's minimum regulatory capital requirement on a case-by-case basis based upon its overall asset quality. Because section 406 of CEBA authorized the Board to propose a case-by-case minimum capital regulation, which the Board did in October (Board Res. No. 87-1045), this provision was dropped from the October classification proposal since any reference in the classification proposal would appear duplicative.

Twenty-six comments addressed the additional capital proposal. None of the commenters expressed support for this provision as set forth in the May proposal. Much of the opposition was quite strenuous and focused on the lack of guidance, standards, and procedures to be used in such determinations by the PSA based upon his or her subjective evaluation of an institution's portfolio.

Given that this particular proposal was deleted from the October classification of assets proposal, these aforementioned capital comments have been considered by the Board in its consideration of comments submitted in response to the case-by-case regulatory capital regulation. The Board is issuing a final rule on that proposal, which addresses these comments, as part of its package of regulations implementing CEBA.

7. Special Mention Category

In an effort to ensure that the Board's asset classification scheme is consistent with those of the Federal banking agencies, the October proposal sought to introduce a new "Special Mention" designation to identify assets that do not yet warrant adverse classification but nonetheless possess credit deficiencies or potential weakness deserving management's close attention. As described in new § 561.16c, Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

A significant number of May and October commenters supported this proposal, noting that this category could serve as a reference point for examiners and management and could serve to prevent institutions from delaying action until a serious risk of nonpayment or asset weakness develops. Two commenters requested clarification as to whether the Board would require quarterly reporting of these assets and whether such reports would be confidential, as is the case with classified assets.

Given the overwhelming support, the Board has decided to implement the Special Mention category as proposed in October. As proposed and now finally adopted, new § 561.16c(c)(3) does not require quarterly reporting of Special Mention assets. Should the Board, based on further supervisory experience, subsequently decide to require reporting of these assets in addition to the aggregate totals of assets classified by the institution in each of the three asset classification categories, the Board will direct that this be included in the same confidential section of Schedule K of the quarterly report as the entries for Substandard, Doubtful, and Loss assets. In the meantime, examiners will have access to this information and supporting internal documentation in the course of any examination.

8. Between-Examination Reclassifications

A significant number of commenters on both proposals noted that neither proposal delineated a provision or policy for the removal of an asset from classified status between examinations or for the upgrading of an asset from one classification category to another. One commenter recommended that the final rule set forth specific guidelines providing institutions with guidance on reclassifications between examinations. A few commenters suggested that such an upgrading procedure be incorporated into the quarterly reporting requirement. It was suggested that the institution indicate any newly classified loans and any modifications to loans already classified in the confidential section of the quarterly report. Any upgrading or removal would be accompanied by an explanation to be included in the report. The regulation would provide that, absent supervisory objection within 30 to 60 days, the revised classification would be effective. If there was supervisory objection, the institution's management would be given the opportunity to provide input.

In response to these comments, the Board wishes to clarify that an integral element of the final rule's self-classification requirement under § 561.16c(c)(2) is the responsibility of an institution to modify classification and allowance determinations as appropriate between examinations, if circumstances warrant (both "downgrades" and "upgrades"). In exercising this responsibility, it is incumbent upon institutions to ensure that any and all modifications are reasonable and conducted in good faith. If at the next examination the examiner and PSA determine that an institution has engaged in a pattern or practice of unreasonable or bad faith modifications, the PSA may suspend an institution's ability to upgrade classifications between examinations (without relieving an institution of its continuing duty to self classify). This authority under § 561.16c to suspend an institution's ability to upgrade a classification between examinations is in addition to any other existing supervisory or formal enforcement actions that the Board or its agents may use to address any regulatory violation or unsafe and unsound practice in connection with the institution's conduct in modifying classifications between examinations. Consistent with this clarification, the Board has amended the proposed § 561.16c(c)(3) reporting requirement to promote effective supervisory monitoring.

9. Classifying Restructured Loans

In the October proposal, the Board stated its specific intention that restructured loans be classifiable, consistent with section 402 of CEBA and with the practices of the Federal banking agencies. Section 402 of CEBA amends the HOLA and the NHA to provide that, in establishing an asset classification system consistent with the classification practices of the Federal banking agencies, the Board shall provide that the PSA may determine whether to classify a restructured loan that is nonperforming, or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms. It must be noted that in a separate resolution the Board is implementing CEBA's requirement that the Board prescribe uniform accounting standards, and is also adopting a detailed policy statement that, pursuant to the statute, authorizes and discusses the use of SFAS No. 5 and SFAS No. 15 in the restructuring of troubled debt ("TDR"). These relevant resolutions were adopted by the Board and are to be published in the final rules section of the **Federal Register.**

A small number of commenters addressed the October proposal's discussion of the classification of restructured loans. One commenter suggested that the Board not permit classification of a restructured loan unless such loan is not in compliance with the modified terms, while another recommended that the Board ensure that a policy of routinely classifying restructured loans is not adopted. One commenter believed that the proposal contained an inference that restructured loans are more classifiable. Finally, one commenter urged the Board to address more clearly how an asset classified prior to restructuring is to be treated after restructuring.

In response to the comments, the Board wishes to dispel any misunderstanding regarding the classification of loans that have been restructured. The Board does not intend that loans be routinely classified simply because they have been restructured. Nor are restructured loans exempt from the classification system. Once loans have been restructured in accordance with the detailed TDR policy statement separately adopted today by the Board they are classifiable on the same basis as other types of loans. As stated in the October proposal, the Board recognizes that some risk of nonpayment may remain after a troubled debt restructuring. To the extent that a risk of nonpayment or collectibility questions remain after restructuring or become manifest during the pendency of the loan, examiners will conduct a credit analysis to determine whether the restructured loan should be classified and whether any valuation allowances should be established. Such restructured loans will be classifiable under § 561.16c after consideration has been given to the existence of other types of collateral or other reliable means of repayment. The Board believes this approach to be consistent with the Federal banking agencies' classification approach to restructured loans.

10. Technical Questions

Currently, Doubtful assets require the establishment of specific loss allowances. Under today's rule, Doubtful assets will instead require establishment of general allowances. A specific issue on which the Board solicited particular comment was whether the Board should deem existing specific allowances for such assets as general valuation allowances after the effective date of the final rule. (In May, the Board proposed to treat such allowances as general allowances; in October the Board took no position but solicited comment.) A large number of commenters on both the May and October proposals supported treating existing specific allowances established for Doubtful assets as general allowances, arguing that such treatment would avoid "grandfathering" of specific valuation allowances and the inherent problems created by dual treatment. One commenter noted that these "new" general allowances could always be reconsidered at the institution's next exam. A few commenters favored permitting each institution to decide how such existing allowances should be treated, while another urged that these existing reserves not be redesignated until each institution's next examination. Additionally, one commenter who generally favored the redesignation recommended that institutions not currently meeting their minimum regulatory capital requirement be required to obtain PSA approval prior to any redesignation.

The Board has determined to permit insured institutions discretion to review existing Doubtful assets, to evaluate carefully the continuing need for existing specific allowances (that is, to determine whether all or some portion of all assets previously classified Doubtful should be reclassified as Loss), and to redesignate any existing specific allowances for Doubtful assets as general allowances if prudent. This possible reconsideration and redesignation of existing specific allowances as general allowances is permissible if, pursuant to its next examination, the assets for which these allowances were established are reviewed, any additional losses under GAAP are recognized, and specific or general allowances have been established under § 561.16c, as appropriate.

If this reevaluation and additional loss recognition under GAAP is conducted by the institution itself or is done as part of an institution's independent annual audit, however, the insured institution will be required to provide the PSA with a written notification of its plan to redesignate some or all of these existing specific allowances as general allowances. In this notification, an institution must clearly identify the effect on regulatory capital, aggregate classifications, and aggregate general and specific valuation allowances resulting from its redesignation of some or all of the existing specific allowances for Doubtful assets. Institutions conducting their own reevaluation of assets and existing specific allowances must also maintain, for examiner review, complete files evidencing that an appropriate reevaluation procedure has been conducted on an asset-by-asset basis. This notification and possible redesignation may receive close PSA review where an institution is currently not meeting its regulatory capital requirement or is currently subject to formal enforcement action.

In both the May and October proposals, the Board sought to delete the existing rule's provision requiring automatic classification of assets with deficient appraisals. The Board received many comments in response to the May proposal supporting the Board's intention to eliminate the mandatory classification of an asset where a required appraisal is absent or not in conformance with appraisal requirements. This support for the deletion of automatic classifications was reiterated by an additional seven October commenters. No comments were received in opposition to the proposal.

Commenters also generally praised the Board's recognition that gauging the risk of nonpayment of an asset can depend on a variety of factors other than appraisals. The experience of these commenters confirmed that the present system, which may conflict with GAAP principles, can sometimes result in arbitrary classifications of assets that are in fact still performing and adequately underwritten.

A number of commenters on both proposals expressed other appraisal-related concerns. Although a few commenters urged the Board to reiterate that appraisals are only one factor to consider in classification, one trade association commenter believed that the Board was mistakenly de-emphasizing the value of an appraisal. Another commenter urged the Board to provide additional examples of non-appraisal factors for examiner consideration. Other commenters recommended that the Board generally restrict the conditions under which reappraisals of real estate are required, and stress the importance of the borrower's ability to repay (as opposed to an over-reliance on collateral value).

In light of broad commenter support, and for reasons stated in both the May and October proposals, the Board is deleting the existing rule's requirement that certain assets be automatically classified on the basis of nonexistent, deficient, or nonconforming appraisals. Moreover, the Board wishes to reiterate that, while a properly conducted appraisal is an important factor in an examiner's evaluation of an asset, risk of nonpayment is dependent upon several factors, as discussed *infra* under "Description of the Final Rule."

D. Description of the Final Rule

As stated in both the May and October proposals, the Board believes that the existing classification system could be construed to constrain unduly the exercise of judgment, flexibility, and discretion by both supervisory agents and examiners. As written, certain portions of the provisions bearing on asset classification rely heavily on appraisals of collateral.

In issuing today's final rule, the Board wishes to reiterate that it continues to believe that an appraisal of collateral that follows accepted appraisal methodology is an important factor in an examiner's evaluation of assets in an insured institution's portfolio. In assessing the risk of nonpayment, however, other factors are important. These factors include the overall risk involved in the project or business being financed; the nature and degree of the collateral security; the character, capacity, financial responsibility, and record of the borrower; and the feasibility and probability of orderly liquidation of the asset. Of necessity, the institution's or the examiner's arrival at a valuation based on all the relevant factors will involve the exercise of some subjective judgment. Although the Board recognizes the importance of an appraisal, it believes the value of the collateral should not be the sole determinant of asset valuation where, for example, the borrower has other resources for repayment against which the lender has legal recourse. This approach is consistent with the classification practices of the Federal banking agencies.

The approach implicit in today's final rule—*i.e.*, the introduction of greater flexibility into the classification process—is consistent with the practices of the Federal banking agencies. For reasons outlined in the October proposal, the Board does not believe that the examiner's exercise of discretion and judgment will result in arbitrary valuation.

Today's final rule continues to employ the existing classification categories Substandard, Doubtful, and Loss, as outlined under § 561.16c(b). As under the existing rule, a portion of an asset may remain unclassified, or may be classified under a different category than the remainder of the asset. The final rule also retains the factors used to determine the proper category or categories to which an asset should be classified, except in cases of certain "automatic" classifications related to appraisal deficiencies. 12 CFR 571.1a. However, the final rule amends both the classification rule and policy statement to change the effect of classification for the three asset classification categories as outlined below.

Today's rule amends §§ 561.16c(d), 571.1a(d), and 561.13 to provide that assets classified Substandard will no longer receive scheduled item treatment, in light of the final rule's deletion of the § 561.15 scheduled item regulation. Moreover, assets classified Doubtful will no longer require the establishment of specific reserves. The final rule provides that, for assets classified Substandard or Doubtful, the examiner is authorized to direct the establishment of general allowances for loan losses based on the assets classified and the overall quality of the asset portfolio. These valuation allowances must be established in accordance with GAAP. Moreover, today's final rule amends §§ 561.16c(d) and 571.1a(d) to provide that, in cases where an examiner has classified an asset or a portion of an asset loss, the institution is required either to establish specific allowances of 100 percent of the amount so classified, or to charge off such amount. These specific allowances or charge-offs must be established in accordance with GAAP.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. The examiner will also examine those assets classified and the allowances for loan losses established pursuant to the institution's self-classification. This, in addition to consideration of other factors, will assist the examiner in determining the effectiveness of, and the institution's adherence to, its classification procedures and methods of loan evaluation and determine the need, if any, to require additional valuation allowances.

This classification and valuation allowance scheme is consistent with both the requirements of CEBA and the classification practices of the Federal banking agencies. Under today's final rule, once assets have been classified Substandard or Doubtful, the thrift examiner will review the adequacy of the insured institution's aggregate general valuation allowances and, if necessary, direct the institution to increase these aggregate allowances. Although the establishment of these allowances would reduce GAAP capital, the institution can include general valuation allowances in determining its regulatory capital, as is permitted by the Federal banking regulators and as is required under section 402 of CEBA. Thus, under today's final rule, an increase in general allowances will lead to a different capital result than would the current allocation of specific allowances for Doubtful items, since specific valuation allowances for loan losses do not qualify as regulatory capital. *See* 12 CFR 561.13(a).[13]

As discussed under the Response to Comments, the Board sought in its May proposal to amend § 563.13, governing regulatory capital, to provide for the imposition of an increased minimum capital requirement on the basis of the quality of an institution's overall portfolio, consistent with the practices of the Federal banking agencies. For reasons stated *supra*, the Board has deleted this provision from the final rule, consistent with the October proposal. The Board is revising § 563.13, however, to incorporate a "scheduled item factor" as described under "C. Response to Comments."

The amendments contained in today's final rule indicate that GAAP is to be applied in setting the amount of valuation allowances for loan losses. The Board believes that such an approach is consistent with the requirements of CEBA and the Board's goal of achieving flexibility in the administration of its classification system.[14]

In order to comply with CEBA's mandate that the Board implement an asset classification scheme that is consistent with the classification practices of the Federal banking agencies, today's final rule amends § 561.16c to incorporate the "Special Mention" category proposed in October. This category is meant to include those assets that do not justify a classification of Substandard, but do constitute undue and unwarranted credit risks to the institution.

The Board believes that the adoption of this Special Mention category under § 561.16c(e) will promote, through self-classification, the identification and monitoring of those assets that have potential weaknesses that may, if not checked or corrected, weaken the asset or inadequately protect the institution's financial position at some future date.

[13] The Board is also revising § 571.la(a) to clarify that the eight Substandard characteristics set forth in this paragraph do not constitute an exclusive listing of such possible characteristics.

[14] It should be noted that the Board continues to believe that factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate allowances for loan losses when the probability of a full insurance payment is substantial. See 12 CFR 571.1a(b)(3).

Today's final rule also amends § 561.16c to require that insured institutions independently review their asset portfolios, classify their assets, and set aside appropriate valuation allowances on the basis of such self-classification. This amendment merely sets forth as a regulatory requirement what is commonly regarded as a prudent institutional management policy. This process of self-classification is already widely observed throughout the banking industry and is thus consistent with CEBA.[15]

Pursuant to the Board's authority, as operating head of the FSLIC, to prescribe the manner in which an insured institution reports its affairs to the FSLIC, 12 CFR 563.18, the Board is requiring that an institution reflect its self-classification of assets in its quarterly reports to the Board, in the form of aggregate totals of assets in each of the three asset classification categories. This information is to remain confidential. As reflected in § 561.16c(c)(2), an institution's failure to classify its assets reasonably and in good faith, and to establish appropriate valuation allowances, will be a factor considered by the examiner and supervisory personnel in determining any necessary valuation allowances. Such reports will be reviewed by supervisory personnel to ensure that they accurately reflect an institution's self-classification and reflect a self-classification procedure performed reasonably and in good faith. Although these reports are subject to § 563.18, and may be reviewed to ensure consistency with safe and sound practice, the Board again emphasizes that it is not its intention to penalize an institution for good faith efforts to self-classify.

Under today's final rule, the Principal Supervisory Agent retains primary authority over the examiner's classification of an asset, the examiner's directives with respect to the appropriate amount of valuation allowances to be established, and the acceptability of an appraisal made in connection with the re-evaluation of an asset. As set forth in § 561.16c(f)(4), this authority may be delegated to a Supervisory Agent. It should also be noted that the final rule substitutes a delegation to ORPOS for the previous delegation to the Board's former Office of Examination and Supervision ("OES"), although this amendment is not intended to circumscribe the Office of General Counsel's authority to issue legal interpretations with respect to the classification regulations. *See* Board Res. No. 86–755, 51 FR 27165, 27167 (July 24, 1986) (codified at 12 CFR 522.90) (ORPOS succeeds to all delegations of authority from Board to OES).

Today's final rule also amends § 563.17–2 pertaining to the re-evaluation of assets. This amendment deletes those provisions of § 563.17–2(b) requiring "automatic" or mandatory classification where the appraisal is absent or does not conform with the Board's appraisal requirements, or where the assumptions underlying the appraisal are demonstrably incorrect. The Board is deleting this automatic classification mechanism to provide examiners with sufficient flexibility and discretion to consider other factors relevant to assessing risk of nonpayment, and to promote consistency between the Board's classification of assets scheme and the classification practices of the Federal banking agencies. This is also consistent with GAAP and the Board's intention to afford examiners adequate discretion to determine the necessity of, and appropriate reliance on, a reappraisal, subject to review by the PSA.

Section 402 of CEBA amends the HOLA and the NHA to provide that, in establishing an asset classification system consistent with the classification practices of the Federal banking agencies, the Board shall provide that the PSA may determine whether to classify a restructured loan that is nonperforming, or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms. In broadening the scope of the § 561.16c classification regulation to encompass all assets or portions thereof held by an insured institution, the Board has concluded that restructured loans are classifiable, consistent with section 402 of CEBA and with the practices of the Federal banking agencies. The Board recognizes that some risk of nonpayment may remain after a troubled debt restructuring. To the extent that a risk of nonpayment or collectibility questions remain after restructuring or become manifest during the pendency of the loan, examiners will conduct a credit analysis to determine whether the restructured loan should be classified and whether any valuation allowances should be established. Such restructured loans are classifiable under § 561.16c after consideration has been given to the existence of other types of collateral or other reliable means of repayment. As a result of staff discussions with Federal banking agency representatives, the Board believes this approach to be consistent with the Federal banking agencies' classification approach to restructured loans.

E. Technical Questions

In light of the proposal's deletion of the requirement of specific valuation allowances for assets classified Doubtful, questions arise as to the appropriate treatment of existing specific valuation allowances for assets classified Doubtful under the current regulation. The Board has resolved this issue by permitting insured institutions to redesignate existing specific allowances as general allowances in one of three ways: (1) After review by all examiner as part of its next examination after the effective date of this rule; (2) in connection with its annual independent audit; (3) after appropriate self-classification. If the institution redesignates loan loss allowances after either independent audit or self-classification, however, it is required to notify its PSA of the redesignation and its effect of regulatory capital as described in Section C, above.

In conclusion, the Board believes that today's final rule will be instrumental in reducing the risk exposure of both insured institutions and the FSLIC insurance fund. Identification of problem assets enables the FSLIC, through the examination process, to require institutions to maintain adequate allowances for loan losses to help insulate the FSLIC from loss. The classification process can serve a second, invaluable function. It can reveal lending patterns or deficiencies in portfolio administration that are consistently causing collectibility problems for an institution. Once the examiner identifies such patterns or deficiencies, his or her discussions with management can focus on avoiding practices that have resulted in the necessity for classifying existing assets. In this way, the classification process can serve a preventative, as well as a protective, function.

Effective Date

The Board is adopting this regulation effective December 31, 1987. Thus, these final rules will apply to any evaluation or examination of assets done for any report due on or after December 31, 1987. This would encompass evaluations of assets that are part of the 1987 annual or fourth-quarterly reports, even though asset evaluations necessary for these reports may have commenced and are currently ongoing. While the

[15] This self-classification and reporting requirement should not pose a particular problem for insured institutions using GAAP financial reporting, since the proposed method of setting aside allowances for loan losses is generally consistent with GAAP.

Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than 30 days before its effective date, this delayed effective date does not apply when "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3) (1987). The "good cause" exception to the APA's requirement has been found to apply when Congress prescribes an effective date by statute. CEBA requires finalization of this regulation no later than 150 days following enactment of the CEBA. CEBA, Title IV, section 402(d). The Board therefore finds that good cause exists for dispensing with the delayed effective date provision of the APA.

Final Regulatory Flexibility Analysis

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

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

2. *Issues raised by comments and agency assessment and response.* These issues and the agency's response are set forth above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

The Board believes that this final rule on classification of assets will not have a disparate effect on small entities. This final rule establishes an asset classification scheme consistent with the practices of the Federal banking agencies, consistent with the clear mandate of CEBA. The legislative history of the statute evidences Congressional intent that in adopting such a system, uniform, consistent classification practices would result for all institutions. To the extent that small entities engage to a greater degree than larger insured institutions in one-to-four family, owner-occupied mortgage lending, the impact of the final rule will be liberalizing since the classification scheme will no longer provide for an automatic "classification" of such assets as scheduled items.

List of Subjects in 12 CFR Parts 561, 563, and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561, 563, and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 1, 48 Stat. 128, as amended (12 U.S.C. 1461 *et seq.*); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.15 [Removed and Reserved]

2. Remove and reserve § 561.15.

3. Amend § 561.16c by revising paragraphs (a), (c), and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 561.16c. Classification of assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution.

* * * * *

(c) *Implementation of classification system.* (1) In connection with examinations of an insured institution or its affiliates, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each insured institution shall classify its own assets on a regular basis. In addition to any other remedies available to the Board under applicable statutes and regulations, an institution's failure to set aside prudent valuation allowances, or to monitor portfolio risk with an effective self-classification procedure, will be considered by the examiner or the Principal Supervisory Agent in determining the amount of valuation allowances to be established by such institution.

(3) In its quarterly reports to the Corporation, each insured institution shall include aggregate totals of assets that the institution has classified in each of the three asset classification categories, and the aggregate general and specific valuation allowances established. To the extent an insured institution's specific valuation allowances have decreased from the previous reporting period, such institution shall identify the amount of the decrease attributable to an institution's between-examination upgrading of classifications.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c, an examiner has classified one or more assets or portions thereof Substandard or Doubtful and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner, subject to approval of the Principal Supervisory Agent.

(2) When, pursuant to § 561.16c, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall either establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Adequate valuation allowances consistent with generally accepted accounting principles shall be established for classified assets. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

(e) *Assets deserving "Special Mention".* Assets that do not currently expose an insured institution to a sufficient degree of risk to warrant classification under paragraph (b) of this section but do possess credit deficiencies or potential weaknesses deserving management's close attention shall be designated "Special Mention" by either the institution or the examiner. Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

(f) *Delegations and interpretations.* (1) The Principal Supervisory Agent may approve, disapprove, or modify any classifications of assets made pursuant to § 561.16c and any amounts of allowances for loan losses established by insured institutions or required by examiners pursuant to § 561.16c.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent may approve or reject the appraisal and any valuation related to it.

(3) The Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System shall, from time to time, issue supervisory interpretations and other informational material regarding classification of assets. *See* § 571.1a of this subchapter containing the Corporation's statement of policy on the classification of assets.

(4) The Principal Supervisory Agent may delegate functions assigned under § 561.16c to a Supervisory Agent in the same Federal Home Loan Bank district.

PART 563—OPERATIONS

4. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. Amend § 563.13 by revising paragraph (b)(4)(i)(D) to read as follows; by adding new paragraph (b)(4)(i)(F) to read as follows; and by revising paragraph (b)(4)(ii)(B) to read as follows:

§ 563.13 Regulatory capital requirement.

* * * * *

(b) *Minimum required amount.* * * *

(4) *Calculation of contingency component.*—(i) *Definitions.* * * *

(D) "Fixed reserve elements" means scheduled item factor, recourse liabilities, and standby letters of credit.

* * * * *

(F) "Scheduled item factor" means twenty (20) percent of an insured institution's reported scheduled items as of September 30, 1987. This factor does not include scheduled items as of the above date that have since been classified Loss under § 561.16c and which the institution has charged off or for which it maintains a one hundred (100) percent specific valuation allowance.

(ii) *Calculation method.* * * *

(B) An insured institution's scheduled item factor;

* * * * *

6. Amend § 563.17–2 by revising paragraphs (a) and (b) to read as follows:

§ 563.17-2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the time of the institution's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The Principal Supervisory Agent or his designee may require subsequent appraisals if, in his discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be retained in the institution's records.

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate may be based on an appraisal as provided by § 563.17–1, and re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. When an appraisal is required, it shall conform with § 563.17–1a of the Board's regulations.

* * * * *

PART 571—STATEMENTS OF POLICY

7. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

8. Amend § 571.1a by revising the last sentence of the introductory text of paragraph (a); and by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 571.1a Classification of assets.

* * * * *

(a) *Substandard.* * * * Assets classified Substandard may exhibit one or more of the following characteristics:

* * * * *

(b) *Doubtful.* * * *

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors that may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. An entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, if there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the institution is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off or reserving all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c of this subchapter, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate; the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 561.16c of this subchapter, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Allowances provided on classified assets should be established consistent with Generally Accepted Accounting Principles. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-30073 Filed 12-31-87: 8:45 am]
BILLING CODE 6720-01-M

12 CFR Part 563

[No. 87-1297]

Capital Forbearance

Date: December 22, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting regulations to implement section 404 of the Competitive Equality Banking Act of 1987, which provides that the Board shall establish a program of capital forbearance for well-managed, viable Federal associations and FSLIC-insured institutions if certain requirements are met. The regulation sets forth the requirements that institutions must meet to obtain forbearance under this program, the procedures for requesting forbearance, the procedures under which an applicant's Principal Supervisory Agent ("PSA") will consider such requests, the effect of forbearance, and the termination of a grant of forbearance.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael P. Scott, 202-778-2516, Policy Analyst, or Kevin O'Connell, 202-778-2615, Supervision, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System; Catherine McFadden, 202-377-6639, Attorney, or Jerome L. Edelstein, 202-377-7057, Acting Deputy Director, Regulations and Legislation Division, Office of General Counsel; C. Dawn Causey, 202-653-2624, Attorney, or Marianne E. Roche, 202-653-2609, Deputy Director, Office of Enforcement; Richard Brown, 202-377-6795, Economist, or Joseph A. McKenzie, 202-377-6763, Director, Policy Analysis Division, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"), provides that the Board, as operating head of the FSLIC, adopt capital recovery regulations for regulating and supervising troubled but well-managed and viable Federal associations and insured institutions in a manner that will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation.

CEBA describes certain circumstances under which the Board is to extend capital forbearance. The Board is to consider whether a well-managed institution's weak capital condition is primarily the result of losses on loans or participations in loans and whether: (1) The value of the collateral for such loans has been adversely affected by economic conditions in an economically depressed region; or (2) the institution is a minority institution having 50 percent or more of its loan assets as minority loans and 50 percent or more of its originated loans as construction or permanent loans for one-to-four family residences. In addition, the Board is to determine whether an institution's weak capital condition is the result of imprudent operating practices. Furthermore, when granting capital forbearance, the Board must approve a capital recovery plan submitted by the institution, and the institution must adhere to that plan and submit regular and complete reports on its progress in meeting the goals set forth in the plan.

Generally, CEBA requires that the capital recovery regulations apply to institutions with regulatory capital of at least 0.5 percent. CEBA also provides the Board with discretionary authority to extend capital forbearance to institutions with regulatory capital of less than 0.5 percent. In making capital forbearance available to such an institution, the Board is to determine whether the institution satisfies the same capital forbearance requirements that pertain to institutions with regulatory capital of 0.5 percent or more and, in addition, whether the institution has reasonable and demonstrable prospects for returning to a satisfactory capital level.

Pursuant to section 416 of CEBA, capital forbearance authority under the statute expires when the financing corporation established under section 302 completes all net new borrowing authority.

On October 5, 1987, the Board proposed a capital forbearance regulation to implement its statutory authority under CEBA. *See* 52 FR 39098 (Oct. 20, 1987). Public hearings on the proposal were held on November 3 and 4, 1987, and written comments were solicited by the Board. The comment period ended on November 19, 1987.

The Board invited commenters and participants in the hearing to address all aspects of the proposal and, in addition, specifically solicited comment with regard to several issues including: (1) The method of identifying economically depressed regions; (2) the advisability of defining more specifically the statutory standards that an institution must meet in order to qualify for forbearance and how such standards should be defined; (3) whether forbearance should be terminated when economic conditions in the relevant geographical region improve; and (4) whether a process should be established for review or appeal of forbearance determinations made by PSAs.

The Board received a total of 31 comments in response to the proposal including written comments and comments expressed at the public hearings. Eighteen expressed general support for the proposal; two expressed opposition; and eleven indicated no position about the proposal generally. Many of the commenters suggested various modifications to the proposal.

Of the comments received, fifteen came from thrift institutions, eleven from trade organizations, which for the most part were national and state thrift organizations, four from law firms that represent thrift institutions, and one from a government agency.

Although the comment period expired on November 19, the Board considered late-filed comments in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, the Board has determined to adopt the proposal with certain modifications and clarifications.

A. Appeal/Review Process

Many commenters urged the Board to adopt a process for review or appeal of the PSA's decision on a forbearance application. These commenters included five thrifts, eight trade groups, and four law firms. Five of these commenters also suggested adoption of more specific standards for PSAs to apply in passing on forbearance applications. Three commenters expressed the view that more specific guidelines were necessary but did not address the question of a review or appeal procedure.

Virtually all of the commenters advocating an appeal or review process felt that one was necessary to assure fair and uniform application of the regulation. As one commenter said, "while one alternative might be to place limitations on the PSA's authority, we believe that a flexible approach, consistent with the Bank Board's intentions can be effected by providing an appeals process."

One commenter argued that a review of PSA forbearance decisions is essential prior to the appointment of a conservator or receiver for the institution. The institution "just wants somebody to review what the PSA has done * * * the 11:59 review before a final determination is reached," the commenter told the Board.

Commenters supporting adoption of guidelines without addressing the need for a review or appeals procedure felt, as one commenter said, that this "would ensure that all affected institutions are treated fairly and in a uniform manner."

The Board has reviewed all of the comments and weighed all of the arguments made on behalf of adoption of a review or appeal procedure. However, after giving the matter due consideration, the Board does not believe that an appeal or review procedure is necessary or appropriate.

As the Board indicated in the preamble to the proposed regulation, it does not anticipate that a denial of a request for capital forbearance necessarily will be followed by supervisory or enforcement action or the appointment of a conservator or receiver. Rather, the Board expects that an institution denied forbearance will be subject to the same treatment as it would have had it not filed a request for forbearance. *See* 52 FR 39898, 39103 (1987).

In other words, while an institution granted forbearance will not, absent termination of forbearance, be subjected to adverse actions based on the insured institution's inadequate capital, denial of the application does not and will not automatically trigger adverse action. Consequently, denial by the PSA does not adversely affect the institution, which will continue to be regulated and supervised in the same manner as if it had not filed an application for forbearance.

In response to the commenter who was concerned that the PSA's denial of forbearance would sound the death knell for an institution, the Board emphasizes that denial of an institution's capital forbearance application does not automatically result in the appointment of a conservator or receiver. The denial decision only means that the PSA has determined that the institution does not meet the prescribed factors for forbearance under the regulation. Appointment of a conservator or receiver, as appropriate, for a Federal association or insured institution is made by the Board. 12 U.S.C. 1464(d)(6), 1729(c) (1982).

The Board does, however, believe that to promote uniformity of forbearance decisions by different PSAs, while preserving the flexibility of PSAs to address the unique circumstances of each institution applying for forbearance, it is appropriate to develop guidelines that PSAs should consider in making the determinations governing whether a grant of forbearance to a particular institution is appropriate. Consequently, pursuant to the Board's direction, the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") is developing guidelines for the implementation of the capital forbearance regulation. All aspects of the regulation will be considered in the development of these guidelines, and the views of those commenting on the proposed capital forbearance regulation will be considered with respect to specific factors.

B. "Economically Depressed Region"

1. Method of Designation

Commenters expressed a diversity of opinion on the method of designating economically depressed regions.

One commenter supported the method set forth in the proposed regulation, that each PSA determine economically depressed regions on a case-by-case basis. The commenter explained that, because of his knowledge of the local economies in his district, the PSA could identify such regions more accurately than could the Board.

Eight commenters supported designation by the Board or the PSA of economically depressed regions coupled with flexibility to recognize other areas that applicants demonstrate are economically depressed. Three of these commenters explained that the PSA, because of his knowledge of the local economies in his district, would provide the most accurate determinations. Another commenter believed that identification of economically depressed regions will free the PSAs from the burden of analyzing data submitted by all institutions within such regions. Two of the commenters believed that identification would remove the burden from institutions of proving that they operate in an economically depressed region. One commenter noted that small institutions may not have the economic resources and expertise to make findings as to what constitutes an economically depressed region.

Three commenters suggested that the Board identify a list of economically depressed regions. Two commenters explained that this method of designation would lessen the burden on institutions and supervisory staff, and believed it would provide a measure of uniformity to the determinations that is lacking if left to the discretion of each PSA.

The Board has carefully considered these comments, particularly the emphasis that several commenters placed on the expertise of PSAs to make such determinations, the need to reduce the burden on institutions of demonstrating that a particular region is economically depressed, and the need to take steps to assure uniformity among decisions of various PSAs.

The Board believes that these concerns can be alleviated without identifying and constantly updating pre-established lists of economically depressed regions. As a result the Board is adopting in its final regulation revised procedures to help address these concerns. First, an institution applying for capital forbearance will identify in its application the region or regions in which it has suffered losses due to loans with declining collateral values. At this stage, the applicant need not present evidence that such region or regions are economically depressed within the meaning of the regulation. Rather, this determination may be made by the PSA upon consideration of the factors set forth in the regulation and other appropriate factors. In the event that the identified region is in a Federal Home Loan Bank District ("Bank District") other than that to which the application is directed, the PSA to whom the application has been directed will consult the PSA of the Bank District in which the identified region is located. The latter PSA will make the determination as to whether the region is economically depressed. Only if the appropriate PSA is unable to determine the issue will it be necessary for the applicant to submit documentation in support of its request. The PSA to whom the application was directed, following consultation with the PSA of the Bank District in which the region is located, must make the request for such additional information within the time frames set forth in the application guidelines adopted by the Board on October 2, 1987, 52 FR 39064 (Oct. 20, 1987), *to be codified at* 12 CFR 571.12. The PSA in the Bank District where the region is located will then determine whether the region is economically depressed based on the evidence submitted.[1] The Board believes that this

[1] In this regard, the Board expects that if a PSA would reject an application, whether or not the identified region is economically depressed (for example, the institution's capital condition has been impaired by imprudent operating practices or its capital plan is unacceptable), no additional evidence on the question of whether the region is economically depressed would be requested because it would be irrelevant to the determination.

method of identifying economically depressed regions reduces the burden on institutions seeking forbearance and promotes uniformity by assuring that different PSAs will not reach different conclusions on the same facts regarding whether a particular region is economically depressed.

2. Form and Type of Documentation

Two commenters requested that the Board and the PSAs consider a broad range of data in identifying economically depressed regions. One added that the Board should do so only so long as such data were relevant and credible and that the Board should allow the PSA to determine the weight to be accorded to each type of information submitted. The other commenter explained that economic data are scarcer in areas outside Metropolitan Statistical Areas ("MSAs") and the accuracy of the factors used to identify economic problems varies according to the type of economic problem.

The Board wishes to emphasize that if a PSA requests that an institution submit evidence that it is operating in an economically depressed region, the regulation provides significant flexibility with respect to the form and type of data that the institution may submit to the PSA, so long as the data is relevant and reliable. The factors set forth in the regulation are examples and do not constitute a definitive list.

3. "Geographical Region"

Five commenters responded to the Board's request for comment on the definition of "geographical region." The proposal had suggested that regions be identified based on political boundaries. One commenter requested clarification of the term "established political boundaries" and suggested that, at a minimum, it should include counties. Three commenters suggested that "geographical region" be identified by the institution seeking forbearance, without the requirement that it be identified on the basis of "established political boundaries." One commenter suggested that the PSA determine the appropriate geographical region because of his familiarity with the economic affairs of his district.

After considering these suggestions, and in light of the approach that the Board is adopting to identify economically depressed regions, the final regulation provides that any geographical region identified by the applicant can be recognized as economically depressed if such recognition is appropriate. The Board believes this approach will enable applicants to identify the region most pertinent to demonstrating their case for forbearance.

C. "Well-Managed" and "Imprudent Operating Practices" Tests

CEBA requires that the Board adopt regulations to provide forbearance to well-managed and viable institutions whose weak capital condition is not the result of imprudent operating practices.

One commenter suggested that Congress did not intend that a well-managed test be separate from the imprudent operating practices test. The commenter supported this position by directing attention to the statutory enumeration of five specific imprudent operating practices, while the term "well-managed" is not similarly defined or clarified.

The Board, however, interprets the statutory language and legislative history as evidence that Congress intended that institutions that are not well-managed be disqualified from capital forbearance. The introductory statutory language to section 404 instructs the Board to promulgate regulations to permit "troubled but well-managed" institutions to apply for capital forbearance. Likewise, Congress reiterated the statement that well-managed institutions with capital below 0.5 percent may be granted forbearance. Also, a statement made by Senator Garn in a colloquy with Senator Proxmire during the Senate debate on CEBA stressed that the capital forbearance provisions were not intended to provide a safe harbor for:

> [the] small minority of the industry, [which] has operated in an unsafe and unsound condition—often engaging in fraudulent and reckless investment strategies, self dealing, conflicts of interest and a whole host of otherwise repugnant business practices in violation of statutes, regulations, ethics, their fiduciary duties and plain decent business standards.

133 Cong. Rec. S11209–10 (daily ed. August 4, 1987) (statement by Senator Garn during colloquy with Senator Proxmire).

Because the Board believes that Congress intended that only well-managed institutions be granted forbearance and that it is possible that an institution may not be well-managed, even if imprudent operating practices did not contribute to its impaired capital, the well-managed test is retained.

Two commenters suggested that the well-managed test is unduly subjective and several commenters requested clarification of the factors to be considered in applying the well-managed test and the imprudent operating practices test. These factors will be described in the memorandum being prepared by ORPOS setting forth guidelines for the implementation of the capital forbearance program.

Another commenter asked the Board to clarify that institutions that are located outside economically depressed regions not be judged *per se* imprudent because they have lent in economically depressed regions; rather, that the underwriting of such loans, loss experience, and economic conditions in the area at the time the loan was made or acquired by the institution be examined in determining whether management engaged in "imprudent operating practices." The Board concurs with this comment.

One commenter was concerned as to how the well-managed and imprudent operating practices tests would be applied. This commenter believed that Congress intended that institutions not engaged in fraud, self-dealing, or other business practices violative of law and ethics be eligible, not excluded, from forbearance if their capital losses resulted from "bad" business decisions. This commenter asked the Board to clarify that imprudent operating practices criteria (such as "speculative" practices, payment of "excessive" dividends, "substandard" underwriting practices) and well-managed criteria (such as management's record of operating the institution, its ability to operate the institution in changing economic conditions, and ability to develop and implement a capital plan) be viewed in the context of management's intent to violate Board rules and policies, rather than viewing errors in management's business decisions as imprudent operating practices or as an indication that the institution is not well-managed. With respect to imprudent operating practices, the Board intends that only those business decisions that constitute imprudent operating practices be considered in disqualifying an institution from capital forbearance. With respect to a well-managed determination, the Board does not intend that the well-managed test be used to judge business decisions on the basis of hindsight; however, it does intend that the PSA determine that an institution's management is capable of overseeing its capital recovery. To the extent that an institution's management has a history of "bad" business decisions, this is a relevant consideration for the PSA to weigh in determining whether the institution qualifies for capital forbearance. According to the Joint Explanatory Statement of the Conference Committee:

The capital recovery program is not intended to restrict any authority of the Bank Board to correct any fraud, criminal activity, imprudent operating practices or managerial incompetence.

H. Rep. No. 100-261, 100th Cong., Ist Sess. 165 (1987).

Therefore, given Congressional intent, the Board believes that it is not precluded from considering managerial incompetence in making the forbearance determination.

D. Capital Plan

Several commenters addressed various aspects of the proposed regulation concerning the capital plan to be submitted by forbearance applicants.

Three commenters specifically addressed the preamble discussion of plans submitted by institutions whose capital is less than 0.5 percent. The preamble to the proposed regulation stated that such institutions should not rely "on generalized hopes or expectations of economic improvements and other uncertain future events." One commenter said that the regulation should not be read as permitting unrealistic future economic scenarios, but that reasonable positive economic assumptions be allowed. Two other commenters likewise suggested that institutions be allowed to project reasonable recovery rates for the local economy.

Several commenters misunderstood the "demonstrable" portion of the "reasonable and demonstrable" standard, fearing that the standard may be interpreted to mean that an institution may not base its capital plan on predictions of economic improvement.

With respect to the proposal's requirement that the "reasonable and demonstrable prospects" standard apply to institutions with regulatory capital below 0.5 percent, one commenter was concerned that this implies that institutions with regulatory capital greater than 0.5 percent would not be required to have reasonable prospects of meeting capital goals within the required time frame. This commenter believed that all forbearance applicants should be required to meet this standard. Moreover, two commenters urged the Board to impose rigorous review standards on capital plans submitted by all applicants. Both suggested that the business plans demonstrate that an institution has a genuine and reasonable prospect of returning to financial health in the near term. One commenter also suggested that if the assumptions underlying a business plan are unrealistic or the business plan projections are unrealistic, such application should be rejected. Another commenter urged the Board to impose minimal operating restrictions on an institution as part of the capital plan.

In response to these comments, the Board notes that the "reasonable and demonstrable" test, as interpreted by the Board in its proposed regulation, requires that the capital plan "not rely upon unrealistic predictions of economic improvements or other uncertain future events." The Board believes that adoption of this standard, which clearly contemplates reliance on realistic projections concerning future occurrences, addresses the concerns of several of the commenters. To the extent that preamble language accompanying the proposed regulation suggested that the Board was proposing a standard other than that contained in the regulatory language itself, the preamble language was insufficiently precise. Consequently, the Board is adopting in the final regulation the standard set forth in the proposed regulatory language.

The Board also emphasizes that while CEBA specifically applies the "reasonable and demonstrable" standard to institutions with capital under 0.5 percent, in evaluating a forbearance application PSAs must consider the applicant's prospects for recovery in granting or denying the application and determine whether the goals set forth in the applicant's capital plan are reasonably achievable. Of necessity, this determination must be made on a case-by-case basis; however, as noted previously, ORPOS is in the process of developing guidelines for the implementation of the capital forbearance program.

Three commenters addressed the content of the capital plan. Two commenters asked that the regulation state that revised business plans may be acceptable as capital plans and urged the Board to discourage use of new, boilerplate, computer-generated business plans. Instead, they suggested that capital plans be generated by management with an emphasis on quality, not quantity. Another commenter stated that requiring sophisticated business plans would unfairly burden small institutions and urged that concise, well-considered plans, without reams of computer printouts, be considered.

The Board agrees fully with these commenters and emphasizes that the acceptability of a plan must be based on its quality and achievability. The Board encourages management-generated plans and, in fact, expects an institution's management to have a significant involvement in the preparation of the capital plan and not to rely entirely on outside consultants. Further, each capital plan of necessity will be individualized because it will be developed by each institution to reflect its unique situation. Moreover, the precise content of the capital plan is initially to be devised by the applicant, although the PSA may request additional information and provide for restrictions or requirements before approving the plan.

With respect to the grounds for terminating forbearance, one commenter requested clarification of an institution's failure to comply with its capital plan. For example, if an institution does all that it is able under its capital plan, but unfavorable market conditions preclude it from taking certain actions set forth in the plan, such as issuance of subordinated debt, the commenter was uncertain as to whether the applicant would be viewed as in compliance with the plan under such circumstances. As stated in the proposal, institutions must submit regular reports describing and explaining any deviations from the schedule, methods, operations, or goals set forth in the plan. This would include, for instance, failure or inability to issue subordinated debt. The PSA is to evaluate the information submitted to aid him in determining whether modification of the plan or termination of forbearance is appropriate.

Seven commenters discussed the capital instruments program, which is provided for in section 405 of CEBA, and its interrelationship with the capital forbearance program. Six commenters urged that the capital forbearance regulation be revised to include the sale of capital instruments pursuant to section 405 as an important tool in helping institutions meet their capital requirements.

A capital instruments program pursuant to section 405 is being developed by the Corporation. The Board will permit the inclusion of capital instruments as part of a capital plan. However, PSA approval of forbearance in such case does not, in any respect, commit the Corporation to purchase the capital instruments provided in the plan. A decision by the Corporation not to purchase the instruments could lead to a reevaluation of the plan and the grant of forbearance by the PSA.

One commenter thought that five years was too short a time in which to require an institution to increase its capital to minimum required levels pursuant to its plan. This commenter suggested that the purchase of capital instruments as provided for by section 405 of CEBA would help alleviate his concerns. In addition to providing for capital instruments, the Board, in response to these concerns, is extending the capital recovery period to January 1, 1995. This is consistent with the time period provided in the forbearance policy statements of the Federal Deposit Insurance Corporation ("FDIC") and the Comptroller of the Currency. *See* 52 FR 28182 (July 13, 1987); Comptroller of the Currency Banking Issuance BC-212 (July 7, 1987).

As an alternative, this commenter suggested that the Board expressly deem acceptable any capital plan indicating that the institution will have break-even profit levels by the end of the five-year time frame. This suggestion departed from the proposal which required that an acceptable capital plan must provide for the institution to meet its minimum capital requirement. The Board rejects this suggestion on the basis that capital forbearance was provided by Congress to permit institutions to regain appropriate capital levels, not to achieve break-even profit levels.

E. Federal Savings Banks Insured by the FDIC

Three commenters asked that the Board explicitly state that Federal savings banks insured by the FDIC are eligible to apply for forbearance under section 404. The FDIC, however, took the position that such institutions should not be covered by the Board's capital forbearance program.

The Board believes that CEBA's language requires that such institutions be eligible to apply under the Board's capital forbearance program. Section 404(a) of CEBA, which amends the Home Owners' Loan Act of 1933 ("HOLA"), provides that the Board "shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable *associations* * * *" (emphasis added). The HOLA defines "association" as including a "Federal savings bank chartered by the Board under section 1464 of this title * * *." 12 U.S.C. 1462(d) (1982). FDIC-insured Federal savings banks are chartered pursuant to paragraph (o) of section 1464. *Id.*. 1464(o)(1), (3).

Moreover, Congress has given the Board the authority to provide for the "organization, incorporation, operation, examination, and regulation" of such institutions. *Id.* 1464(o)(1). Decisions to close these FDIC-insured institutions and appoint the FDIC as receiver are made by the Federal Home Loan Bank Board. 12 U.S.C. 1821(c) (1982). Consequently, the Board believes that Congress intended that its forbearance policy apply to these FDIC-insured institutions.

The Board also notes, however, that the FDIC deems an FDIC-insured institution to be operating in an unsafe and unsound condition if its capital level falls below three percent, unless the FDIC is party to an agreement between the institution and the Board to increase the institution's capital ratio to a level deemed appropriate by the FDIC. 12 CFR 325.4(c) (1987). Absent such agreement, the FDIC contends that it is empowered by statute to terminate insurance coverage if the institution is "engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an [FDIC] insured bank." 12 U.S.C. 1818(a). The statute provides that this finding be made by the FDIC Board of Directors. *Id.* In providing forbearance for FDIC-insured Federal associations, Congress did not amend the statutory provision providing for termination by the FDIC of insurance coverage. Thus, if forbearance were granted by the Bank Board, the institution could still face termination of insurance by the FDIC due to capital inadequacy and, if insurance coverage were terminated, this likely would provide grounds for the PSA to terminate forbearance.

Consequently, to reconcile the authority of both the Board and the FDIC with regard to FDIC-insured Federal savings banks, the final regulation provides that FDIC-insured institutions may apply for forbearance and that such forbearance may be granted upon the concurrence of the PSA and the FDIC.

F. Termination of Forbearance

Six commenters addressing the issue believed that forbearance should not be terminated on the grounds that economic conditions in the relevant designated economically depressed region have improved. As one commenter said, "it would be unrealistic to assume that there would be no delay between improvement in local economic conditions and the recovery of capital deficiencies caused by the formerly depressed economy." The Board agrees and is not providing in the regulation that recovery of a depressed economy alone will trigger termination of forbearance.

One commenter suggested that the regulation provide that prior to termination by the PSA of a grant of forbearance the institution be given an opportunity to address and rebut the PSA's reasons for termination. As stated in the preamble to the proposed regulation the Board prefers that, when circumstances allow, the PSA provide the institution with an opportunity to address the reasons for termination before finally terminating forbearance.

G. Policy Statement Impact

The preamble to the proposal states that, when effective, the proposed regulation will supersede the Board policy statement on capital forbearance, but that the policy statement will continue to govern applications filed on or before December 31, 1987. One commenter asked whether institutions that have timely filed an application pursuant to the policy statement will be afforded the same benefits, such as participation in the section 405 capital instruments program, as institutions granted capital forbearance under the final regulation. The commenter suggested the final rule be clarified to permit the PSA, upon request, to deem the approval of an application under the policy statement to be an effective approval under the capital forbearance regulation. The Board agrees with this suggestion. Where an application granted under the capital forbearance policy statement meets the requirements of today's final rule, and upon written request by the institution, the PSA may deem the grant of forbearance as a grant under the final rule. If the application does not meet the requirements of the final regulation, the PSA may ask the applicant to provide any additional information the PSA believes is necessary for the application to meet the requirements of the final rule. In the event that an applicant does request that a forbearance application that was approved under the policy statement be approved under the regulation, the timetable for such determination will be that governing forbearance requests made initially under this proposal and set forth in § 563.47(i)(3)(i).

H. Effect of Forbearance

The proposed regulation stated that following a grant of forbearance an institution would not be subject to supervisory or enforcement action to enforce its minimum capital requirement or termination of insurance or placement in conservatorship or receivership on the basis of inadequate capital.

One commenter suggested that, where forbearance has been granted, the Board should also forbear from removing existing management, merging the institution out of existence, or instituting any fundamental change in corporate structure.

The forbearance provisions of CEBA were adopted by Congress to provide a mechanism whereby institutions with weak capital condition related to economic conditions would, with improving economic conditions, develop adequate capital. Consequently, the Board is establishing a program of forbearance from adverse actions against institutions based solely on inadequate capital. As stated in the preamble to the proposed regulation, however, such institutions may suffer from problems other than inadequate capital that may need to be addressed by supervisory or enforcement actions. Forbearance does not apply to such problems, and the Board and the Corporation will not refrain from taking any appropriate action against a participating institution for matters other than inadequate capital.

Likewise, CEBA provides that Federal associations and insured institutions, if meeting the requirements of the statute and this regulation, may be allowed to continue to operate and be eligible for capital forbearance. The statute does not provide for forbearance against members of management of such institutions, and the Board and Corporation may, in certain instances, find it appropriate to grant forbearance or continue a grant of forbearance to a Federal association or insured institution even though it may be necessary to take action against members of management. The Board believes such an approach is the most consistent with the direction of Congress that a program of forbearance be established "in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation."

I. Miscellaneous Issues

Several miscellaneous comments were raised by one commenter each. One commenter asked that the program being proposed encompass institutions with weak capital conditions caused by other than economic conditions. As discussed, however, Congress has explicitly linked the grant of forbearance in CEBA to institutions adversely affected by economic conditions.

Another commenter asked that the Board specifically state that institutions with negative regulatory capital be permitted to apply for forbearance. The Board notes that CEBA requires adoption of a forbearance program for institutions with regulatory capital of 0.5 percent or more. CEBA leaves it to the discretion of the Board, however, to apply those regulations to institutions with regulatory capital of less than 0.5 percent. The Board's proposed regulations did not distinguish between institutions above and below the 0.5 percent threshold, except to the extent required by CEBA, which provides that institutions with less than 0.5 regulatory capital have "reasonable and demonstrable" prospects of returning to satisfactory capital levels. Consequently, at this time the Board is not precluding any Federal association or insured institution from applying for forbearance. Depending on the Board's experience under this regulation, however, the Board may reevaluate this position in the future.

Description of Final Capital Forbearance Regulation

To a large extent, the final capital forbearance regulation being adopted today reflects the proposed regulation adopted by the Board on October 5, 1987. An explanation of those provisions can be found in the preamble to the notice of proposed rulemaking. See 52 FR 39098 (Oct. 20, 1987). The following modifications and clarifications, however, have been made.

A. Definitions

The Board has added two definitions to the regulation and modified one other definition.

The definition of "economically depressed region" has been changed to state that any geographical region, whether or not it has established political boundaries or is an MSA, can be recognized as economically depressed if such a designation is warranted by a consideration of factors set forth in the regulation and any other relevant data submitted by the applicant. The Board believes this change will enable applicants to identify the geographical area most pertinent to demonstrating their case for forbearance. The definition also has been changed to state that determinations about whether a particular region is economically depressed are to be made by the PSA of the Bank District in which the region is located, even if the forbearance application is filed with the PSA of another Bank District.

The Board also has defined "weak capital condition" to mean that an institution's regulatory capital does not meet its regulatory capital requirement as calculated in accordance with §§ 561.13 and 563.13, and any special requirement imposed under § 563.14, or other capital level imposed by the Board or Corporation. This definition is necessary to clarify the level at which institutions may apply for forbearance and to determine the level at which forbearance, once granted, is terminated because the institution has satisfied its capital plan and met its goals.

The Board also has added definitions of "minority," "minority insured institution," and "minority loan" that incorporate by reference relevant statutory definitions set forth in CEBA.

B. The Capital Plan

The Board has made one change in the provision of the regulation relating to requirements that must be met for a capital plan to be deemed acceptable. The proposed regulation had required that an institution seeking forbearance be given five years to bring its capital up to required minimum levels. For the reason previously discussed, this period has been extended until January 1, 1995. A corresponding change has been made in connection with the requirements that must be met by institutions with regulatory capital under 0.5 percent.

C. Termination of Capital Forbearance

The Board has added two grounds for termination of a grant of capital forbearance. The first provides that forbearance may be terminated if it was granted by the PSA based on an assumption about the occurrence of future events that subsequently do not occur. Alternatively, in appropriate circumstances, the PSA may seek modification of the capital plan, or permit the grant of forbearance to continue without any change to the plan.

Second, a provision has been added to require a grant of forbearance to be terminated when an institution satisfies its capital requirement. Once that standard is met, the Board believes there is no reason to continue the grant of forbearance.

D. Procedures

As discussed in connection with other comments, the Board has made several changes to the procedures involved in the consideration of requests for forbearance.

The proposed rule had required that an applicant for forbearance include in its application, among other things, a showing that the region or regions in which its collateral with declining values is located are economically depressed. For the reasons discussed in response to the comments, the final regulation states that the applicant must supply such information only upon the request of the PSA. Thus, institutions need not undertake the burden of compiling such information where the PSA already has determined, or already has the facts available, to show whether such region is economically depressed. The final regulation also provides that determinations about whether a particular region is economically depressed are to be made by the PSA of the Bank District in which the region is located, even if the forbearance application is filed with the PSA of another Bank District.

The Board also added a provision to paragraph (c) which states that FDIC-insured Federal associations can be granted forbearance with the concurrence of the FDIC.

E. Waiver of Loans-to-one-Borrower Limitation

The Board is clarifying the existing waiver provision of the loans-to-one-borrower regulation at 12 CFR 563.9–3(b)(4)(1987) to give the Board and the PSA or their designee the authority to grant flexibility to insured institutions to engage in loan restructurings and facilitate disposition of real estate owned. This waiver enables the Board or the PSA, in accordance with guidelines approved by the Board, to waive the aggregate loans-to-one-borrower limits in connection with resolving or managing institutions of supervisory concern which have deficit or deteriorating regulatory capital. Resolution or management of such cases would include assisted or non-assisted acquisitions approved by the Board or PSA and the daily supervisory oversight of the PSA over such institutions. Any institution of supervisory concern with deficit or deteriorating regulatory capital is eligible to apply for this waiver, including those institutions that have been granted capital forbearance under section 563.47 of this rule. The PSA has the discretion to tailor the terms of the granting of the waiver on a case-by-case basis.

However, with respect to the commercial loans-to-one-borrower limitation, 12 CFR 563.9–3(b)(2) (1987), the Board emphasizes that any waiver of this limitation cannot exceed any statutory investment restriction. For example, Federal associations cannot exceed the limitation imposed by section 5(c) of the Home Owners Loan Act of 1933. 12 U.S.C. 1464(c)(1)(R) (1982) (which includes limitations on commercial loans to one borrower and on aggregate commercial loans). Likewise, this waiver does not permit state-chartered institutions to exceed any investment restriction imposed by state law. This modified waiver of the loans-to-one-borrower regulation supersedes Board Resolution 86–578 that was adopted on June 9, 1986, and granted a different waiver authority to the PSAs.

F. Effect of Forbearance

Although the Board is making no changes in the regulatory language regarding the effect of a grant of forbearance, it wishes to reiterate and clarify language contained in the preamble to the proposed regulation regarding this issue.

A grant of forbearance pursuant to this regulation operates prospectively only. Any existing agreements with, or orders against, the institution and all regulations that address, relate to, include a reference to, or otherwise concern regulatory capital are not changed or voided by an institution's capital forbearance status. The institution may request a modification or termination of any capital-related order or agreement or a waiver or modified application of any capital-related regulation, in connection with, or subsequent to, qualifying for forbearance. For instance, an institution not meeting its minimum capital requirement may not make equity risk investments without approval of its PSA. 12 CFR 563.9–8(c)(2)(iii) (1987). The grant of forbearance alone would not constitute approval to make such investments unless such investments were expressly included in the capital plan or the PSA otherwise expressly gives such approval.

Modification or termination of some of these actions, such as cease-and-desist orders, may be carried out only by the Board, not the PSA. This may or may not be done in conjunction with the granting of forbearance.

Effective Date

The Board is adopting this regulation effective January 1, 1988. While the Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than thirty days before its effective date, this delayed effective date does not apply to rules that grant or recognize an exemption or relieve a restriction. 12 U.S.C. 553(d)(1) (1982). Because this regulation provides a process whereby the Board may exempt Federal associations and insured institutions from capital requirements, the Board is causing the rule to become effective prior to the passage of thirty days from publication. Moreover, the APA's delayed effective date requirement may be waived for "good cause" such as where Congress has prescribed an effective date. *Cf. Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 888 (3d Cir. 1982) (relating to notice and comment procedures). The provisions of CEBA require finalization of this regulation no later than January 7, 1988. The Board finds that the statutorily prescribed effective date constitutes "good cause" for dispensing with the APA delayed effective date requirement.

While the Board believes it could adopt the regulation effective immediately, an effective date of January 1, 1988, has been chosen because the Board's forbearance policy statement, 52 FR 6876 (March 5, 1987), lapses on December 31, 1987. Consequently, the January 1, 1988, effective date eliminates an overlap between the policy statement and the regulation and any lapse of time between the expiration of the policy statement and the effectiveness of this rule.

Final Regulatory Flexibility Analysis

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

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

2. *Issues raised by comments and agency assessment and response.*

These elements are incorporated above in SUPPLEMENTARY INFORMATION.

3. *Significant alternatives minimizing small-entity impact and agency response.* All institutions, regardless of size, would be permitted to obtain capital forbearance as long as they are well-managed, viable institutions meeting the various requirements set forth in section 404 of CEBA as implemented by this rule. Such institutions would be permitted to operate and not be subject to supervisory action as a result of failure to comply with capital requirements as long as they remain in compliance with their capital plan.

In response to several commenters who suggested that small institutions may lack the resources and expertise to demonstrate that a particular region is economically depressed, the Board is not requiring that institutions make such a showing in their application for forbearance. Further, only if a PSA is unable to determine that a particular region is economically depressed based on the factors included in the regulation and others that the PSA determines are pertinent, would an institution be required to make such showing.

List of Subjects in 12 CFR Part 563

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.9–3 by revising paragraph (b)(4) to read as follows:

§ 563.9–3 Loans to one borrower.

* * * * *

(b) *Limitations*—(1) *Aggregate loans* * * *

(4) *Waiver.* In accordance with guidelines approved by the Board, the Board or the PSA or the designee of either may waive the application of the limitations in this paragraph (b) to any loan in connection with the resolution or management of an insured institution that is of supervisory concern and has deficit or deteriorating regulatory capital.

* * * * *

3. Amend Part 563 by adding a new § 563.47 to read as follows:

§ 563.47 Capital forbearance.

(a) *Purpose.* This section implements section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, which requires that the Board and the Corporation adopt regulations for regulating and supervising troubled but well-managed and viable insured institutions so as to maximize the long-term viability of the thrift industry at the lowest cost to the Corporation by permitting qualifying institutions to continue to operate and be eligible for capital forbearance. This section sets forth the procedures and the conditions under which an insured institution may qualify for capital forbearance. This section provides that institutions granted capital forbearance will not be subject to supervisory or enforcement action to enforce minimum capital requirements or to terminate insurance nor will they be placed in conservatorship or receivership based on inadequate regulatory capital. This section also indicates the circumstances under which capital forbearance may be terminated.

(b) *Definitions.* When used in this section:

(1) *"Economically depressed region"* means any geographical region, identified by an applicant for forbearance, that has suffered severe economic conditions, as determined by the Principal Supervisory Agent of the Federal Home Loan Bank District in which the region is located. The Principal Supervisory Agent's determination may be based on consideration of any or all of the following factors and any other data that are presented by an institution in support of a claim that a region is economically depressed:

(i) The economic base of the region is largely dependent on one particular employer or industry, and that employer or industry is experiencing decline;

(ii) Unemployment in the region has increased;

(iii) Real estate values have declined in the region as evidenced by a sampling of recognized indices or surveys measuring such values in that region;

(iv) Personal income levels in the region have declined; or

(v) Substandard loan ratios of insured institutions in the region have increased.

(2) *"Minority,"* and *"minority loan"* have the meanings set forth in 12 U.S.C. 1467a(d) and 12 U.S.C. 1730i(d); and *"minority insured institution"* has the meanings set forth for "minority institution" and "minority association" in 12 U.S.C. 1467a(d) and 12 U.S.C. 1730i(d).

(3) *"Principal Supervisory Agent"* has the same meaning as set forth in § 541.18 of this chapter.

(4) *"Reasonable and demonstrable prospects"* means that the plan to meet specified capital levels sets forth in detail a precise and readily attainable schedule for increasing regulatory capital through realistically achievable methods and does not rely upon unrealistic predictions of economic improvements or other uncertain future events.

(5) *"Weak capital condition"* means that the insured institution has regulatory capital that does not meet its regulatory capital requirement as calculated in accordance with §§ 561.13, 563.13, and 563.14 of this title, or other capital level imposed by the Board or Corporation.

(c) *Qualifying for capital forbearance.* The Principal Supervisory Agent may permit insured institutions to continue to operate and obtain capital forbearance, except as provided in paragraphs (f) and (g) of this section, if

(1) The insured institution, at the time it submits its request for forbearance, has a weak capital condition;

(2) The insured institution's weak capital condition is primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of loans or participations in loans that are:

(i) secured by collateral whose value is determined, in the discretion of the Principal Supervisory Agent, to have been adversely affected by economic conditions in an economically depressed region; or

(ii) Made by a minority insured institution that has

(A) 50 percent or more of its loans qualifying as minority loans or participations in minority loans; and

(B) 50 percent or more of its originated loans secured by one-to-four family residences;

(3) The insured institution submits and the Principal Supervisory Agent approves a capital plan that meets the requirements of paragraph (d) of this section for increasing the insured institution's regulatory capital to the required level;

(4) The insured institution, if its regulatory capital as calculated in accordance with § 561.13 at the time it requests forbearance is less than 0.5 percent, demonstrates and the Principal Supervisory Agent determines, in his discretion, that the institution has evidenced in its plan reasonable and demonstrable prospects for achieving its required level of regulatory capital thereafter, but not later than January 1, 1995; and

(5) In the case of a Federal association whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"), the FDIC concurs in the PSA's determination.

(d) *The capital plan.* The plan referred to in paragraph (c)(3) of this section should contain a detailed description of the steps the insured institution will take to meet its minimum capital requirements, including capital infusions, mergers, and operating changes to increase regulatory capital or decrease asset size; address the insured institution's operations during the time it has capital forbearance, including lending and investment strategies, asset-liability growth, dividend levels, and compensation of directors and officers; and include forecasts and pro forma financial statements and set forth a reasonable time frame for achieving its minimum capital requirement that is not later than January 1, 1995. The Principal Supervisory Agent may require that the plan include other restrictions or requirements before approving the plan.

(e) *Reporting.* Any insured institution determined by the Principal Supervisory Agent to qualify for capital forbearance shall submit thorough and complete reports on such insured institution's progress in meeting the goals set forth in its capital plan. Such reports must provide the Principal Supervisory Agent with a detailed ongoing evaluation of capital recovery progress and explain any deviations from the schedule, methods, operations, or goals set forth in the plan. These reports shall be submitted as frequently as required by the Principal Supervisory Agent, but not less often than semiannually.

(f) *Management and operating practices.* The Principal Supervisory Agent must review the past and present management structure and operating practices of any insured institution that has submitted a request for capital forbearance and shall not approve that request if the Principal Supervisory Agent determines that the institution is not well-managed or that the institution's weak capital condition is the result of imprudent operating practices.

(1) In determining whether an insured institution is not well-managed, the Principal Supervisory Agent may consider, among other things, the management's —

(i) Record of operating the insured institution, including those operating practices not reviewed under paragraph (f)(2) of this section;

(ii) Compliance with laws, regulations, directives, orders, and agreements;

(iii) Timely recognition and correction of regulatory violations, unsafe or unsound practices, or other weaknesses identified through the examination or supervisory process;

(iv) Ability to operate the insured institution in changing economic conditions; and

(v) Ability to develop and implement the capital plan.

These factors may be considered with regard to service by any member of management at other insured institutions, commercial banks, or other financial institutions. The Principal Supervisory Agent also may take into account whether management has taken actions solely to qualify for capital forbearance.

(2) In determining whether the insured institution's weak capital condition is the result of imprudent operating practices, the Principal Supervisory Agent shall review the circumstances resulting in the institution's weak capital condition and determine whether they involve imprudent operating practices including, but not limited to:

(i) Practices that were speculative at the time they were undertaken;

(ii) Insider abuse and conflicts of interest;

(iii) The payment of excessive dividends;

(iv) Substandard underwriting of loans and investments;

(v) Unsafe or unsound practices within the meaning of 12 U.S.C. 1464(d)(2), 1730(e);

(vi) Excessive operating expenses; and

(vii) Actions taken solely to qualify for capital forbearance.

(3) Any determinations made pursuant to this paragraph (f) are solely for purposes of determining whether an insured institution qualifies for capital forbearance and are not binding or in any way dispositive of any pending or future supervisory, enforcement, or other legal actions.

(g) *Termination of capital forbearance status.* (1) The Principal Supervisory Agent may determine that an institution does not qualify for capital forbearance or no longer qualifies for capital forbearance status, if:

(i) The institution fails to comply with its capital plan;

(ii) Forbearance was granted contingent upon the occurrence of events that do not subsequently occur;

(iii) The institution undergoes a change in control or a material change in management that was not approved by the Principal Supervisory Agent;

(iv) The institution engages in practices inconsistent with achieving its minimum capital requirement;

(v) Information is discovered that was not made available to the Principal Supervisory Agent at the time the institution qualified for capital forbearance and that indicates that forbearance should not have been granted;

(vi) The institution's regulatory capital at the time of requesting forbearance was reported to be at least 0.5 percent, but is later found to have been below 0.5 percent;

(vii) The institution engages in abusive, unsafe or unsound, or other imprudent practices;

(viii) The institution violates an agreement with, or order issued by, the Board or Corporation; or

(ix) The institution fails to submit the reports required by paragraph (e) of this section.

(2) The Principal Supervisory Agent shall terminate a grant of forbearance when an institution is no longer operating in a weak capital condition.

(3) The Principal Supervisory Agent shall notify an insured institution in writing if it no longer qualifies for capital forbearance stating the reasons for the termination. Such termination shall take effect upon receipt of such notification by the insured institution.

(4) Except if termination is contemplated for the reason set forth in paragraph (g)(2) of this section, as an alternative to denying or terminating capital forbearance, the Principal Supervisory Agent may permit the insured institution to revise its plan, and if such revision is approved by the Principal Supervisory Agent, capital forbearance may be granted or continued.

(5) Any action by the Principal Supervisory Agent to terminate capital forbearance is deemed to be final action of the Board or Corporation.

(h) *Status of supervisory, enforcement, and other actions during capital forbearance participation.* (1) While an insured institution qualifies for capital forbearance, the Board and the Corporation shall not issue a capital directive pursuant to 12 CFR 563.14–1, institute supervisory or enforcement action to enforce the institution's capital requirement, or take action to terminate the institution's insurance, or place the insured institution in conservatorship or receivership based on the insured institution's inadequate capital.

(2) Notwithstanding paragraph (h)(1) of this section, the Board and the Corporation will not forbear from taking any appropriate action against—

(i) The insured institution for matters other than inadequate capital, or

(ii) Any individual or entity other than the institution for any matter, including inadequate capital.

(3) All existing supervisory or enforcement actions remain in effect unless lawfully modified or terminated.

(4) All regulations that address, relate to, or include a reference to regulatory capital or net worth remain in effect as before forbearance was granted, unless lawfully modified as applied to a particular institution.

(i) *Procedures.* (1) An insured institution seeking capital forbearance must submit a written request to the Principal Supervisory Agent. Except as provided in paragraph (i)(2) of this section, the request must consist of:

(i) A detailed showing, including documentation, by the insured institution that it is eligible for capital forbearance because it meets the requirements of paragraphs (c) (1) through (4) and (f) of this section; and

(ii) A plan meeting the requirements of paragraph (d) of this section.

(2) The written request for capital forbearance need not include a showing that the region or regions in which the insured institution's collateral value was adversely affected, within the meaning of paragraph (c)(2)(i) of this section, are "economically depressed" unless, within the time frames permitted for requests for additional information under § 571.12(c)(1) of this subchapter, the Principal Supervisory Agent to whom the application was directed, following consultation, where appropriate, with the Principal Supervisory Agent of the Federal Home Loan Bank District in which the region is located, requests such a showing.

(3)(i) Requests for capital forbearance will be processed in accordance with § 571.12 of this subchapter unless within thirty days of the receipt of a properly filed request, the Principal Supervisory Agent notifies an institution that an examination is necessary in conjunction with its request, in which case the request will not be deemed complete until the examination is completed.

(ii) If the request is denied, the Principal Supervisory Agent shall notify the institution in writing and state the reasons for the denial.

(4) Any action by the Principal Supervisory Agent to grant or deny a request for forbearance is deemed to be final action of the Board or Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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12 CFR Part 563

[No. 87-1298]

Individual Regulatory Capital Requirements; Capital Directives

Date: December 22, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting rules to implement its authority to set and enforce regulatory capital requirements for all institutions the accounts of which are insured by the FSLIC ("insured institution(s)" or "institution(s)"). The Board is adopting these regulations pursuant to the authority granted it by section 406 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA") and pursuant to the Board's general authority to promulgate regulations under 12 U.S.C 1437(a), 1725(a), and 1730.

These regulations implement the authority granted the Board and the FSLIC by section 406 of CEBA to vary the minimum regulatory capital requirements of an individual insured institution as may be necessary or appropriate in light of the particular circumstances of the insured institution. They also establish procedures for implementing the authority granted by section 406 to issue a directive and enforce a plan for increasing an individual insured institution's capital level.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Deputy Director for Capital and Finance, (202) 377-6465, Regulations and Legislation Division, Office of General Counsel; Marianne Roche, Deputy Director, Office of Enforcement, (202) 653-2609; Donald G. Edwards, Director, Financial and Quantitative Analysis, (202) 377-6914, Edward A. Hjerpe III, Financial Economist, (202) 377-6976, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 778-2519, Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board today is adopting rules to implement the express authority granted to it by section 406 of CEBA to set minimum capital requirements for insured institutions on a case-by-case basis and to issue capital directives mandating capital compliance. These regulations strengthen the Board's ability to require insured institutions to achieve and maintain an amount of capital consistent with sound financial practice and commensurate with the financial risk of loss to which such institutions expose themselves, depositors, and the FSLIC. In August 1986 when the Board adopted its general capital regulation, § 563.13, the Board set forth its analysis of the policy reasons that make adequate capital of critical importance to the safety and soundness of insured institutions and the FSLIC deposit insurance fund.[1]

Those same policies support the adoption of these regulations explicitly giving the Board authority to establish individual capital requirements and to enforce the Board's capital regulations by issuing capital directives. Individually established capital requirements are crucial to ensuring that insured institutions have adequate capital to absorb the risk of loss from their selected business strategies and decisions. Although §563.13 sets forth a type of objective, risk-based capital scheme, no uniform formula can take into account sufficiently the continuously changing financial positions and risk postures of the more than three thousand insured institutions under the Board's supervision.

With the enactment of section 406 of CEBA, which amends both section 5 of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464, and section 407 of the National Housing Act, ("NHA"), 12 U.S.C. 1730, Congress has explicitly empowered the Board and the Corporation to exercise much more discretion with respect to the required capital levels of individual insured institutions.[2] Sections 406(a) and 406(b) provide, in part, that the Board and the Corporation may set the required capital level of an insured institution on a case-by-case basis as it "determines to be necessary or appropriate for such insured institution in light of the particular circumstances of the insured institution."[3]

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[1] On August 15, 1986, the Board adopted its revised regulatory capital regulation [hereinafter, "capital regulation"] establishing the levels of capital required for all insured institutions. *See* Board Res. No. 86-857, 51 FR 33565-88 (September 22, 1986), *codified at* 12 CFR 563.13. The Board determined that it was essential for insured institutions to reach 6 percent capitalization before risk adjustment (increased for concentration of higher credit risk assets and decreased for reductions in interest rate risk) as quickly as feasible, thereby more closely approximating the minimum capital requirements imposed by Federal banking regulators.

On June 10, 1987, the Board proposed to amend the capital regulation to compute industry profitability by using the median return on assets of all insured institutions that are solvent under generally accepted accounting principles instead of using the average return on assets of all insured institutions. 52 FR 23845 (June 25, 1987). The Board wishes to advise all insured institutions and other interested parties that it may adopt this proposal after consideration of comments received either in conjunction with other changes to § 563.13 or by separate Board action.

[2] Section 403(b) of the NHA, 12 U.S.C. 1726(b), provides the FSLIC with express authority to require an institution to provide adequate reserves in a form satisfactory to the FSLIC. This statutory provision gave the Board broad discretion in prescribing such reserves, which could have been set on a case-by-case basis. Section 406 of CEBA, however, provides express authority to do so.

[3] All Federal savings and loan associations and Federal savings banks are chartered and regulated under the HOLA and the regulations promulgated pursuant thereto. Most of these same institutions are also insured by the FSLIC and required to comply with the NHA and its implementing

Continued

Since the passage of section 908 of the International Lending Supervision Act of 1983 ("ILSA"), Pub. L. No. 98-181, 97 Stat. 1278, *codified at*, 12 U.S.C. 3907, the Federal banking regulators have had the explicit authority to set the minimum capital requirements of individual banks on a case-by-case basis. Pursuant to section 908 of ILSA, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Federal Reserve Board ("FRB") have promulgated regulations requiring banking institutions generally to achieve and maintain a minimum acceptable ratio of total capital to total assets of six per cent, and a minimum primary capital ratio of five and one-half per cent of adjusted total assets.[4]

Section 908 of ILSA specifically provides, however, that the bank regulators may "establish such minimum levels of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." ILSA at 908(a)(2).[5] In accordance with that statutory provision, the implementing regulations adopted by the Federal banking agencies authorize the discretionary exercise of broad power to require different capital ratios for banks. For example, the relevant OCC regulations, 12 CFR 3.1 *et seq.*, set forth examples of instances in which capital ratios higher than the generally applicable ratios may be appropriate: these include the capital ratios for a newly chartered bank, a bank receiving special supervisory attention, or a bank having a high proportion of off-balance sheet risks. 12 CFR 3.10 (1987).[6]

With section 406 of CEBA, which is closely patterned after section 908 of ILSA, Congress has expressly provided the Board and the Corporation with the authority to vary insured institutions' minimum capital requirements on a case-by-case basis. Therefore, in accordance with the authority Congress explicitly conferred in the new legislation and in the interest of the safety and soundness of all insured institutions and the integrity of the FSLIC insurance fund, the Board today is adopting these regulations establishing procedures for increasing the required capital level of any given insured institution as its particular circumstances may warrant.

The Board believes that these rules comport with the congressional mandate, set forth in section 406 of CEBA, that the Board establish minimum capital requirements for insured institutions consistent with the other banking agencies' capital requirements. This new express statutory authority is supported by lengthy congressional hearings and extensive testimony on the public need for effective supervision of FSLIC-insured institutions. In enacting section 406 of CEBA, Congress granted the Board supplemental authority to strengthen its supervisory efforts. Moreover, Congress views this authority as a critical component of the effective supervision of a Federal system of deposit insurance where "capital is the touchstone of financial integrity and guardian of the guarantee of Federal insurance." [7]

The Board notes that the rules it is adopting today are substantially similar to the rules adopted by the OCC, the FDIC, and the FRB to implement their authority to set case-by-case capital requirements and to issue capital directives. The Board has carefully considered those rules, which were adopted in final form after full consideration of public comment, and believes that those rules and their supporting evidentiary records serve as appropriate models for, and provide additional support for, the rules the Board is adopting today.

I. Summary of the Proposed Rule

On October 5, 1987, the Board proposed rules pursuant to section 406 of CEBA to help protect the FSLIC insurance fund and insured institutions' depositors in the wake of the serious financial situation that currently besets the depository insurance system.[8] The Board requested comments on all aspects of the proposal. Furthermore, on November 3-4, 1987, it held a public hearing relating to these and other regulations that it proposed in order to implement CEBA.

The Board is setting forth below a summary of its proposed regulation together with a discussion of the comments received and the Board's modifications made to the proposal in adopting these final rules.

A. Case-by-Case Capital Requirements for Individual Insured Institutions

The Board is adopting § 563.14 pursuant to its authority under section 406 of CEBA to set the capital requirement of Federal associations, or acting as operating head of FSLIC, to set the capital requirements of insured institutions at whatever amounts or capital-to-asset ratios the Board determines to be necessary or appropriate in light of the particular circumstances of the association or insured institution. The power to set such requirements is crucial to the safety and soundness of insured institutions.

The Board's proposed regulation described the proposed procedure for setting individual minimum capital requirements higher than those set forth in § 563.13. It provided for notification to institutions by their Principal Supervisory Agents ("PSA(s)") of their proposed individual minimum capital requirements, subsequent response by insured institutions, and the establishment of individual minimum capital requirements for institutions by their PSAs with the concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS").

The Board proposed to delegate the authority to determine appropriate individual minimum capital requirements for insured institutions to the PSAs because they and their staffs generally are most familiar with the specific financial, economic, and operational characteristics of insured institutions within their districts that may demonstrate a need for increased capital. Under the proposed regulation, the concurrence of ORPOS would be necessary before a higher minimum individual capital requirement could be set because that Office is responsible on

regulations. Federal savings banks that are insured by the Federal Deposit Insurance Corporation are encompassed within the definition of insured institution in § 561.1, unless expressly exempted by a specific regulation. The Board as the regulatory authority under the HOLA and as the operating head of the FSLIC under the NHA is implementing identical provisions of section 406 of CEBA regarding Federal associations and insured institutions, as with its current capital regulation, by adopting these regulations for all insured institutions (including Federal associations) under its insurance regulations.

[4] The Board is aware that these banking regulators have recently proposed to revise their minimum capital requirements to include risk-based capital guidelines. The Board intends to monitor closely the progress of these regulatory initiatives, consistent with the intent of section 406 of CEBA.

[5] The legislative history of section 908 of ILSA demonstrates that it was a specific legislative response to a judicial decision that brought into question the authority of a Federal bank regulator to establish an individualized minimum capital requirement for a particular bank. *See First National Bank of Bellaire v. Comptroller of the Currency*, 697 F.2d 674 (5th Cir. 1983).

[6] *See also* the regulations of the FDIC at 12 CFR 325.1 *et seq.* and the guidelines of the FRB at Appendix A to 12 CFR Part 225.

[7] 133 Cong. Rec. S11,208; S11,210 (daily ed. August 4, 1987).

[8] Board Res. No. 87-1045, 52 FR 39105 (October 5, 1987).

the national level for matters relating to the examination and supervision of insured institutions and, through involvement in this process, can promote uniform national application of this authority to set individual minimum capital requirements. In the further interest of consistent national use of this power, the Board stated that it would establish guidelines through ORPOS to control the PSAs' exercise of their delegated authority under proposed § 563.14(b).

The proposed rule also set out examples of situations where higher minimum capital levels may be necessary or appropriate and examples of the factors that the PSAs might consider in deciding upon an appropriate individual minimum capital requirement for an insured institution. The proposed regulation established individual minimum capital requirements and provided that an insured institution would have reasonable opportunity to respond to its notification of a proposed individual minimum capital requirement and to submit any supporting documentation supporting its response.

B. Capital Directives

Also pursuant to section 406 of CEBA, the Board proposed a process for the issuance of capital directives and capital plans enforceable under section 5(d)(8) of the HOLA, 12 U.S.C. 1464(d)(8), or section 407(k) of the NHA, 12 U.S.C. 1464(d)(8), or section 407(k) of the NHA, 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as final cease-and-desist orders issued by the Board or Corporation.[9] These capital directives and capital plans, similar to cease-and-desist orders, may be enforced through petition to the appropriate United States district court or through the imposition of civil money penalties of up to $1,000 a day against the institution or against any officer, director, or employee/agent or other person participating in the conduct of the affairs of an institution that violates the directive or the plan. *See* 12 U.S.C. 1464(d)(8) and 1730(k).

Because of the powerful and sensitive nature of formal enforcement powers, the Board wanted to ensure that its capital directive authority was used in a uniform manner nationwide and with adequate and appropriate attention to the rights of the institutions involved. In order to ensure judicious use of this authority, the Board proposed to establish a written hearing process, which would begin after referral of a case by a PSA. Then, the Office of Enforcement would initiate the process of issuing a capital directive by notifying an insured institution of the Board's intent to issue a directive, would provide an opportunity for the institution to respond, would review the institution's response to that notification, and in coordination with ORPOS would make a recommendation for final Board action. The Board explained the involvement of these two offices by stating that the Office of Enforcement has specialized knowledge and unique expertise in the use of the Board's formal enforcement powers and that ORPOS has parallel experience and expertise concerning the examination and supervision of insured institutions. The Board proposed to reserve for itself the final decision to issue a capital directive in proposed or modified form.

II. Summary of Comments; Response To Comments

The Board received 54 comments on its proposed regulation to implement its authority to set capital requirements on an institution-by-institution basis and to issue capital directives. These comments were received by letter and through testimony at the Board's hearing on the proposed regulations under CEBA held on November 3–4, 1987. Comments were received from 33 insured institutions, 14 trade associations, 1 economic consulting firm, and 3 law firms. Of these comments, 8 supported the proposed regulation and 9 opposed the proposal. The other 37 addressed specific problems with the proposal or made specific recommendations. The Board has also considered as part of this rulemaking the 26 comments received in response to the Board's proposal in May 1987 to impose individual capital requirements as part of the classification of assets regulation,[10] a provision that was deleted from the classification of assets regulation under CEBA that the Board adopted yesterday.[11]

A. Individual Minimum Capital Requirements

Delegation, Guidelines, and Appeals

A large number of commenters expressed their views on the appropriate roles of the Board, ORPOS, and the PSAs in setting individual capital requirements for insured institutions. Some strongly urged the Board to retain its responsibility to review PSAs' actions to ensure that the power to set individual minimum capital requirements is used uniformly across the country under a fair, national policy. Some of these commenters opposed any delegation to the PSAs because it would allow them to act unfairly, excessively, and arbitrarily without Board oversight for consistency and abuse of discretion. Other commenters felt that the capital scheme under § 563.13 established objective national criteria and that the power to set individual capital requirements was unnecessary because the PSAs already have adequate authority to control institutions' capital levels.

A substantial number of commenters stated that this Board review should be provided by establishing a process for institutions to appeal to the Board decisions by the PSAs setting individual minimum capital requirements or ruling that changed circumstances justifying modification do not exist. Several commenters specifically endorsed the concept of an appeal to the Board if the individual capital requirement imposed by a PSA would increase an institution's capital requirement by some threshold amount, usually 100 basis points. Some said that ORPOS involvement was not adequate retention of Board review authority and did not substitute for an appeal. Other commenters exhorted the Board to continue its efforts to increase the level and quality of the field examination and supervisory staff because that is the best way to ensure that the system of individual capital requirements for institutions is fairly and effectively utilized.

On the other hand, a substantial number of commenters supported the Board's delegation to the PSAs of the authority to set individual minimum capital requirements with the concurrence of ORPOS, as a national oversight authority, in individual determinations. Others objected to ORPOS involvement on the national level in individual decisions that should be made by the PSAs at the Federal Home Loan Bank level. A number of commenters holding either of these opinions expressed strong views that the power to set individual capital requirements must be a flexible, effective tool for the PSAs to use in conjunction with their other examination and supervisory efforts. These commenters said that Congress intended this new power to be used in an efficient, flexible manner in dealing with the myriad problems facing the Board and the FSLIC that must be addressed promptly and effectively in

[9] A major difference between these capital directives and plans and cease-and-desist orders is that cease-and-desist orders may be issued only by consent or after notice and a hearing on the record. Capital directives may be issued by consent or in accordance with § 563.14a, which establishes a written hearing process which is not required by statute.

[10] Board Res. No. 87-527, 52 FR 18369 (May 15, 1987).

[11] Board Res. No. 87-1296 (December 21, 1987).

the interest of safety and soundness. Many of these commenters recognized that such individually established capital requirements can effectively supplement the general capital scheme established under § 563.13 by tailoring capital requirements to deal with the risk exposure from the tremendously diverse financial and operational situations of over three thousand institutions.

A large majority of commenters, including both those supporting the proposed regulation and those addressing specific problems with the proposal, stressed that fair and effective implementation and use of the authority to set individual minimum capital requirements depends on the Board's development of specific guidelines to be applied by the PSAs in setting such individual minimum capital requirements. Some commenters also expressed detailed objections to the use of certain terms and criteria, particularly criteria appearing to overlap with the components of § 563.13. Many of these commenters said that the Board must develop such guidelines to define terms, quantify criteria, and give specific details to implement the general standards contained in the proposed regulation. They said that such guidelines are essential for the Board to ensure fair, uniform use of the power to set such capital requirements by the PSAs under ORPOS and Board oversight. This was the major criticism of the regulation by many commenters, who appeared to favor, or at least not to oppose, the proposal if such guidelines were adopted. One commenter said that Congress contemplated that the Board would adopt such specific standards through this rulemaking and that the Board should not adopt a final rule until it had been reproposed with specific criteria. Some said that demanding additional capital would be unnecessary and redundant because of the capital required by § 563.13 and the valuation allowances reserved against assets requiring classification.

After carefully considering these comments, the Board has decided to fulfill its oversight responsibilities and to promote system-wide uniformity by developing, through ORPOS, comprehensive guidelines for the setting of individual minimum capital requirements and by requiring ORPOS concurrence in the setting of such requirements until guidelines have been developed and implemented to the Board's satisfaction. The Board also will closely monitor PSAs' use of this authority through the ORPOS oversight function.

Exercise of the Board's oversight authority in this way insures a fair process while enabling the PSAs to use the power to set individual capital requirements as the strong, flexible tool able to deal with the varied and unique circumstances of insured institutions, thereby supplementing PSAs' other examination and supervisory efforts, as Congress intended in adopting section 406 of CEBA. Furthermore, this regulation, including the list of criteria justifying imposition of such a capital requirement and the factors for consideration, is closely patterned after those adopted by the Federal banking regulators in implementing virtually identical statutory authority under ILSA.

The guidelines written by ORPOS will provide more specific details and definitions of the criteria so as to allow enhanced business planning by insured institutions with reasonable certainty of the regulatory capital ramifications of alternative business decisions. Section 563.14 has been modified to eliminate certain provisions expressly overlapping components of § 563.13. The guidelines, moreover, will also clarify that additional capital will not be required under § 563.14 for the risks adequately addressed by § 563.13.[12] Establishment of these guidelines together with the Board's monitoring of PSA use of the power to set individual capital requirements will constitute the key method by which the Board will oversee fair, uniform use of this authority in conformance with sound national policies. These guidelines must be flexible and be continuously updated to deal effectively with the many changing problems confronting insured institutions and the FSLIC.

Commenters devoted substantial discussion to the question of who should have the power to set individual capital requirements and why the Board's involvement is needed either through making the initial decisions or by reviewing such decisions upon appeal. In response, the Board notes that Congress gave it the explicit authority to set individual capital requirements for use in a flexible and efficient manner in conjunction with the Board's other supervisory tools in addressing the varied problems presented by diverse institutions posing serious threats to the safety and soundness of themselves, depositors, and the FSLIC deposit insurance system. In 1985, the Board transferred its examination staff to the Federal Home Loan Banks under the authority of the PSAs, which traditionally performed the Board's supervisory function. As recognized by commenters, since this transfer the Board has devoted great attention to increasing the size and improving the quality and training of these staffs. The Board undertook this major staff enhancement effort because it has vested the PSAs and their examination and supervisory staffs with primary responsibility for the crucial mission of conducting the Board's examination and supervisory efforts in order to ensure the safety and soundness of insured institutions, depositors, and the FSLIC insurance fund. Therefore, the Board strongly believes that the PSAs and their staffs must be authorized within the Board's guidelines and under Board oversight to use the power to establish individual capital requirements in conjunction with other examination and supervisory actions in furtherance of this mission.

This process fulfills the Board's legal responsibilities without providing for appeals to the Board because it ensures that the power to set individual capital requirements will not be used in an arbitrary and capricious manner and that there is no abuse of agency discretion. Contrary to the assertions of some commenters, a formal appeal mechanism (which, according to some comments should involve an adjudicatory administrative hearing on the record) is not needed to prevent arbitrary and capricious action or an abuse of agency discretion. Accordingly, the Board has decided that an appeal to the Board would not increase insured institutions' protection from unfair, unequal treatment in exercise of this authority but could deter PSA use of this important supervisory tool.

Furthermore, the Board is legally empowered to delegate the exercise of this power and this decision is a logical, reasonable decision in light of the Board's delegation of its other examination and supervisory efforts to the PSAs with the full knowledge of Congress. Moreover, although the Board has carefully reviewed and considered comments received on its proposed delegation of authority, such delegation generally is within agency discretion and is not subject to the notice and comment requirements of section 553 of the Administrative Procedures Act, 5 U.S.C. 553.

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[12] For example, interest rate risk is dealt with in § 563.13 through the maturity matching credit for relatively low interest-rate risk exposure as measured by the one-year and three-year cumulative hedged gaps. The granting of such a credit to institutions with relatively low exposure to interest rate risk should not preclude imposition of an increased individual capital requirement on an institution exposing itself and the FSLIC to a high degree of interest-rate risk.

Finally, the Board has determined that the current rulemaking has satisfied the intent of CEBA and that it is consistent with the law and appropriate agency process for the Board to adopt this final regulation and then to develop guidelines providing more specific details. Such guidelines are being developed in part in response to comments received in this rulemaking and will continuously be reviewed and updated to deal with problems facing the Board and the FSLIC. The proposal and adoption of such detailed, supplemental guidelines before final adoption is not legally necessary, is not feasible in light of the guidelines evolving nature, and would add undue rigidity to the process.

State Involvement

Several commenters stated that the proposed regulation violates the dual banking system by establishing minimum capital requirements for state-chartered institutions and issuing directives to such institutions without the solicitation of comments from state thrift supervisors. One commenter asserted that if a state-chartered institution is involved, a PSA must be required to notify and consult with the appropriate state supervisor concerning the issuance of a proposed individual minimum capital requirement (proposed § 563.14(d)(1)), the ultimate decision on the proposed requirement (proposed§ 563.14(d)(3)), the determination of whether there are changed circumstances justifying modification of a proposed requirement, and other decisions throughout the capital directive process. Commenters asserted that such involvement of state supervisors is consistent with section 406 of CEBA because state thrift supervisors already have such a relationship with other federal banking agencies in exercising their identical authority under ILSA.

In response to these comments and consistent with the Board's initial intent, § 563.14 has been revised to provide expressly for solicitation of comments from, and consideration of comments made by, state thrift supervisors when a PSA establishes individual minimum capital requirements for state-chartered, FSLIC-insured institutions. The revised rules also provide that the state thrift supervisors will be advised of final action taken with regard to such institutions.

Reasonable Use of Authority

A number of commenters made recommendations with which the Board agrees in general principle for appropriate use of the authority to set individual capital requirements. The Board is setting forth these recommendations to reflect the Board's general intent for use of this authority. A number of commenters stated that the PSAs must be aware of the current state of the capital markets and the prices for thrifts debt and equity securities when establishing a schedule for thrifts to raise additional external capital. PSAs must also be aware that raising capital through retained earnings of the capital markets takes time and that the feasibility of raising capital and the cost of such capital depends on market demand. Of course, an institution's need for adequate capital is not affected by the feasibility of raising such capital.

Other commenters said that a PSA should base his judgment as to the capital necessitated by a particular type and extent of investment on his evaluation of the institution's overall portfolio, operations, loss record, management, and regulatory compliance record. Some commenters said that institutions should be able to work informally with their PSAs to reach a voluntary agreement before initiation of the formal process to set an individual minimum capital requirement or to issue a capital directive. Commenters said that PSAs should not substitute their determinations for the business judgment of insured institutions. Other commenters said that the PSAs should be cognizant of the effect of regulatory actions on an institution's ability to attract investors and acquirors, particularly the effects on required disclosure under the securities laws.

A number of commenters said that PSAs should inform institutions of the specific causes for setting higher individual capital requirements and that such requirements should "sunset" when the specific causes have been remedied. In response to these comments and to clarify the Board's initial intention, § 563.14 has been revised to require a PSA to notify an institution of the specific cause for imposition of an individual minimum capital requirement and of the remedial action the institution could take to eliminate the need for continued applicability of such a requirement. The Board expects PSAs to terminate individual minimum requirements if an institution has remedied the initial cause for the individual requirement and if no other cause exists justifying the increased capital requirement. The Board will monitor these practices through ORPOS in its oversight role.

Notice and Response Procedures

A number of commenters raised issues regarding the notice-and-response procedure involved when a PSA seeks to issue an individual minimum capital requirement. Some asserted that institutions should have 30 days for response from receipt of the notice of a proposed individual minimum capital requirement, rather than from the date the notice is sent by the PSA. This is consistent with the capital directive process and has been incorporated in the final regulation.

Other commenters stated that the PSA must respond to comments and alternative suggestions made by the insured institution. Commenters recommended that when notice of a proposed increase capital requirement and the documentation supporting the need for that higher capital requirement is sent to ORPOS, it should simultaneously be forwarded to the insured institution along with the notifying letter. The Board has clarified in this regulation its initial intention that the PSAs' decisions address issues raised in the responses received within the response period from the insured institution and the appropriate state thrift supervisor, if a state-chartered institution is involved. The Board believes, however, that providing to institutions the internal memoranda and documentation forwarded by the PSA to ORPOS would be inadvisable, as reflected by the Board's established procedures and disclosure practices for other supervisory or enforcement actions, and also would inhibit to the public's detriment the communication between the PSAs and ORPOS in setting individual capital requirements or between PSAs and the Office of Enforcement and ORPOS in dealing with capital directives.

Some comments made regarding the timeframe and procedures were that 30 days is too short a response period and that this period should only be shortened for sufficient cause. The Board believes 30 days is an appropriate response period for an institution to respond, but has modified § 563.14 to permit the PSA to extend the response period for good cause. The Board also agrees with a number of commenters who said that the response period should not be shortened to less than 30 days without good cause, language actually included in the regulation. The Board, however, disagrees with commenters who stated that the PSA should only be able to set an individual requirement within a certain number of days of an examination or must make a final decision on establishment of an individual capital requirement within a designated number of days (generally 60 days) from receipt of an institution's response. Both of these suggestions would impose unnecessary rigidity into the process and would not make adequate allowance for the varied circumstances that may be involved in instances where an individual requirement is proposed. Furthermore, it would not provide material benefit to institutions because even if the period for final decision passed, it would only take 30 days to initiate and finalize a new capital requirement. The Board through ORPOS, however, will monitor PSAs' practices in this regard.

B. Capital Directives

A number of commenters stated that by granting capital directives the same force and effect as cease and desist orders, but not providing for an adjudicatory hearing on the record before an administrative law judge, as with cease and desist proceedings, the Board is denying institutions' due process rights in violation of the Constitution.

The Board strongly disagrees with these commenters because they ignore the written hearing process that the Board has established, a process that is not required by CEBA and which is consistent with due process and the administrative procedures of the other Federal banking agencies for issuance of capital directives. This written hearing process has been adopted by the Board specifically for the purpose of giving insured institutions and their state supervisors full notice of the basis for proposed capital directives, the opportunity to respond by presenting their views and supporting documentation contradicting the need for issuance of a capital directive, and a final Board decision addressing the institution's response and setting forth the Board's reasons for issuing the capital directive. Institutions may also submit an alternative plan for increasing their capital. Section 563.14–1 also allows for extension of the response period for good cause. Finally, the rule provides that issuance of a capital directive is a final agency action. In short, by adopting § 563.14–1 the Board is establishing a written hearing process carefully guarding insured institutions' due process rights.

Some commenters expressed concern that because of the drastic effect of capital directives, there should be an intermediate process through which remedial action could be decided upon without formal issuance of a capital directive. In light of this comment, the Board wishes to clarify that the capital directive process is intended to be used in conjunction with other supervisory and enforcement actions by the PSA and the Board. The Board does not anticipate that capital directives will replace existing supervisory and enforcement actions that can be used to achieve the same capital increase. This is particularly true if an institution will consent to such an increase whether through a voluntary supervisory agreement or otherwise.

Other commenters stated their concern about the large number of insured institutions that currently are failing to meet their capital requirements (§ 563.13) and, therefore, could immediately be subject to capital directives. In light of regional economic problems and the Board's forbearance regulation, these commenters asserted and the Board generally concurs that capital directives should be used consistently with the Board's capital forbearance policies.

A few commenters concurred with the simplified procedure for reducing a capital requirement based on positive changes in circumstances but said that the capital directive process should commence again to make the terms of a previously issued directive more severe. This is consistent with the regulation as proposed in that it contemplated an institution's claiming changed circumstances and that would undoubtedly only occur if the institution felt circumstances warranted a lower requirement.

A commenter recommended changing the proposed regulation so that fines for violation of an order may be levied only against the institution and not against individual officers and directors, or alternatively, eliminate such fines altogether. This comment reflects a misunderstanding of the proposal because this rule is not creating the power to assess civil money penalties; rather, this power is derived from the Board's existing enforcement powers under the National Housing Act. This regulation only recognizes that this power exists and would be supported by a violation of a capital directive.

C. Relationship Between This Rule and Other Regulations

The regulation adopted today gives the Board the authority to establish and enforce individual minimum capital requirements and to treat capital noncompliance as an unsafe and unsound practice. In section 404 of CEBA, however, the Congress also mandated a capital forbearance policy. Pursuant to that statutory mandate, the Board is adopting a regulation pursuant to which it will forbear from enforcing its capital requirements if insured institutions that are otherwise financially sound are temporarily unable to meet such requirements for certain statutorily specified reasons.[13] Such institutions' capital requirements under § 563.13 or under § 563.14 would be unaffected by the Board's temporary forbearance from enforcing such capital requirements. It is enforcement of noncompliance with an institution's capital requirement, and not the level of an institution's capital requirement, to which the capital forbearance policy applies.

Pursuant to section 406 of CEBA, the Board is under a statutory requirement to establish minimum levels of capital for insured institutions consistent with the purposes of Section 908 of ILSA and the federal banking agencies' capital requirements. The Board has reviewed the comments submitted on what action the Board should take to implement this statutory mandate and will consider them further in deciding upon any further action to implement section 406 of CEBA.

Pending further Board action regarding § 563.13 the Board intends that this rule will function in tandem with the existing capital regulation, § 563.13. The Board wishes to clarify that all insured institutions are currently required to comply with the Board's capital regulation set forth in § 563.13. Only those insured institutions for which an individual minimum capital requirement has been established, however, would be required to comply with § 563.14.

The Board also wishes to clarify that the arbiter process, which is applicable to the classification of assets, does not apply to the setting of individual minimum capital requirements under § 563.14. This is the case even if the individual minimum capital requirement is based upon an evaluation of the underwriting standards and general overall credit risk of an insured institution's portfolio, or even on the classification of certain assets or results of the adoption or use of the classification-of-assets system. Section 407 of CEBA explicitly states that the arbiter process applies only to subsequent PSA review of individual determinations made by the PSA's staff members regarding appraisals of underwriting collateral, loan classifications, and loan loss reserves or allowances.

As stated above, however, the Board in adopting these regulations has considered the comments made concerning the Board's proposal to establish a process for setting case-by-case capital requirements, which was included in the May 1987 proposed

[13] Board Res. No. 87–1297 (December 22, 1987).

classification of assets regulation, but which has been eliminated from the final classification of assets regulation adopted under CEBA in part because of the authority granted to the PSAs by this regulation.

In addition, as stated in the Board's proposal, the Board is amending the capital regulation, § 563.13, to make clear that references throughout Chapter V of Title 12 to regulatory capital levels or requirements should be deemed to require compliance with §§ 563.14 and 563.14-1, as well as requirements under § 563.13. The Board, however, will carefully examine such references to regulatory capital in numerous regulations and may decide to make technical changes to such requirements to prevent unwarranted burdens on insured institutions effects contrary to the Board's intent and sound public policy.

Final Regulatory Flexibility Analysis

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

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

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

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1987). Therefore, the approximate number of small entities to which the rule would apply are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

The rule would not impose any unnecessary financial, recordkeeping or administrative burden on small insured institutions. The rule would authorize the Board and the Corporation to vary any insured institution's capital requirement on a case-by-case basis, require a plan from any insured institution for capital compliance, treat a failure to comply with a capital requirement as an unsafe and unsound practice, and issue a directive to enforce capital compliance. The rule would treat small institutions in a manner similar to large ones. The safety and soundness of both small and large institutions necessitates adequate capital appropriately adjusted for risk. The amount of capital required, however, is generally proportionate to an institution's level of liabilities and investments. There would be no disproportionate economic or regulatory impact on small institutions.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.13 by revising paragraph (a) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) *Scope.* This section sets forth the requirement for the maintenance by insured institutions, as defined in § 561.1 of this subchapter, of regulatory capital, as defined in § 561.13 of this subchapter. An insured institution's regulatory capital requirement under this section may be superseded or modified by an individual capital requirement established under § 563.14. Any reference in this chapter of Title 12 to compliance with the capital requirements of § 563.13 shall be deemed to require compliance with this section as superseded or modified by an individual minimum capital requirement established under § 563.14 or by a capital directive issued pursuant to § 563.14-1. Compliance with the requirements of this section and § 563.14, if applicable, shall be deemed to constitute compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

* * * * *

3. Amend Part 563 by adding a new § 563.14 and § 563.14-1 to read as follows:

§ 563.14 Individual minimum capital requirements.

(a) *Purpose and scope:* (1) The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for an insured institution that varies from the requirement that would otherwise apply to the insured institution under § 563.13. Pursuant to 12 U.S.C. 1464(s) and 1730(t), the Board, as operating head of the Corporation, delegates authority to the Principal Supervisory Agents ("PSA(s)") to establish, with the prior written concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), such individual minimum capital requirements for insured institutions as are necessary or appropriate on a case-by-case basis in light of the particular circumstances of each insured institution. Under the Board's oversight, ORPOS shall establish guidelines for the exercise by the PSAs of the authority granted by this section to set individual minimum capital requirements in a fair, uniform manner consistent with the Board's national policies.

(2) Upon adoption and satisfactory implementation of such guidelines under the oversight of the Board, the Board may delegate, in all or in part, exclusively to the PSAs the authority to set individual minimum capital requirements in conformance with the guidelines without the requirement for case-by-case concurrence by ORPOS, and the Board subsequently may terminate such delegation. Under such delegation, a PSA's decision would constitute final agency action. After such delegation, ORPOS under the Board's oversight would retain control over the guidelines for PSA action and would oversee implementation of and compliance with the guidelines. ORPOS would continue to be notified of individual minimum capital requirements set by the PSAs.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than those required under § 563.13 may be appropriate for individual insured institutions. Increased individual minimum capital requirements may be established upon a determination that the insured institution's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) An insured institution receiving special supervisory attention;

(2) An insured institution that has or is expected to have losses resulting in capital inadequacy;

(3) An insured institution that has a high degree of exposure to interest-rate risk, prepayment risk, credit risk, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

(4) An insured institution that has poor liquidity or cash flow;

(5) An insured institution growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by § 563.13-1 of this part or other Board regulations;

(6) An insured institution that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or institutions with which it has significant business relationships, including concentrations of credit;

(7) An insured institution with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) An insured institution that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) An insured institution that has a record of operational losses that exceeds the average of other, similarly situated, insured institutions; has management deficiencies; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual insured institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the insured institution;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the insured institution and, if applicable, its holding company, subsidiaries, and affiliates;

(4) The insured institution's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated insured institutions; and

(5) The policies and practices of the insured institution's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) *Procedures*—(1) *Notification.* When a PSA determines that a minimum capital requirement different from that set forth in § 563.13 is necessary or appropriate for a particular insured institution and is in accordance with any guidelines, the PSA shall notify the insured institution in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the insured institution. At the same time, the PSA shall forward to ORPOS a copy of the notifying letter, along with the documentation supporting the need for such a higher capital requirement. The PSA shall also forward the notifying letter to the appropriate state supervisor if a state-chartered insured institution would be subject to an individual minimum capital requirement.

(2) *Response.* (i) The response shall include any information that the insured institution wants the PSA to consider in deciding whether to establish or to amend an individual minimum capital requirement for the insured institution, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The responses of the insured institution and appropriate state supervisor must be in writing and must be delivered to the PSA within 30 days after the date on which the notification was received. The PSA shall then forward a copy of these responses to ORPOS. The PSA may extend the time period for good cause. The time period for response by the insured institution may be shortened for good cause:

(A) When, in the opinion of the PSA, the condition of the insured institution so requires, and the PSA informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the PSA that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the PSA, may constitute a waiver of any objections to the proposed individual minimum capital requirement or to the schedule for complying with it, unless the PSA has provided an extension of the response period for good cause.

(3) *Decision.* After expiration of the response period, the PSA shall decide whether or not he believes the proposed individual minimum capital requirement should be established for the insured institution, or whether that proposed requirement should be adopted in modified form, based on a review of the insured institution's response and other relevant information. The PSA's decision shall address comments received within the response period from the insured institution and the appropriate state supervisor (if a state-chartered institution is involved) and shall state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the institution could take to eliminate the need for continued applicability of the individual minimum capital requirement. The PSA shall send a copy of the recommended final determination to ORPOS, which must concur before the decision becomes effective and is communicated to the insured institution and to the appropriate state supervisor (if a state-chartered institution is involved). The PSA shall provide the insured institution with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the insured institution and setting forth the decision and the basis for that decision. Upon receipt of this decision, the individual minimum capital requirement becomes effective and binding upon the insured institution. This decision represents final agency action.

(4) *Failure to comply.* Failure to satisfy an individual minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individual minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 563.14-1.

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the insured institution's capital adequacy or its ability to reach its required minimum capital level by the specified date, the PSA may, with the concurrence of ORPOS, amend the individual minimum capital requirement or the insured institution's schedule for such compliance. As set forth in paragraph (a)(1) of this section with regard to the

initial setting of an individual capital requirement, this authority may also be delegated exclusively to the PSAs without the need for ORPOS concurrence in individual determinations. The PSA may decline to consider an insured institution's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. The PSA shall notify ORPOS of the request and his decision. Pending the PSA's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

§ 563.14-1 Capital directives.

(a) *Issuance of a Capital Directive*—(1) *Purpose.* In addition to any other action authorized by law, the Board, as operating head of the Corporation, after referral of an appropriate case by a Principal Supervisory Agent ("PSA") and based on a recommendation of the Board's Office of Enforcement developed in coordination with the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), may issue a capital directive to an insured institution that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on an institution's noncompliance with a capital requirement established under § 563.13, § 563.14, by a written agreement under 12 U.S.C. 1730(e), or 1464(d)(2), or as a condition for approval of an application. A capital directive may order an insured institution to:

(i) Achieve its minimum capital requirement by a specified date;

(ii) Adhere to the compliance schedule for achieving its individual minimum capital requirement;

(iii) Submit and adhere to a capital plan acceptable to the Board describing the means and a time schedule by which the institution shall reach its required capital level;

(iv) Take other action, including but not limited to, reducing the institution's assets or its rate of liability growth, or imposing restrictions on the institution's payment of dividends, in order to cause the institution to reach its required capital level;

(v) Take any action authorized under § 563.13(d); or

(vi) Take a combination of any of these actions.

A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1464(d)(8) and 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final under 12 U.S.C. 1464(d)(2) or 1730(e).

(2) *Notice of intent to issue capital directive.* Upon referral of a case by a PSA, the Office of Enforcement, in coordination with ORPOS, will determine whether to initiate the process of issuing a capital directive. The Office of Enforcement will notify an insured institution in writing by registered mail of its intention to issue a capital directive. If a state-chartered institution is involved, the Office of Enforcement will also notify and solicit comment from the appropriate state supervisor. The notice will state:

(i) The reasons for issuance of the capital directive and

(ii) The proposed contents of the capital directive.

(3) *Response to notice of intent.* (i) An insured institution may respond to the notice of intent by submitting its own compliance plan, or may propose an alternative plan. The response should also include any information that the insured institution wishes the Office of Enforcement to consider and ORPOS to review in deciding whether to recommend that the Board issue a capital directive. The appropriate state supervisor may also submit a response to the Office of Enforcement. These responses must be in writing and be delivered to the Office of Enforcement within 30 days after receipt of the notices. In its discretion, the Office of Enforcement may extend the time period for the response for good cause. The Office of Enforcement may, for good cause, shorten the 30-day time period for response by the insured institution:

(A) When, in the opinion of the Office of Enforcement, the condition of the insured institution so requires, and the Office of Enforcement informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the Office of Enforcement that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the Office of Enforcement, may constitute a waiver of any objections to the capital directive unless the Office of Enforcement grants an extension of the time period for good cause.

(4) *Decision.* After the closing date of the insured institution's response period, or upon receipt of the insured institution's response, if earlier, the Office of Enforcement shall consider the insured institution's response and may seek additional information or clarification of the response. Thereafter, the Board, based on a recommendation from the Office of Enforcement developed in coordination with ORPOS, will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and effectiveness.* (i) Upon issuance, a capital directive will be served upon the insured institution. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the insured institution, unless the Office of Enforcement determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the insured institution has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Board.

(6) *Change in circumstances.* Upon a change in circumstances, an insured institution may submit a request to its PSA for the Board to reconsider the terms of the capital directive or consider changes in the insured institution's capital plan issued under a directive for the insured institution to achieve its minimum capital requirement. If the PSA believes such a change is warranted, the PSA shall forward the request to the Office of Enforcement, which may recommend that the Board modify the institution's capital requirement or may refuse to recommend such action if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The Board—

(1) May consider an insured institution's progress in adhering to any capital plan required under this section whenever such insured institution or any affiliate of such insured institution (including any company which controls such insured institution) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such insured institution's progress in meeting its minimum capital requirement (such

as an application under § 563.13-1, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.9-8(g)); and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the Board determines that the proposal would adversely affect the ability of the insured institution on a current or *pro forma* basis to satisfy its capital requirement.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29867 Filed 12-31-87; 8:45 am]

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12 CFR Parts 563 and 571

[No. 87-1295]

Appraisal Policies and Practices of Insured Institutions and Service Corporations

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a final rule and a statement of policy pertaining to appraisal policies and practices of institutions insured by the FSLIC ("insured institutions") and their service corporations consistent with the requirements of the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552. This rule requires the management of insured institutions and service corporations to develop and implement prudent appraisal policies and procedures.

The Board is also adopting a statement of policy to accompany the rule. The statement of policy sets forth certain appraisal standards that the Board recommends to management for consideration in the development of the appraisal policies and procedures required by the rule.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Joan S. van Berg, Attorney, (202) 377-7023, Thomas J. Delaney, Attorney, (202) 377-6417, or Karen O'Konski Solomon, Director, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel; Patricia Rudolph, Visiting Scholar, (202) 377-6766, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Diana Garmus, Policy Analyst, (202) 778-2515, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The soundness of mortgage loans and real estate investments made by insured institutions and their service corporations depends upon the adequacy of the loan underwriting used to support these transactions. An appraisal report is one of several essential components of the loan underwriting process. Accordingly, section 563.17-1 of the Board's regulations requires that the records of a loan secured by real estate include "[o]ne or more written appraisal reports, prepared at the request of the lender or its agent * * * by a person or persons duly appointed and qualified as appraisers by the board of directors of such lender, disclosing the market value of the security offered by the borrower and containing sufficient information and data concerning the appraised property to substantiate the market value of the security described in such report * * *." 12 CFR 563.17-1(c)(1)(iv). To date, standards for compliance with 12 CFR 563.17-1 have been issued in the form of "R" Memoranda by the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") of the Federal Home Loan Bank System. *See e.g.*, ORPOS Memorandum No. R41c (Sept. 11, 1986). In the preamble to its October 2, 1987 proposal on appraisal policies, the Board discussed the history of these appraisal standards. *See* Board Res. No. 87-1040, 52 FR 39070 (Oct. 20, 1987).

On May 5, 1987, the Board proposed to adopt a rule and a statement of policy to incorporate in its regulations appraisal standards to be used by insured institutions and service corporations in complying with regulatory requirements. 52 FR 18386 (May 15, 1987) (the "May proposal"). The May proposal was published with a 60-day comment period that was scheduled to expire on July 14, 1987. On July 14, 1987, however, the Board extended the comment period to September 1, 1987, in order to ascertain the effect of final recapitalization legislation on the proposed rule and policy statement. 52 FR 27219 (July 20, 1987). The Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, was signed into law on August 10, 1987.

Pursuant to section 402(a) of CEBA, the Board is required to establish, by regulation, an appraisal standard for Federal associations "which is consistent with the appraisal standard established by the Federal banking agencies." [1] CEBA, tit. iv, sec. 402(a). Section 402(b) requires that the Board promulgate a regulation establishing an identical appraisal standard for state-chartered, FSLIC-insured institutions.[2] CEBA, tit. iv, sec. 402(b).

CEBA's specific directive that the Board establish appraisal standards by regulation is consistent with the Board's existing statutory mandate to promote home financing according to principles of safety and soundness. Among the paramount purposes of Title IV of the National Housing Act ("NHA") (12 U.S.C. 1724-30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421-29) is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is protection of the FSLIC insurance fund from exposure to undue risk.[3] The appraisal standards rule and policy statement are designed to enable the Board to carry out both statutory objectives.

Moreover, the Board is authorized by sections 403(b) and 407(m) of the NHA to conduct examinations of insured institutions and their service corporations. 12 U.S.C. 1726(b), 1730(m). The Board believes that carefully documented appraisals are essential to an accurate evaluation of the asset portfolio of an insured institution or service corporation. The rule pertaining to appraisal policies and practices of insured institutions and their service corporations therefore comports with the Board's statutory authority to examine and evaluate the asset portfolios of insured institutions and their service corporations.

In light of CEBA's mandate, the Board reviewed its May proposal and concluded that significant modifications to both its structure and content were necessary in order to comply with CEBA's directive in the most effective way. Therefore, on October 2, 1987, the Board withdrew its May proposal. Board

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[1] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[2] Pursuant to 12 CFR 561.1, the term "insured institution" is defined as a Federal association or a state-chartered, FSLIC-insured savings and loan association. Therefore, an amendment to the Board's regulations governing all insured institutions will implement the statutory amendments to the HOLA and the NHA made by CEBA.

[3] The concern of risk to the FSLIC was also echoed in the Conference Report to CEBA. *See* Joint Explanatory Statement of the Conference Committee, H. Rep. No. 261, 100th Cong., 1st Sess. 164 (1987).

Res. No. 87-1039, 52 FR 39070 (Oct. 20, 1987).

A. Description of the Proposal

On October 2, 1987, the Board proposed to adopt a rule and statement of policy pertaining to appraisal policies and practices of insured institutions and their service corporations consistent with the requirements of CEBA. *See* Board Res. No. 87-1040, 52 FR 39070 (Oct. 20, 1987). When CEBA was enacted, the Federal banking agencies had not adopted any regulations or written standards on appraisals. At that time, the Board's staff learned, through discussions with representatives of those agencies, that the hallmark of the Federal banking agencies' appraisal practices is the placement of responsibility for developing and maintaining adequate appraisals with the management of the regulated institutions.[4] Therefore, in order to comply with the mandate of CEBA, the Board proposed a rule that instructs management to develop, implement, and maintain appraisal policies and practices that are best suited to the needs of the particular institution. With the exception of certain provisions that, at a minimum, must be included in all appraisals, the proposed rule did not set forth the specific indicia of an acceptable appraisal. These provisions required every appraisal to: (1) Be based upon the definition of market value as set forth in the rule; (2) be presented in a narrative format; and (3) contain a prior sales history of the property appraised. With respect to all other aspects of an appraisal, the proposal simply required management to develop and adopt guidelines and to institute procedures pertaining to the hiring and review of appraisers.

Moreover, the proposal provided for certain exemptions to the rule's requirements. It exempted appraisals of existing and proposed one-to-four family properties and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), in compliance with their respective appraisal standards. The proposal also exempted appraisals on commercial and industrial loans that are prepared on the form report approved by the Board.

The proposed statement of policy offered guidance to management concerning relevant and accepted appraisal standards to be considered in developing an institution's appraisal policies and practices.

On October 5, 1987, the Board also voted to hold a public hearing; the hearing was held on November 3 and November 4, 1987. *See* Board Res. No. 87-1048, 52 FR 39154 (Oct. 20, 1987). At the hearing, the Board received oral comments and written submissions on all regulations required under CEBA, including the proposed appraisal rule. With regard to the appraisal rule, ten written submissions were received from participants at the hearing. The written submissions and oral testimony have been considered with the other written comments the Board has received and are summarized below.

B. Discussion of Comments

The Board received a total of 89 comments in response to the proposal, including written statements submitted at the public hearing. The majority of comments (47) were submitted by insured institutions. Of the remainder, 23 were submitted by industry trade associations, 11 by appraisers, 2 by law firms representing insured institutions, 1 by a bank holding company, 1 by an investment banking firm, 1 by a real estate company, 1 by a government-chartered corporation, and 2 by private individuals.

Seven commenters expressed unqualified support for the October proposal. The vast majority of commenters, 49, generally expressed support for the proposal, but suggested various substantive and technical modifications. Only five commenters opposed the proposal, two of whom disagreed that there was any necessity to issue the rule and policy statement. The 26 remaining commenters expressed neither support nor opposition for the proposal, but suggested modifications or clarifications. Although the comment period ended on November 19, 1987, the Board has considered late-filed letters in its efforts to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are discussed more fully below, the Board has determined to adopt the proposal with certain modifications and clarifications.

1. The Appraisal Rule

Compliance With the Mandate of CEBA

Most of the commenters generally supported the proposed rule's shift of responsibility to management to develop and implement prudent appraisal policies and practices. Several commenters noted that the new rule provides management with the necessary discretion and flexibility to enable thrift institutions to be in competitive equality with banks.

Three commenters urged, however, that in order to be consistent with the banks, the Board should not impose any standards on institutions. Two of those commenters argued that to require all appraisals to conform with the standards enunciated in the proposed rule would put thrifts at a competitive disadvantage, which they contended would be inconsistent with CEBA. Three commenters urged the Board to join with the banking agencies to develop common appraisal standards to achieve competitive equality.

Several commenters were pleased that the Board deviated from the R-41c standards that were applicable to all appraisals irrespective of the property type or loan amount. One commenter noted that the R-41c standards are crippling to thrifts and that in fact under such guidelines many institutions delegate the underwriting decision to appraisers. A few commenters were concerned that the new rule is a retreat from the Board's current appraisal standards, the guidelines issued by ORPOS as R-41c. One commenter argued that if a single standard, such as R-41c, does not prevail throughout the thrift industry, institutions will be on an unequal footing with each other. Another commenter argued that in order to take enforcement or supervisory action against an institution, the Board must promulgate specific appraisal guidelines and/or standards.

In light of CEBA's mandate to adopt appraisal standards that are consistent with those of the Federal banking agencies, the Board has determined that it is necessary to revise and restructure its appraisal standards. It is the Board's opinion that the delegation to management of the responsibility to adopt appraisal policies for insured institutions affords flexibility in achieving compliance with this rule. The Board is also of the opinion that its new approach, consistent with the appraisal principles endorsed by the Federal banking agencies, will foster both cost efficiency in the appraisal process and competitive equality with the banking industry.

The shift to management of the burden to develop, implement, and maintain adequate appraisal standards does not signal a retreat from the Board's strong policy in favor of encouraging sound underwriting practices, including appraisal standards. Consistent with this policy and the Board's statutory enforcement

[4] In December, 1987, after the Board issued its proposed rule and policy statement on appraisals, the Federal banking agencies issued guidelines pertaining to real estate appraisal policies and review procedures.

authority,[5] an institution may be subject to enforcement action if it violates any final appraisal regulation or if its appraisal standards do not comport with principles of safety and soundness.

The Board believes that those commenters who argued that the standards enunciated in the proposed rule would be inconsistent with CEBA take an unduly restrictive view of the statute. Although the Federal banking agencies have no regulation on appraisals, in December, 1987, these agencies issued guidelines pertaining to real estate appraisal policies and review procedures. After carefully reviewing these guidelines, the Board is of the opinion that its rule and policy statement adopted today are not inconsistent with the appraisal policies of the banking agencies. In fact, the banking agencies' guidelines contain many of the same components that are included in the Board's rule and/or policy statement. Similar to the practices of banks, in its rule, the Board places the responsibility on management to develop and implement appraisal policies and practices. The Board's rule prescribes specific requirements for appraisals which are clearly permissible under the banking agencies' guidelines. Therefore, the Board's rule is fully consistent with the guidelines issued by the Federal banking agencies. As opposed to banks, the Board is requiring a specific definition of market value and that unless exempted, appraisals be contained in a narrative format. In their guidelines, the banking agencies recommend that banks also utilize a definition of market value. However, while the Board requires a specific definition, the banking agencies allow a market value definition as defined by the major appraisal associations, a definition which may not be uniform. Moreover, the banking agencies do not necessarily require that appraisals be contained within a narrative format. Similar to the standard recommended by the banking agencies that appraisals contain a sales history, the Board's rule includes this requirement.

Adoption of certain specific minimal standards for appraisals will contribute to sound loan underwriting practices and will protect the FSLIC from undue risk. Further, the Board notes that historically, unlike banks, thrift institutions have primarily been involved in real estate lending. On the other hand, banks have traditionally been involved in commercial lending activities, generally with less emphasis on home mortgages, which require different underwriting standards. Therefore, the need for minimal standards for real estate valuations are more critical for thrift institutions than for banks. While the Board leaves to each institution the responsibility to develop its own appraisal policies, for the above-mentioned reasons, the rule sets forth the minimal elements of what in the Board's view would constitute an adequate and fair appraisal.

Responsibilities of an Institution's Directors

The rule specifically solicited comment on whether the board of directors of an institution must formally adopt the appraisal standards and policies developed and implemented by the institution's management. Several commenters supported the directors' involvement in this process, and particularly supported the directors' adoption of the institution's appraisal standards. A few commenters noted that inasmuch as the board has fiduciary responsibilities for the establishment of an institution's policies and overall responsibility for supervising the management of the thrift institution, the board has the obligation to review and approve such policies and procedures of the institution. Three commenters opposed such a requirement; two of these commenters argued that internal auditing by the institution should be sufficient. A few commenters expressed concern as to whether the directors would be involved in the selection, approval, and review of each appraiser hired by the institution. They argued that such a requirement would be burdensome. Moreover, two commenters questioned whether the rule permits the board to delegate to management or a committee of the board the selection, approval, and review of appraisers.

Although the rule explicitly directs the management of an institution to develop appraisal policies, the rule also specifically includes directors and officers within the definition of management. It is the Board's belief that it is incumbent upon an institution's board of directors to ensure that the institution has proper policies and procedures in place, which must include the maintenance of prudent loan underwriting policies. Moreover, the directors have fiduciary responsibilities and are responsible for supervising the overall management of the institution. It is the Board's view, therefore, that in order to fulfill the responsibilities attendant to the position of a director of an institution, the board of directors should consider the appraisal policies developed by management and formally adopt an appraisal policy for the institution. In this regard, the Board has modified the rule and included a provision requiring the board of directors to adopt an institution's appraisal policies.

Further, it is not the Board's intention that the board of directors individually approve each appraiser recommended by management. Rather, the board may delegate such functions to management and remain in compliance with the requirements of the rule. Alternatively, a blanket approval, indicating that the board of directors has approved the hiring of one or more appraisers would also satisfy the requirements of the rule.

Definition of Market Value

The rule includes a definition of market value as adopted by Fannie Mae and Freddie Mac. Six commenters, including two trade associations, argued in support of the definition of market value as set forth in the regulation. They argued that the definition is widely accepted. One commenter contended that the definitions utilized by Fannie Mae and Freddie Mac or by major appraisal organizations would be appropriate.

One commenter, however, questioned whether one market value definition is appropriate for appraisals on all loans and investments. This commenter contended that the definition does not contemplate the variety of property types. In addition, this commenter argued that appraisers should have the flexibility to use other standards so that borrowers are not ultimately denied access to mortgage loans. Moreover, one commenter argued that the Board should permit the use of other opinions of value or sources of information relating to the value of collateral. Specifically, this commenter urged the Board to utilize tax values instead of market value. Further, two commenters recommended that the Board delete the term "probable" from the definition because it makes the definition ambiguous.

As it stated in the proposal, the Board believes that the definition of market value, as adopted by Fannie Mae and Freddie Mac, is an accurate and reliable measure of the economic potential of security property. Moreover, the definition is widely accepted and utilized, and the Board strongly believes that a uniform standard of market value

[5] The NHA provides that the FSLIC may take enforcement action if an institution violates a regulation or if it commits an unsafe or unsound practice. 12 U.S.C. 1730(e). The statute provides a more specific list of items that may justify enforcement action. *Id.*

will provide consistency to appraisal reports in the loan underwriting process.

The Board also specifically solicited comment on whether to continue to use the term "market value" in the rule. Two commenters urged the Board to adopt one term for market value to be applicable to all regulations. A few commenters supported the term "market value," inasmuch as this is an appraisal concept; the other suggested term, "fair value," it was argued, is an accounting concept.

With regard to the continuation of the use of market value in this rule, the Board prescribes within this rule the use of the term "market value" as opposed to "fair value." [6] Although the terms "market value" and "fair value" are somewhat similar, the term "market value" is a term that is generally accepted and utilized by the professional appraiser community. On the other hand, "fair value" is a term that is more widely accepted by the accounting profession. To resolve the question of terminology, the Board, therefore, has determined to continue the use of the term "market value" in the rule and policy statement.

Narrative Format

A few commenters supported the concept of the new rule providing for shorter, less detailed appraisal reports for uncomplicated properties. Several commenters suggested that the extent of the appraisal should bear some relationship to the size of the loan. For smaller loans where the lending decision is based on the creditworthiness of the borrower, it was argued that less detail should be required than that which is required when the loan is larger and the real estate is the primary source of repayment. Another suggested that leeway should be provided in the appraisal requirements where the value of the property clearly exceeds the loan amount. One commenter suggested that the Board apply different requirements for institutions with proven experience in land development than those that have experienced problems. A few commenters, however, contended that it should be left to management to ensure that quality appraisal reports, which include complete, well-documented materials, have been performed by the appraiser without also requiring that the report be in a narrative format as set out in the rule.

At the outset, the Board notes that its purpose in requiring the narrative format for appraisals is to ensure that appraisals be sufficiently descriptive to enable a reviewer to ascertain the estimated value reported and the rationale for that estimate. Moreover, to require the appraiser to present the opinions, analyses, and conclusions pertaining to the appraisal of the subject property in such a format should not require the reviewer to go beyond the report or supporting documentation. This format also will enable the reviewer to determine whether the appraisal conforms with the institution's appraisal guidelines and practices and should make any such deficiencies in the report readily apparent to the reader. Further, consistent with the Board's objective to ensure that an institution's lending policies comport with safety and soundness principles, the narrative format will require an institution to be circumspect in its review of appraisals and will provide the institution with documentary evidence as to whether the appraisal conforms with the rule's requirements and the institution's policies and procedures.

The Board also notes that the extent of detail and analysis of the appraisal should be commensurate with the complexity of the real estate appraised.. The Board believes that this requirement affords management the discretion to determine the adequacy of an appraisal based upon the characteristics of the collateral appraised. This requirement promotes cost efficiency in the preparation of appraisal reports by permitting management to accept shorter, less detailed, and less costly reports on uncomplicated properties.

Many commenters expressed support for the use of certain form reports in lieu of the provision requiring that all appraisal reports be presented in a narrative format. Under the rule, Fannie Mae or Freddie Mac forms are permitted for existing or proposed one-to-four family and existing multi-family properties, in compliance with the appraisal standards established by those agencies; Board-approved forms are permitted for appraisals on certain non-residential properties. Two commenters noted that the use of Fannie Mae or Freddie Mac reports and Board-approved reports for small commercial and less complicated properties will reduce costs and be more competitive with banks.

Several commenters advocated the use of the Uniform Residential Appraisal Report ("URAR"), a form report prepared by Fannie Mae and Freddie Mac, if completed in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP") either as an alternative to the underwriting standards utilized by Fannie Mae and Freddie Mac, or as a replacement. They contend that the URAR, if completed in compliance with USPAP standards, satisfies professional appraisal standards and is flexible for various uses. One trade association suggested that, for routine properties, if the USPAP standards are incorporated on the URAR form, such an appraisal should be adequate and reliable. Moreover, this commenter noted that Fannie Mae or Freddie Mac appraisal standards are not static and, therefore, additional requirements may be imposed that would be time-consuming and costly. One commenter argued that institutions should not have to conform with the requirements of those organizations that are involved in the secondary mortgage market. Three commenters argued that the Fannie Mae or Freddie Mac standards are far more comprehensive than those required under USPAP. Further, with regard to proposed multi-family properties, one commenter urged that Federal Housing Authority appraisal forms and documentation be included within the scope of the exemption.

For small commercial loans, of approximately $500,000 or less, one commenter contended that the provisions of the rule pertaining to the narrative format required on appraisals are too stringent. This commenter argued that appraisers may require an institution to prepare a "full-blown" report irrespective of the loan amount or use of the property. Such a report, it was argued, is costly and time-consuming for thrifts. Moreover, one commenter contended that for non-residential loans, the regulation should allow appraisers more latitude to follow accepted professional standards if the particular form is not adaptable to the given assignment.

The Board is of the opinion that narrative appraisal reports are unnecessary for certain types of properties. The Board, therefore, continues to encourage the development and use of form reports under certain circumstances. It is the Board's view that this exemption to the narrative format requirement permits the appraiser to exercise discretion in

[6] The Board does not mean to imply that an institution should base its allowances for loan losses on fair value if the appropriate basis for loan loss allowances is net realizable value in accordance with Statement No. 5 of the Financial Accounting Standards Board. Market value as estimated in an appraisal may differ from net realizable value under generally accepted accounting principles. When net realizable value is required, as for example in loan loss allowances on existing credits, certain elements underlying market value must be adjusted, e.g., the discount rate used.

providing reasonable supporting documentation for all value estimates and conclusions. For one-to-four family and existing multi-family properties, with regard to the forms prepared and approved by Fannie Mae and Freddie Mac in compliance with their appraisal standards, the Board has determined that either the Fannie Mae or Freddie Mac appraisal and loan underwriting standards are sufficient, will produce an acceptable and reasonable appraisal, albeit on a form report, and will satisfy concerns of safety and soundness. Although the form report does not include the type of detail and reasoning required in the narrative format, the Board believes that the appraisal standards of either Fannie Mae or Freddie Mac will satisfy the Board's concern that an appraisal contain a reasonable estimate of the value reported and the rationale supporting such estimate.

Similarly, for commercial and industrial loans, the use of a Board-approved form should prove less costly and enable institutions to be more competitive with banks. This is consistent with the Board's intent to promote the use of less detailed reports that are commensurate with the complexity of the property appraised. Moreover, although not subject to a formal rule-making procedure, a Board-approved form will be open to comment by the industry.

With regard to the use of Fannie Mae or Freddie Mac forms for one-to-four family residential properties, the rule states that such forms are not to be used for "proposed tract developments." Two commenters, including a trade association, were unclear as to what constituted a tract development and suggested that the Board clarify or define the term. The Board has carefully reviewed these comments and has agreed, for the purposes of clarification, to include such a definition within the rule and modified the rule accordingly.

Prior Sales History

One commenter strongly endorsed the rule's requirement that an appraisal contain a prior sales history of the property appraised. This commenter argued that this provision will prevent abuse by developers and speculators, and also will provide institutions with the necessary information to be on guard against rapidly escalating values of properties through the use of land flips. One commenter noted that a three-year sales history may be unavailable on the property, and if so, it was urged that a signed statement of the appraiser attesting that such a sales history could not be obtained would be sufficient. A few commenters expressed concern about whether the prior sales history requirement would need to be satisfied if the appraisal was completed on a Fannie Mae or Freddie Mac form report. Moreover, although one commenter questioned whether the prior sales history requirement is consistent with CEBA, in that banks do not have such a requirement, he acknowledged that the requirement is warranted due to the Board's experience with land flip situations and the attendant risk to the FSLIC.

For purposes of clarification, the section of the rule pertaining to exemptions applies to the three components of the rule. Therefore, if a Freddie Mac or Fannie Mae form report is used, the rule's three requirements need not be satisfied. However, the Board recognizes that if such a report is used, the Fannie Mae/Freddie Mac definition of market value would, of course, be required inasmuch as their appraisal guidelines use this definition.[7] The Board notes, however, that neither the Fannie Mae nor Freddie Mac guidelines require a prior sales history. The Board is convinced that the failure to include this one requirement in the Fannie Mae or Freddie Mac guidelines should not make the report less acceptable. It is the Board's view that their guidelines are comprehensive and result in adequate and quality appraisal reports.

The Board notes that in the recently issued guidelines by the Federal banking agencies, banks are recommended to include a sales history within an appraisal. Therefore, consistent with the banking agencies' guidelines and the comments received on this provision, the Board has determined to retain this requirement.

Moreover, if a prior sales history is unavailable, and the appraiser has made reasonable attempts to procure it, the Board is of the opinion that a statement in the appraisal report attesting to that would be sufficient.

Selection of Appraisers

On the hiring of appraisers, one commenter strongly endorsed the proposed rule's advocacy of the use of appraisal companies for one-to-four family residential properties. One commenter, however, contended that it would be a poor industry practice for institutions to hire appraisal companies, in that such companies would likely use students or "legmen," as opposed to professional appraisers, for conducting appraisals.

The Board continues to believe that for one-to-four family residential properties, management may approve an appraisal company in lieu of individual appraisers. It is, however, incumbent upon management to determine that the appraisal company's standards for hiring appraisers are fully satisfactory to the institution. On the approval of appraisal companies, the board of directors or management, if such functions are so delegated, should procure a listing of the hiring qualifications required by the appraisal company and a representative sampling of appraisers' resumes. This sampling should be obtained periodically. Moreover, for clarification, the term appraisal company is only intended to include companies engaged in the business of appraising, with appraisers or staff whose resumes show the company as their primary employer. The rule would not include, however, an occasional source for free lance work or a company that does not use staff appraisers. Further, the Board recognizes that mortgage bankers often provide thrifts with substantial loan business. The Board also notes that mortgage bankers employ appraisers. For one-to-four family residential properties, the Board does not object to the use of appraisals performed by appraisers employed by mortgage bankers provided that the brokerage firm's standards for hiring appraisers are satisfactory to the institution and that the institution is fully satisfied that the brokerage firm's appraisal standards will be in conformance with the institution's appraisal standards.

A few commenters asserted that the rule fails to state that an appraiser be independent from and not have any allegiance to the institution. They argued that such a clarification is necessary inasmuch as it would ensure fair and accurate appraisals. Certainly for those institutions that utilize staff appraisers, this requirement would be onerous and costly. Moreover, the Board would encourage institutions to include in the appraisal a certification that the appraiser has no interest in the property and that compensation for the services performed is not based upon a percentage of the valuation of the property. Similarly, for these same reasons, staff appraisers should be independent from the underwriting staff. These would, in the Board's view, be prudent appraisal practices.

With regard to an appraiser's membership in a professional organization, one commenter contended

[7] The Board also notes that for the Board-approved form report, the definition of market value as set out in the rule will be required.

that such a requirement would be unreasonable for appraisers located in a rural area. Another commenter, however, indicated that the regulation only requires institutions to consider whether an appraiser is a member of a professional organization. The Board also wishes to reiterate that the rule does not require that management only approve appraisers holding any specific appraisal designation or membership in any specific appraisal organization. Instead, management may consider these factors in assessing whether to hire appraisers.

The rule provides management with the responsibility for the selection and approval of appraisers. The responsibility is, therefore, placed on management to hire competent appraisers who will be capable of performing the appraisals for the institution. The appraiser, of course, should be qualified to perform the particular appraisal assignments for which he or she has been engaged. Moreover, an appraiser's experience should be commensurate with the complexity of the assignment.

Institution's Review of Appraiser's Performance

Many commenters expressed concern with the rule's requirement that institutions periodically review all approved appraisers at least semi-annually. Rather than requiring a separate semi-annual review, a few commenters suggested that an institution's review of appraisers should be conducted in conjunction with each appraisal at the time it is submitted. Four commenters, however, noted that banks do not impose such appraisal review requirements. These commenters generally argued that such a requirement is burdensome on management, costly, and duplicative. Moreover, a few commenters noted that an institution may not use all approved appraisers within a six month period, particularly if an institution is involved in nationwide lending. One commenter noted that Fannie Mae only reviews appraisers on a random basis. Another commenter was concerned with the impact of this requirement on small institutions. This commenter asserted that it would be a particular hardship for small institutions.

Several commenters offered alternatives to the six-month review period. One trade association recommended that the six-month requirement be limited to those actively working for an institution. One commenter suggested that only for new appraisers should such a requirement be mandatory. Several commenters suggested that an annual review would be adequate; two commenters recommended that an annual certification that an appraiser complied with the institution's requirements would be satisfactory. Another commenter recommended a two year review for accredited appraisers who are members of a professional association and a six-month or annual review for nonaccredited appraisers.

Two commenters expressed concern as to whether the rule's requirements for appraiser review would be retroactive. These commenters urged that the requirement not be retroactive so that an institution would not be subject to sanctions for unsafe and unsound practices with respect to actions taken before the effective date of the rule. One commenter contended that an adequate appraisal review system will contribute to the soundness of loans and investments.

The Board believes that management is responsible not only for establishing an institution's appraisal policies and hiring appraisers but also for continual oversight of the provision of appraisal services to the institution by fee or staff appraisers. In this regard, it is incumbent upon management to ensure that appraisals consistently report estimates of market value of collateral that adequately support an institution's lending decisions.

After carefully reviewing the comments received and after thorough consideration of the effect a semi-annual review of approved appraisers would have on individual institutions, the Board has decided to continue the requirement of a periodic review, but will require that such review be performed on an annual basis for those appraisers used within the preceding twelve-month period, and has modified the rule accordingly. Of overriding concern to the Board is the fact that such reviews be performed in order to ensure that the institution employs qualified and competent appraisers. The Board leaves to the discretion of management, however, the frequency and type of review to be performed. Further, with regard to the commenters' concern regarding the retroactive effect of the review requirement, the Board emphasizes that all aspects of the rule are effective as of the rule's effective date. An institution, therefore, is not bound by the review requirement until such date.

2. The Appraisal Policy Statement

Impact of Policy Statement on Institutions' Appraisal Policies

The largest number of comments received on any aspect of the proposed rule and policy statement were those that addressed the intended purpose of the policy statement. Twenty-four commenters expressed concern about the role the policy statement would play in future examinations. Many noted that the rule places responsibility on management for the development, implementation, and maintenance of appraisal standards and questioned whether the effect of the policy statement would nullify the intent of the rule. Moreover, although many of these commenters recognized that the policy statement is only intended as guidance, is not prescriptive, and does not carry the force and effect of law, many were concerned that it would be viewed as the standard against which an institution's appraisal policy would be measured. In particular, commenters were concerned that examiners would use the standards contained in the policy statement when reviewing the adequacy of an institution's appraisal policies and practices inasmuch as those standards include many components of R-41c, a standard with which examiners are very familiar. Since examiners tended to support the specific requirements of the R-41c memorandum, a few commenters argued that the examiners would be less receptive to other policies that did not mirror the R-41c approach. Two commenters objected to the inclusion of R-41 standards in the policy statement arguing such standards are not competitive with banks.

Many commenters who questioned the intended purpose of the policy statement recommended the adoption of USPAP. Of the twenty-four commenters that expressed concern about the intent of the policy statement, twenty suggested the adoption of USPAP. A few commenters asserted that USPAP is relied on and in general use in the appraisal industry and that to adopt those standards would promote consistency in the profession. One commenter noted that USPAP promotes clarity and standardization in appraisals, facilitates sound underwriting standards, and comports with principles of safety and soundness. One commenter argued, however, against the adoption of USPAP stating that those standards are too vague, too broadly based, and do not deal with specifics on appraisals.

Other commenters, while not specifically calling for inclusion of

USPAP in the policy statement, did suggest changes to insure that the criteria contained in the policy statement would not be considered the only acceptable appraisal policy that an institution could adopt. Two commenters suggested that the Board designate alternative appraisal policies, in addition to those standards included in the policy statement, that would be appropriate. Another commenter suggested that the Board list appraisal policies or practices that were not acceptable to the Board. This commenter also recommended that in order to avoid confusion over the impact of a Board-adopted policy statement, the Board merely should issue guidance on appraisal policies, as for example, in the form of R memoranda. Alternatively, in order to eliminate concern about examiners, two commenters suggested that the Board, the Principal Supervisory Agents, or ORPOS approve or disapprove alternative policies that are adopted by institutions. Several commenters contended that the policy statement should explicitly state that its requirements are not mandatory and adherence is not necessary if an institution's appraisal policies produce accurate appraisals. Moreover, one commenter suggested that the Board include language that the absence of certain elements of the policy statement in an institution's appraisal policy will not be sufficient to sustain an enforcement action. Further, another commenter proposed that when an institution adopts what it believes are reasonable appraisal guidelines and appraisals are performed in conformance with those guidelines, the Board should indicate to that institution that supervisory actions will not be initiated because of its appraisal policy.

To those commenters who expressed concern over the intent of the policy statement, the Board reiterates that the rule sets forth the minimal elements necessary for sound appraisal practices. The responsibility for developing, implementing, and maintaining appraisal policies and practices that are consistent with prudent loan underwriting and that comport with the principles of safety and soundness is expressly left to the management of each insured institution. Moreover, the policy statement is intended merely as guidance to assist institutions in developing their appraisal policies and practices in accordance with the requirements of 12 CFR 563.17-1. The Board recognizes that factors such as the number and types of loans that an institution makes will dictate the complexity of the appraisal policies and practices that an institution adopts. The policy statement is not intended to be the only approach viewed by the Board as consistent with sound underwriting principles. Insured institutions may also consider the appraisal guidelines recently issued by the Federal banking agencies in developing appraisal policies. Each institution must consider its individual lending activities, and within that context, adopt the components of an appraisal policy that are best suited to the needs of that institution and that also comport with principles of safety and soundness. The Board does not anticipate that every institution's appraisal policy must incorporate every aspect of the policy statement. Some institutions may determine that alternative approaches to appraisal policies and practices are better suited to their lending practices, contribute to sound loan underwriting, and comport with principles of safety and soundness. On the other hand, as the comments indicated, others will find the elements of the policy statement well-suited to their needs. Adherence to the policy statement is not intended by the Board to be the measuring rod against which an institution's appraisal policies and practices are evaluated. The touchstone for evaluating an institution's appraisal policies and practices will be the extent to which those policies and practices comport with principles of safety and soundness.

The Board recognizes the concern expressed by various commenters that examiners will utilize the standards contained in the policy statement when reviewing the adequacy of an institution's appraisal policies and practices. Examiners will be trained to evaluate each institution's appraisal practices and policies in the context of safe and sound loan underwriting. ORPOS is currently developing a training program to educate examiners on all regulatory changes necessitated by CEBA. This process should be in place soon after the promulgation of the regulations required by CEBA.

With regard to the final appraisal rule, examiners will be trained to understand that the requirements regarding appraisals are those contained in the rule itself and that appraisal standards previously issued by the Board or ORPOS are no longer applicable. Because the proposed rule does not contain the specific indicia of an acceptable appraisal, with the exception of certain requirements, examiners will be advised that there is no specific standard to be used in evaluating an institution's appraisal policies and practices. As opposed to applying the elements of the policy statement, examiners will be trained to analyze management's performance in developing, implementing, and maintaining appraisal policies and practices in accordance with principles of safe and sound loan underwriting.

The Board does not believe it is necessary or appropriate to incorporate within the policy statement additional standards that would constitute acceptable appraisal practices. To the extent that the rule sets forth minimal appraisal requirements, leaving responsibility for the development, implementation, and maintenance of appraisal policies and practices to an institution's management, in adopting an appraisal policy, management should not be constrained by any particular approach to appraisal practice. The policy that an institution adopts should be tailored to the particular lending practices of that institution. Furthermore, the Board strongly believes that in developing and implementing an appraisal policy, the underlying goal of management should be the production of appraisals that will support prudent loan underwriting.

Unlike the accounting profession, the practices of which are governed by the standards of one nationally recognized organization, the appraisal profession lacks a similar governing body. As a result, there are no national standards of appraisal practice that are recognized by the entire professional appraiser community. Lacking the ability to make reference to governing standards, the Board is not disposed at this time to include in the policy statement a set of standards of appraisal practice that are not adhered to by the entire appraiser profession. After carefully considering the concerns raised by commenters, the Board has determined that the policy statement will provide the management of insured institutions with sufficient guidance as to the type of considerations that should be addressed when developing and implementing an appraisal policy. The standards followed by any of the representative appraisal organizations can be similarly considered by an institution's management, and if management determines that those standards would ensure safe and sound loan underwriting practices, they can be incorporated as part of an institution's appraisal policy.[8] The Board is also

[8] During the public hearing on November 4, 1987, the panel testifying on the proposed appraisal rule was asked by Board Member White how many professional appraisal organizations exist nationally. In response to that question, William J.

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compelled to point out that CEBA requires the adoption of appraisal standards that are consistent with those of the Federal banking agencies, and such agencies have not to date formally approved any standards of the appraiser profession.

Finally, the Board notes that, in discussing below the comments received on the policy statement, the Board has attempted to clarify what the language means so that the statement will be as useful as possible. These clarifications should be interpreted in light of the policy statement's purpose of providing guidance rather than prescribing specific standards.

Various Definitions of Market Value

Commenters also made recommendations for changes to specific aspects of the policy statement. Eleven commenters noted concerns with the various definitions of "market value" in the policy statement. Despite the general support expressed for "market value" as defined in the rule, many commenters were troubled by the hypothetical valuations required by several of the market value definitions included in the policy statement. In particular, concerns were expressed over the definitions of "market value upon completion of construction" and "market value upon reaching stabilized occupancy." According to these commenters, such definitions would require an appraiser to fix a current value estimate to property, the ultimate value of which will be determined by future occurrences or trends. Such values, it was argued, are speculative, hypothetical, unsupported by the market place, and misleading to the reader of an appraisal report. As one commenter explained, market value is an objective value that cannot be supported until market support has been demonstrated at the future date. One commenter stated that in his opinion, the misuse of "market value" data has been one of the basic causes for faulty appraisals. Another commenter pointed out that an appraiser's errors-and-omissions insurance does not provide coverage for future valuations, making appraisers hesitant to perform such estimates. One commenter noted that certain professional organizations prohibit members from estimating hypothetical values. To correct the problems identified with the proposed definitions of market value, a few commenters suggested use of the term "prospective future value;" others suggested deleting those definitions other than "market value as is on appraisal date."

The Board appreciates and agrees with the concerns raised by commenters regarding the various definitions of market value included in the policy statement. To avoid difficulty differentiating between value estimates that require hypothetical valuations and those that reflect value at a certain point in time, the Board has determined that the use of terms other than "market value" would be appropriate to reflect the value of property upon completion of construction and value upon reaching stabilized occupancy. As a result, the definitional section of the policy statement (§ 571.1b(b)) has been modified to include terms that call for appraisals to contain estimates of "prospective future value upon completion of construction" and "prospective future value upon reaching stabilized occupancy." In addition, conforming changes have been made to § 571.1b(c) of the policy statement.

Appraisal Management

A few commenters took issue with the provision calling for a letter of engagement. Two commenters interpreted the policy statement as encouraging a separate engagement letter for each appraisal assignment. They pointed out that such a requirement would be too costly, time-consuming, and cumbersome. One of these commenters suggested that appraisers used frequently could be accommodated via a master engagement letter with separate notification of individual subject property assignments. Additionally, two commenters stated that it should not be necessary to include FSLIC requirements in an institution's engagement letter because under the regulation those requirements should be incorporated within an institution's appraisal policy. For this reason, they recommended the deletion of this provision from the policy statement. Finally, one commenter pointed out that the legal description of property might not be available for a letter of engagement.

It is the Board's opinion that the use of master engagement letters is not inconsistent with the intent of the policy statement. The Board recognizes that master engagement letters may be more efficient for some insured institutions and is, therefore, not opposed to their use so long as institutions take steps to ensure that the engagement letters contribute to sound underwriting practices. Additionally, the Board agrees with those commenters who suggested that it is not necessary to include copies of the rule with the letter of engagement when an institution incorporates the requirements of the rule within their appraisal policy. To the extent that insured institutions are obligated to adopt appraisal policies and practices that are consistent with the requirements of the rule, the Board believes that it is only necessary that appraisers be informed of the requirements of the rule when an insured institution does not reiterate those requirements within their appraisal policy. The policy statement has been amended accordingly.

With regard to the requirement that appraisals be sufficiently current, one commenter questioned whether letter reports could be used to update recent appraisals. The policy statement recommends that appraisals be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made. Addressing this point, one commenter suggested that appraisal reports that are one to two years old may be updated by a letter report as long as conditions affecting the property have not significantly changed. That individual stated that this was a fairly common practice in the appraisal industry.

The Board notes that the policy statement indicates that appraisals should be sufficiently current. In the Board's judgment, it would not be inconsistent with the policy statement for institutions to use letter certifications of value to update appraisals when there have been no material changes in actual market conditions from the time the original appraisal was performed. It is the Board's view that the appropriateness of certifications of value is a matter to be determined by the management of an insured institution in accordance with the circumstances of each loan.

One commenter suggested that appraisals reflect the market value of the rights in "real property" offered as security rather than "realty" as stated in the policy statement. The Board believes the suggested terminology would be more consistent with that employed in the rule and has incorporated this amendment into the policy statement.

A trade association contended that the requirement that appraisals contain a reasonably detailed history of comparable sales used for properties in markets where the sale prices of comparable properties have been increasing or decreasing at a rate faster

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Schilling of the law firm of Jones, Day, Reavis & Pogue, responded by citing to an article in *National Thrift News* that there are 73 appraisal organizations in the country. These figures were not disputed by other members of the panel.

than that of the local economy was unnecessary. Although this commenter recognized that this portion of the policy statement was intended to address problems that arise due to non-arms-length transactions, such as land flips, it was pointed out that the definition of market value in the rule should encompass such artificial incentives. The Board appreciates the concerns expressed by this commenter but does not believe that it is necessary to amend this portion of the policy statement. While the definition of market value in the rule is intended to address situations where the price of property has been inflated by artificial incentives, the Board feels strongly that the rule also obligates the management of insured institutions to determine the extent to which a history of comparable sales would enhance their institution's loan underwriting procedures by providing a more accurate indication of the value of the subject property.

One commenter believed that the requirement for reasonable documentation of "highest and best use" was appropriate. Another commenter, however, indicated that such a requirement could prove burdensome because highest and best use studies are not always available on properties. After considering these comments, the Board does not believe that a modification of the policy statement is necessary. The policy statement is merely intended as guidance and the rule leaves to management the responsibility of determining whether for a particular property type, a properly supported estimate of the highest and best use of the property would provide a more accurate estimate of its market value.

Appraisal Content

The policy statement provides that the content of each appraisal accepted by an institution should follow generally accepted and established appraisal practices as reflected in the appraisal standards of the nationally recognized professional appraisal organizations. There was some question, however, on the part of one commenter, as to which organizations would qualify as nationally recognized professional appraisal organizations. That individual suggesed that the Board list the nationally recognized appraisal organizations that would be acceptable. As mentioned earlier, the Board has been advised that there are approximately seventy known appraisal organizations and no nationally recognized, uniform standards to which the entire industry adheres. Reflecting the nature of the appraisal profession, and in accordance with the comments received by the Board, the reference to appraisal standards of nationally recognized professional appraisal organizations have been deleted from the policy statement.

Three commenters took exception to the standard in the policy statement that appraisals be self-contained. Two commenters stated that this standard was inappropriate for income-producing properties. Another was concerned that it would be interpreted differently in the various Federal Home Loan Bank districts. A few commenters suggested that the term "totally self-contained" be replaced by a provision requiring that the appraisal "contain reasonable supporting documentation."

After considering the views of commenters on this point, the Board appreciates the concerns expressed by those who fear that this standard may be interpreted in such a manner as to make the production of the appraisal report unnecessarily burdensome. The Board believes it is consistent with the overall thrust of the rule that the policy statement be modified to recommend that appraisals contain "reasonable supporting documentation." What constitutes reasonable supporting documentation is to be determined by management in the context of the property and loan under consideration. The Board would suggest, however, that in order for an appraisal report to be properly reviewed, supporting documentation should be readily available to the reviewer.

Another aspect of the policy statement that was the subject of some comment was the section that a market comparable data analysis of an appraisal include a presentation and explanation of adjustments used in the analysis "together with appropriate market support." Three commenters indicated that this provision would be interpreted in some Federal Home Loan Bank districts as requiring the inclusion of "paired sales," whereby comparable sales having identical factors, with the exception of the one item in question, are compared to show the basis for the market adjustment of that specific item. The commenters asserted that if a paired sales approach is required in order to make a market basis justification for all adjustments from the comparable to the subject property, the demands on submission of supporting data would be impossible. They maintain that an appraiser would be required to document comparable market data to support each adjustment in the sales comparison approach. Furthermore, one commenter concluded that a full history of comparable sales is not always appropriate. Rather than requiring market support for each comparable data adjustment used in the market analysis, the commenters suggested that an explanation in the appraisal report of the adjustments made should be sufficient.

The Board wishes to allay the concerns of those who fear that the suggestion in the policy statement that explanations of adjustments include appropriate market support is intended to encourage the use of "matched pair" analyses. This portion of the policy statement should not be construed as a reference to the use of "matched pair" analyses. Rather, an explanation of the adjustment in conjunction with reasonably available market support is all that would be called for by this provision.

Under the policy statement, appraisals are to contain a summary of actual annual operating statements for existing income-producing properties. If the appraiser is apprised that such information is unavailable, the appraiser should identify this source of information. Two commenters advocated the elimination of this requirement. After further consideration, the Board has determined that as opposed to identifying the source of such information regarding the unavailability of operating statements, appraisers merely should indicate in the report that this information is unavailable. The policy statement has been so amended.

3. Procedural and Technical Comments

Two commenters expressed concern as to the impact of the new rule on the secondary market. These commenters questioned whether the rule might be interpreted to require an institution to obtain new appraisals for each of the properties underlying loan pools in which a purchased mortgage-backed security represents a beneficial interest.

The Board wishes to reiterate that the rule was not intended to apply to participation interests in a mortgage pool. With regard to such interests, the Board notes that 12 CFR 571.13 (1987) specifically exempts institutions purchasing mortgage-backed securities from the record-keeping requirements of the Board's appraisal requirements. Although the Board acknowledges that each purchaser or participant must make its own underwriting decision, reviewing a copy of the originator's underwriting standards should be a necessary part of that decision in order to determine whether the originator's standards are acceptable to the purchaser or participant. Furthermore, an institution also may wish to obtain copies of the underlying appraisals.

One commenter suggested including service corporations within the rule's definition of management. After carefully reviewing this comment, the Board has made a technical revision to the rule to include service corporations within the definition of management.

C. Description of the Final Rule

The final rule begins with the Board's statement of the purpose of the rule. In the interest of safety and soundness, it is incumbent upon management to maintain prudent loan underwriting policies. Appraisals are an essential component of the loan underwriting process because appraisal reports contain the estimates of the value of collateral held or assets owned that lending decisions are based upon. Therefore, under the rule, management would be responsible for the development, implementation, and maintenance of appraisal practices and procedures in accordance with the Board's regulation.

1. Definitions

The definitional section of the rule includes definitions of the few terms that are crucial to the comprehension and application of the appraisal regulation. "Management" is defined as the directors and officers of an institution, or service corporation, as those terms are defined in existing Board regulations. *See* 12 CFR 561.31 and 561.32. This section also includes the definition of "market value," upon which the Board proposes to base estimates of value in an appraisal report. This definition is identical to the definition of market value adopted by Fannie Mae and Freddie Mac.

2. Responsibilities of Management

The rule contains a section entitled Responsibilities of Management that addresses the obligations of management to develop, adopt, and implement appraisal policies. Moreover, the rule has been modified to require the board of directors formally to adopt the institution's appraisal standards. This section emphasizes the Board's view that management should have discretion in establishing appraisal policies; these policies must be designed, however, to ensure that appraisals accepted by the institution reflect professional competence and report estimates of market value upon which the institution's lending decisions can be based. To achieve these results, the rule sets forth three appraisal standards that, at a minimum, must be included in the appraisal policies of every insured institution and service corporation. The accompanying statement of policy also recommends one set of appraisal standards acceptable to the Board that management may consider in fulfilling this responsibility. Institutions are not required, however, to adopt any or all of these standards in developing their appraisal policies.

First, the rule provides that management must require every appraisal to be based upon the definition of market value as set forth in the regulation. As noted above, this market value definition is identical to the definition of market value adopted by both Fannie Mae and Freddie Mac. It contemplates the consummation of a sale as of a specified date and the passing of title from buyer and seller under open and competitive market conditions requisite to a fair sale.

Second, the rule provides that management must require an appraisal to be presented in a narrative format. In this regard, the rule requires an appraisal report to be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value reported and the rationale for that estimate. The analysis of the value estimate reported must be commensurate in its detail and depth with the complexity of the real estate appraised.

Third, the Board believes that the reasonableness of an estimate of the market value of collateral in an appraisal report must be considered in the context of prior sales of the property that occurred in a recent time frame. Therefore, the rule provides that management must require that an appraisal contain a sales history of the real estate appraised. Specifically, an appraisal on a one-to-four family residential property that is not prepared on a form approved by Fannie Mae or Freddie Mac must disclose and analyze prior sales that occurred within one year of the date that the appraisal report was prepared. With respect to all other types of property, the appraisal must disclose and analyze any prior sales of the property that occurred within three years of the date the appraisal was prepared.

The rule also requires management to develop and adopt guidelines and to institute procedures pertaining to the hiring of appraisers. In this regard, it instructs management to consider factors including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in formulating hiring guidelines and determining whether to employ an appraiser.

Moreover, the rule provides that management must annually review the performances of all appraisers used within the preceding 12-month period for accuracy and compliance with the institution's appraisal policies. Additionally, the Board is aware that an institution's underwriting policies and procedures wlll invariably change over time. Therefore, the Board strongly recommends that management periodically review an institution's appraisal practices to ensure consistency with current underwriting standards.

3. Exemptions

The rule exempts from the appraisal requirements, to be established by management, appraisals on existing or proposed one-to-four family and existing multi-family properties, prepared on the forms approved by Fannie Mae and Freddie Mac, in compliance with their appraisal standards. Although the Fannie Mae appraisal standards are more comprehensive than those of Freddie Mac, the Board has determined that compliance with either set of appraisal standards, in conjunction with the use of approved forms, will satisfy the requirements of the rule.

This section of the rule also exempts from the appraisal requirements to be established by management any appraisals on commercial and industrial loans tbat are prepared on a form report approved by the Board and completed in accordance with accompanying instructions.

D. Description of the Statement of Policy

The Board believes that the management of insured institutions and service corporations is best qualified to develop appraisal policies that meet the needs of their institutions. Management's policies will be measured according to whether they comport with principles of safety and soundness. The policy statement is intended to serve as guidance as to what constitutes adequate appraisal standards. The Board is not suggesting, however, that only these standards would be acceptable. An institution could adopt appraisal policies different from those set forth in the policy statement and still be consistent with principles of safety and soundness, so long as such policies are designed consistently to produce fair and accurate appraisals.

It is the Board's opinion that compliance with the appraisal standards contained in the policy statement will result in appraisals that report reliable estimates of collateral value upon which institutions can base lending decisions. The Board may periodically update or modify the appraisal standards contained in the policy statement to ensure that such standards remain current.[9]

E. Effective Date

The Board is adopting this regulation and policy statement effective January 7, 1988. The Administrative Procedure Act ("APA") prescribes publication of a substantive regulation not less than 30 days before its effective date. This delayed effective date does not apply when an agency otherwise prescribes "for good cause found and published with the rule." 5 U.S.C. 553(d)(3) (1987). CEBA requires implementation of this regulation no later than January 7, 1988. CEBA, tit. iv, sec. 402(d). Moreover, the provisions of the APA pertaining to notice and comment do not apply to statements of policy. 5 U.S.C. 553(b)(A). Therefore, the Board finds that "good cause" exists to dispense with a delayed effective date for both this regulation and the accompanying policy statement.

Final Regulatory Flexibility Analysis

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

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

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

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions. The final rule treats all institutions identically regardless of their size for the reasons discussed fully in **SUPPLEMENTARY INFORMATION.** To do otherwise would be fundamentally inconsistent with the objectives of the rule. Moreover, all institutions, including small ones, should benefit from the safety and soundness resulting from investments in loans secured by property that has been valued in compliance with the revised appraisal standards set forth in the final rule. Further, inasmuch as the intent of the final rule is to require all institutions to adopt and maintain sound underwriting standards, including adequate appraisal standards, there is no disproportionate or adverse impact on small institutions. Small institutions are expected to benefit from this rule, due to the latitude provided to the management of insured institutions to develop standards consistent with their institution's actual lending operations.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.17–1a to read as follows:

§ 563.17–1a Appraisal policies and practices of insured institutions and service corporations.

(a) *Introduction.* The soundness of an insured institution's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§ 563.17–1 and 563.17–2 of this subchapter.

(b) *Definitions.* For purposes of this section:

(1) "Management" means: The directors and officers of an insured institution, or service corporation of such institution, as those terms are defined in §§ 561.31 and 561.32 of this chapter, respectively;

(2) "Market value" means: (i) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (A) Buyer and seller are typically motivated; (B) both parties are well informed or well advised, and each acting in what he considers his own best interest; (C) a reasonable time is allowed for exposure in the open market; (D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(ii) Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institution lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

(3) "Proposed tract development" means a project of five units or more

[9] The Board notes that section 407 of CEBA requires it to issue supervisory guidelines "establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent with reflecting underlying values." Section 407 also requires the Board to create an informal procedure for review of certain appraisal decisions. The Board is studying how best to implement these requirements, and expects to issue the necessary guidelines and establish appropriate procedures shortly. It plans, however, to accomplish these objectives through action separate from this rulemaking.

that is planned and constructed as a single development.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which institutions may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the institution's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall include, but are not limited to, all of the following requirements.

(i) Appraisals shall be based upon the definition of market value as set forth in paragraph (b)(2) of this section.

(ii) Appraisals shall be presented in a narrative format. An appraisal shall be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate. The analysis of the market value estimate reported shall be commensurate in its detail and complexity with the complexity of the real estate appraised.

(iii) Appraisals shall disclose, analyze, and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(A) For one-to-four family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property, three years preceding the date when the appraisal was prepared.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the insured institution. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in determining whether to employ an appraiser.

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the institution's appraisal policies and procedures; and (ii) the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of paragraph (c)(1) of this section shall not apply with respect to:

(1) Appraisals on existing or proposed one-to-four family and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in compliance with the appraisal standards approved by those agencies. This exemption does not apply to proposed tract developments; or

(2) Appraisals on nonresidential properties prepared on form reports approved by the Board and completed in accordance with the applicable instructional booklet.

PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1. 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.1b to read as follows:

§ 571.1b Appraisal policies and practices of insured institutions and service corporations.

(a) *Purpose.* The purpose of this section is to offer to the management of insured institutions and service corporations the Board's views on appraisal policies and practices that comport with principles of safety and soundness. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law. Therefore, insured institutions and service corporations may adopt appraisal standards different from those set forth in this section and still be consistent with the principles of safety and soundness required by § 563.17–1.

(b) *Definitions.* For purposes of this section:

(1) "Management" shall have the meaning given in § 563.17–1a(b)(1) of this subchapter.

(2) "Market value" shall have the meaning given in § 563.17–1a(b)(2) of this subchapter.

(3) "Market value as is on appraisal date" means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date the appraisal is prepared;

(4) "Market value as if complete on appraisal date" means the market value of a property with all proposed construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants;

(5) "Prospective future value upon completion of construction" means the prospective future value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date;

(6) "Prospective future value upon reaching stabilized occupancy" means the prospective future value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

(c) *Appraisal management.* Management is obligated by regulation to take reasonable steps to ensure that all appraisals used to support credit and investment decisions report accurate values upon which to base lending decisions. Acceptable appraisals may include the following features:

(1) Management should provide appraisers with a letter of engagement that contains a legal description of the property, the interest to be appraised, the different value estimates requested, copies of the institution's written guidelines, and a copy of the Corporation's rule, if the rule's requirements are not specifically included within the institution's appraisal policies. Management should attach to the letter of engagement information pertinent to the property that is necessary to comply with these requirements to the extent that this information is available. Such information should include, but is not limited to, financing data, leases, purchase agreements, and profit and loss statements of the security property;

(2) Appraisals should be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made;

(3) Appraisals should reflect the market value of the rights in real property offered as security or as part of the transaction. All other values or interests appraised should be clearly labeled and segregated, *e.g.*, value of chattels, value of financing terms,

business value, furnishings, fixtures, and equipment value;

(4) Appraisals should report the cost, income, and sales comparison approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more approaches to such value;

(5) Appraisers should analyze and report in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised if such information is available to the appraiser in the normal course of business;

(ii) A history of comparable sales used when the comparable sales properties have been sold several times during a brief period of time or when prices of comparable properties have been increasing or decreasing at a rate that is not typical for the local real estate market.

Such sales analysis should cover the time period of the multiple transactions and address artificially altered sales prices;

(6) An appraisal of a proposed project, improvement, or change in use should be based upon the most recent plans and specifications. If material changes in the plans and specifications could significantly reduce the estimated collateral value after a loan or investment decision has been made, management should take steps to ensure that a current estimate of value is established based on the final plans and specifications for the project. This may be satisfied by having the original appraiser recertify his value or by obtaining a new appraisal based on the final plans and specifications;

(7) Appraisal reports should contain a properly supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (b)(2) of this section. Such estimate should be prepared whether or not the proposed use of the property is in fact the highest and best use. This highest and best use estimate should consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal should consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser should specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses should be presented in sufficient detail to support the appraiser's forecast of the probable success of the proposed use and should indicate whether this is in fact the highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone other than the appraiser, the appraiser should set forth the reasoning and rationale for accepting or rejecting that study, or any portion thereof;

(8) Appraisals on all properties should report an estimate of "market value as is on appraisal date" as that term is defined in paragraph (b)(3) of this section.

(9) Appraisals on all properties wherein a portion of the overall real property rights or physical assets would typically be sold to their ultimate users over a future time period should report the following estimates of value: (i) "market value as is on appraisal date" as defined in paragraph (b)(3) of this section; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; and (iii) "prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section. Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those that reflect all expenses associated with the disposition of the real property as well as the cost of capital and entrepreneurial profit;

(10) Appraisals on all properties for which anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion should report the following estimates of value: (i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; (iii) "prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section; and (iv) "prospective future value upon reaching stabilized occupancy on the date of stabilization" as defined in paragraph (b)(6) of this section. Such valuations should fully reflect the anticipated pattern of income and pertinent operating expenses during the absorption period as well as the impact upon the value estimates of rental and other concessions;

(11) Appraisals should reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All analyses involving fractional interests in the real estate, where the combined value of all interests on estates is not reported, should establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.

(d) *Appraisal content.* The content of each appraisal accepted by an institution should follow generally accepted and established appraisal practices. Specifically, each appraisal should:

(1) Contain reasonable supporting documentation, with no pertinent information withheld, and not misleading so that when read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported;

(2) Unequivocally identify, by legal description or otherwise, the real estate being appraised as this information is provided to the appraiser by management (management is obliged to ensure, prior to funding, that the appraised real estate is described in a manner consistent with the description found in the institution's evidence of debt or encumbrance);

(3) Identify the property rights being appraised;

(4) Describe all salient features of the property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (b)(2) of this section;

(6) Set forth the effective date(s) of the value conclusion(s) and the date of the report;

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to sales comparable data analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with appropriate market support.

(9) Contain a summary of actual annual operating statements for existing income-producing properties made available to the appraiser by the lender and/or borrower, together with a supported forecast of the most likely future financial performance. If the appraiser is told that actual operating statements are unavailable, the appraiser should so indicate. The appraiser should report current rents and current vacancies;

(10) Set forth all material assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's certification (i) a statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved; (ii) a statement indicating whether or not the appraiser made a personal inspection of the subject property; and (iii) a statement indicating that to the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the appraisal standards of the institution.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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12 CFR Parts 563 and 571

[No. 87-1294]

Troubled Debt Restructuring

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and statement of policy.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") is amending its regulations governing institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") by adopting a rule and statement of policy to clarify that insured institutions have been permitted and may continue to account for troubled debt restructurings ("TDRs") in accordance with generally accepted accounting principles ("GAAP"). The rule states that the Bank Board permits institutions to restructure troubled loans in compliance with Statements 5 and 15 of the Financial Accounting Standards Board ("FASB-5" and "FASB-15") and to account for the effects of such restructurings as provided in those statements. The policy statement summarizes the accounting principles applicable to TDRs and sets forth reporting requirements for institutions that engage in such restructuring.

EFFECTIVE DATE: December 31, 1987. Insured institutions should apply the rule and policy statement on all reports filed with the Board for periods ending on or after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director, (202) 377-6445, or Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, or Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In recent years, a number of borrowers have been unable to meet the original terms of loans they have received from thrift institutions. As a result, in order to obtain any recovery from such a borrower, a thrift may have to renegotiate the terms of the loan. In some instances, this renegotiation may result in the thrift's accepting terms it normally would not accept for similar loans with similar risks. These may include a lower interest rate or even no interest, a reduction in principal, a lengthier term to maturity, a transfer of assets from the borrower, the substitution or addition of a new borrower, or some combination of these terms. This renegotiation is known as troubled debt restructuring. FASB-15 defines TDR as a situation in which a "creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor which it would not otherwise consider."

In the past, the Bank Board has permitted institutions to use TDR. *See* Federal Home Loan Bank Board, Capital Forbearance Policy For Insured Institutions, 52 FR 6876 (March 5, 1987). In the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, Congress instructed the Bank Board to allow an institution that used TDR in accordance with FASB-15 for any of its loans to account for those loans in accordance with FASB-5 and FASB-15. CEBA, secs. 402(a), (b). FASB-5 discusses loss contingencies and sets forth guidance concerning the point at which a loss must be recognized because an asset has been impaired or a liability has been incurred. FASB-15 governs the accounting treatment of a TDR. Using TDR, an institution may be able to restructure its loan portfolio to maximize its possible recovery on troubled loans.

On October 5, 1987, the Bank Board adopted and published for public notice and comment a proposed rule and statement of policy on "Accounting for Troubled Debt Restructuring" to be codified as 12 CFR 563.23-4 and 12 CFR 571.18, respectively. Board Res. No. 87-1046, 52 FR 39112 (Oct. 20, 1987). The proposed rule reaffirmed that the Bank Board permits institutions to use TDR in order to maximize their possible recovery on troubled loans and to account for those transactions in accordance with FASB-5 and FASB-15. The accompanying proposed statement of policy further clarified what constitutes a TDR and when, how, and where a TDR should be reported.

Summary of Comments

The Board received a total of twenty-six written comments on its proposed rule and policy statement on troubled debt restructuring. Several of these commenters also discussed the issue at the Board's public hearings,[1] as did

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[1] The Board's TDR proposals were part of a package of proposals issued in accordance with the CEBA. When it adopted these proposals, the Board announced its intention to hold public hearings on the issues the proposals raised. *See* 52 FR 39154 (Oct. 20, 1987). These hearings were held on November 3 and 4, 1987.

other participants at those hearings. Written comments were received from fourteen thrift institutions, ten trade associations, the staff of the FASB, and one law firm. The commenters generally supported the Board's efforts to increase awareness that thrift institutions can use troubled debt restructuring. Two commenters suggested, however, that the Board delay any action on TDR pending FASB resolution of ambiguities in the interaction of FASB–5 and FASB–15 and the establishment of a uniform method of determining net realizable value ("NRV") of assets. One commenter supporting the proposal urged that the Board specify that FASB–15 takes precedence over FASB–5 in accounting for restructured loans.

Bank/Thrift GAAP

Commenters discussed several specific issues raised by troubled debt restructuring. First, the Board requested comments on whether thrift institutions should be able to account for TDRs on unaudited financial statements and monthly and quarterly reports to the Board using generally accepted accounting principles as set forth in the American Institute of Certified Public Accountants ("AICPA") Industry Guide for Banks ("Bank GAAP"). The proposal noted that, in contrast to the general accepted accounting principles set forth in the AICPA Industry Guide for Savings and Loan Associations ("Thrift GAAP"), Bank GAAP does not require consideration of an institution's cost of capital (debt and equity) as a holding cost in determining an asset's net realizable value. The Board noted that the portion of the CEBA that instructs the Board to allow thrift institutions to use TDRs in accordance with FASB–5 and 15 does not address this discrepancy although the statutes overall intent was to provide for similar treatment of thrifts and banks. The Board further noted, however, that regardless of what the Board required in unaudited financial statements and reports to the Board, auditors preparing a thrift's annual audited financial statements would use Thrift GAAP in calculating an asset's net realizable value.

Seventeen commenters addressed this issue. Regardless of their position on Bank GAAP or Thrift GAAP, all viewed uniform treatment of banks and thrifts as a desirable goal and urged the Board to work towards such uniformity. Three commenters urged uniformity between banks and thrifts on the issue but did not express a clear preference for Bank GAAP or Thrift GAAP. Approximately two-thirds of the commenters expressing a preference favored the use of Bank GAAP. These commenters focussed on the congressional intent expressed in the CEBA that banks and thrifts be treated similarly for accounting purposes. One commenter argued that use of the more conservative Thrift GAAP could adversely affect thrifts' ability to raise capital because it would result in less favorable accounting numbers than Bank GAAP. Commenters supporting the use of Thrift GAAP argued that discounting the cash flow of an asset held by a thrift at the institution's cost of capital would result in a more accurate economic depiction of an asset's value. One trade association commenter based its support for Thrift GAAP in part on the current interest in this issue on the part of accounting standards setters and the likelihood that the accounting community is likely to move in the near future to bring Bank GAAP into line with Thrift GAAP rather than the reverse. The FASB staff comment noted that the different NRV treatment reflected "longstanding industry practice" and that the AICPA is considering a "comprehensive review of the Industry Audit Guides for financial institutions."

Disclosure

A number of commenters discussed which, if any, financial statements should disclose an institution's TDRs. The proposed regulation provided that counter statements and monthly and quarterly reports to the Board should contain line items disclosing both TDRs in compliance with their modified terms and TDRs not in compliance with their modified terms. Disclosures on annual audited financial statements were to be made in accordance within FASB–15.

All eight of the commenters addressing this issue argued that these disclosure requirements were too broad. Six commenters argued that thrifts should not be required to disclose TDRs on their counter statements. They stated that counter statements did not contain sufficient space for accurate and complete information about an institution's TDRs and thus the disclosure of TDRs would be confusing to the public. Several commenters indicated that disclosures on counter statements would add to an institution's administrative burdens. All of these commenters urged that the Board only require disclosure of TDRs in reports to the Board and annual audited financial statements. One commenter suggested that if the Board believed that disclosure of TDRs on counter statements served a useful purpose, that a "materiality" standard be used and that only TDRs above a certain threshold of total capital or assets be disclosed. This commenter also urged clarification of the scope of required disclosures to carve out items excludable under footnote 25 of FASB–15. Another commenter urged that levels of TDRs be given "confidential" or "non-public" treatment on reports filed with the Board. One commenter urged the Board not to require disclosure of TDRs on any financial reports. One commenter believed that disclosure of TDRs was only appropriate on reports filed for capital market transactions.

Classification

Four commenters addressed the issue of classification of restructured loans. The proposed statement of policy indicated that restructured loans would neither be automatically classified nor automatically exempt from classification. Each loan would be reviewed on its own merits. Two commenters supported this approach. Two commenters expressed the view that only restructured loans not in compliance with their modified terms should be classified and that loans that had previously been classified should be removed from classification upon restructuring so long as they remained in compliance with their modified terms.

Miscellaneous

Several other issues were also raised. One commenter suggested that thrifts be required to negotiate in good faith with borrowers in restructuring loans and be required to provide a report three months after reaching an informal agreement on restructuring. One commenter suggested that the Board incorporate additional explanatory language from the Securities and Exchange Commission ("SEC") release on in-substance foreclosure to clarify the factors to be taken into account in determining when such a foreclosure had occurred.

Discussion

After reviewing the comments submitted, the Board has determined to adopt the rule and policy statement in substantially the form proposed, with the modifications noted below.

First, the Board has determined that thrift institutions should continue to follow the AICPA Guide for Savings and Loan Associations in accounting for TDRs, specifically in determining the net realizable value of assets. The Board notes that regardless of the Board's position on the standard to be followed in preparing unaudited financial statements, accountants preparing a thrift's annual audited statements would follow Thrift GAAP. The Board does not believe that under those circumstances the Bank GAAP numbers in unaudited reports would be useful. The availability of two sets of financial reports showing different calculations could lead to unnecessary confusion about a thrift's condition. The Board notes that even a number of commenters favoring the use of Bank GAAP agreed that Thrift GAAP would provide a more accurate reflection of an asset's net realizable value.

Although the CEBA generally indicates that similar accounting standards, *i.e.*, GAAP, should apply to banks and thrifts, the statute does not deal with areas such as this, where GAAP itself differs between the industries. As noted above, the FASB staff, in its comment to the Board, noted that this difference was the result of "longstanding industry practice." A number of commenters, including some favoring the use of Bank GAAP, noted that it was more likely that the accounting profession would resolve the discrepancy by using Thrift GAAP than Bank GAAP. The Board also notes that the Conference Report accompanying the CEBA expressly contemplates the use of Thrift GAAP in determining an asset's net realizable value. "The use of GAAP allows a loan to be carried at the lesser of cost or either (1) net realizable value (discounted value based on cash flow), or (2) a carrying value in accordance with FASB–15 debt restructuring where the original obligor has remained in place." H.R. Rep. No. 261, 100th Cong., 1st Sess., at 165. Under these circumstances, the Board has determined to require that thrifts follow Thrift GAAP in determining the net realizable value of assets. The Board may revisit this question, however, if the accounting profession does not act to resolve the inconsistent treatment of thrifts and banks.

Second, the Board has determined to remove the requirement that levels of TDRs must be disclosed on an institution's counter statements. The Board agrees with the commenters that such disclosures on the abbreviated counter statements may prove more confusing than helpful to the public audience reading those statements. Such information may prove useful to the Board in reviewing a thrift's financial statements and loan portfolio, however. Therefore, the Board has determined to retain the requirement that levels of TDRs must be reported in a thrift's unaudited monthly and quarterly reports to the Board. The Board notes that banks must report TDRs in the call reports filed with their regulators. The disclosures set forth in FASB–15 must be made on annual audited financial statements as provided in FASB–15.

Third, the Board has determined that loans that have been restructured will continue to be reviewed for credit quality and classified where appropriate pursuant to the Board's classification of assets regulation. A borrower's compliance with restructured terms standing alone may not in and of itself raise the quality of a troubled loan and collateral above a classifiable level. The Board reiterates that TDRs will be reviewed under the same criteria as all other loans in an institution's portfolio and should be neither automatically classified nor automatically exempt from classification. As noted in the proposal, this is consistent with the practice of other financial regulatory agencies.

In response to the suggestion that the Board incorporate additional language from SEC Interpretive Rule 33–6679 on in-substance foreclosure, the Board has added additional language to the policy statement. This additional language is designed to clarify the circumstances of such in-substance foreclosures.

Under FASB–15, a TDR may be reported as such in an institution's reports and financial statements when "consummated." The Board emphasizes, therefore, as it did in its proposal, that it expects that an institution and borrower will arrive at a formal agreement within a reasonable period of time following the start of negotiations. Normally, formal written agreements for restructuring should result within six months from the start of negotiations. Negotiations that continue for a significantly longer period without a final written agreement between the thrift and the borrower may give rise to doubt about whether the loan has actually been restructured. The Board assumes that institutions and borrowers will negotiate TDRs in good faith.

To summarize, the policy statement is intended to clarify: (1) When an institution may account for a loan as a TDR; (2) what constitutes a TDR; (3) that the Bank Board expects thrift institutions to account for all losses that must be recognized under FASB–5 both before and after reporting any loan balance under FASB–15; (4) that FASB–5 must be followed not only in accruing losses that have occurred but also in making adequate disclosure of loss contingencies; (5) that, in accordance with FASB–15, any property received by the thrift institution in full or partial payment of a loan, including repossessions in substance, must be accounted for at fair value; (6) that TDRs must be reported in a thrift's monthly and quarterly financial reports, and in these reports and in audited financial statements disclosures must be in accordance with FASB–15; and (7) that TDRs will neither be automatically classified, nor automatically exempt from classification, but will be reviewed under the same criteria as all other loans in an institution's portfolio.

Pursuant to 12 CFR 508.14, the Board finds that a thirty-day delay in the effective date would be unnecessary and contrary to the public interest. The CEBA mandates that regulations be promulgated no later than January 7, 1988. Although the reports for the current reporting period do not contain instructions for TDRs, in order for insured institutions to use TDR in accordance with this rule and policy statement at the earliest possible time the Board has determined that institutions should apply the rule and policy statement in accounting for TDRs for periods ending on or after December 31, 1987. Instructions for reporting TDRs should be available in time for the March, 1988 reports to the Board.

Final Regulatory Flexibility Analysis

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

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

2. *Issues raised by comments and agency assessment and response.* The comments have been summarized and addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The regulation and policy statement will not have a negative impact on small entities.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Parts 563 and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended

(12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.23–4 to read as follows:

§ 563.23-4 Accounting for troubled debt restructuring.

(a) If an insured institution engages in troubled debt restructuring with respect to any loan by the insured institution and the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), the insured institution shall account for the effects of the troubled debt restructuring and its investment in the original debt instrument (or other agreement that is subject to such restructuring) in the manner provided in those statements and in a manner consistent with the AICPA Industry Guide for Savings and Loan Associations. Guidelines for use by insured institutions in accounting for troubled debt restructurings are set forth in § 571.18 of this subchapter.

(b) Insured institutions shall report restructured loans in all monthly and quarterly reports to the Board or the Corporation.

PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.18 to read as follows:

§ 571.18 Accounting for troubled debt restructuring.

(a) The purpose of this § 571.18 is to offer to the management of insured institutions the Board's views on troubled debt restructuring. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law.

(b) All insured institutions should use the accounting treatment for troubled debt restructuring ("TDR") described in this section when preparing all financial reports for filing with the Board or the Corporation. All insured institutions may use TDR for any loans, in compliance with Statement No. 5 and Statement No. 15 of the Financial Accounting Standards Board ("FASB–5" and "FASB–15"). If a thrift chooses to use TDR, it should account for the transaction as specified in FASB–5 and FASB–15. Allowances for losses on those loans should be determined as set forth in the AICPA Industry Guide for Savings and Loan Associations. This statement of policy sets forth the policy and general criteria for determining what may be included in TDR, when an insured institution must report a TDR, treatment of any transfer of assets as part of a TDR, including treatment of repossessions in substance, and how TDRs should be reported. This statement also sets forth the criteria under FASB–5 for when a loss must be recognized because an asset has been impaired, regardless of TDR, and when loss contingencies must be disclosed.

(c) The accounting standards for TDR are set forth in FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," which is summarized in this and following paragraphs. Further specific information may be found by referring to FASB–15. A TDR is a restructuring in which a creditor, such as a thrift, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Extending or renewing a loan with no change in principal at a stated interest rate equal to the current interest rate for new loans at a similar level of risk is not considered a restructured loan and should not be reported as such. A restructuring may involve a transfer of assets from the borrower to the thrift in full or partial satisfaction of the loan, a modification of the loan's terms, or both of the above. A restructuring may also involve the substitution or addition of a new debtor for the original borrower.

(d) FASB Statement No. 5, "Accounting for Contingencies," also plays a significant role in the reporting of TDRs. FASB–5 governs when certain losses must be recognized because a loss contingency is both probable and estimable and an asset has therefore been impaired or a liability has been incurred. Further specific information may be found by referring to FASB–5.

(e) TDR may not be used to avoid recognizing losses that FASB–5 requires to be accrued. Estimated losses must be accrued by a charge to income if two conditions are met. First, available information indicates that it is probable that an asset had been impaired or a liability incurred at the date of the financial statements. Second, the amount of the loss must be reasonably estimable. If both of these conditions are met for a loan, the institution must, both before and after restructuring, establish loss allowances for the difference between the carrying value of the loan and its net realizable value as determined in accordance with the AICPA Indusrry Guide for Savings and Loan Associations. The FASB–15 criteria are then applied to the net realizable value of the loan.

(f) FASB–5 also requires adequate disclosure of loss contingencies not meeting both of the above criteria under certain circumstances. Disclosure is required, for example, where there is at least a reasonable possibility that a loss, or an additional loss, may have been incurred or where an asset has probably been impaired but the amount of loss cannot reasonably be estimated. Such disclosure should include a description of the loss or excess or additional loss contingency and either a range of possible loss or a statement that no estimate of the loss can be made.

(g) Under paragraph 6 of FASB–15, the date of consummation of the restructuring is the time of the restructuring. A TDR exists as soon as there is agreement between the institution and the borrower(s) (either prospective or existing) to consummate the restructuring. Thus, a TDR would clearly exist when a formal letter of intent or mutual agreement is signed. It would also be presumed to exist, however, if the senior management of both the institution and the borrower reach an oral agreement memorialized in written documentation, such as a memorandum to the files, setting forth the terms of the TDR. Institutions that report such informal or incomplete restructurings assume the burden of formally completing the transaction, however. Failure to do so may result in reconsideration of any conclusions drawn as a result of the anticipated restructuring and may require refilings of financial statements. Normally a TDR should be finalized within six months from the start of negotiations. The institution's history in finalizing expected restructurings will be reviewed by the Board's examiners. If an institution's reported expected restructurings frequently do not result in formal consummation within a reasonable time, the examiner may decide to permit only formally completed TDRs to be reported as such.

(h) A restructuring may involve the transfer of assets from the borrower to the creditor institution in full or partial satisfaction of the loan. The proper treatment of assets received in partial satisfaction of the loan is set forth in paragraph (j) of this section. Assets transferred may include, but are not limited to, receivables from third parties, real estate, or an equity interest in the borrower. Pursuant to paragraph 28 of FASB–15, such assets must be accounted for at their fair value at the time of the restructuring. Paragraph 13 of FASB–15 defines the "fair value of the assets transferred" as the amount the borrower could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, *i.e.*, other than a forced or liquidation sale. Paragraph 13 provides that market value shall be used if an active market exists. If no market price is available for the asset or similar assets that could be used in estimating fair market value, a forecast of expected cash flows from the asset, discounted at a rate commensurate with any risk involved, may be used to arrive at fair value.

(1) Such fair value accounting is required by FASB–15 when collateral is repossessed by the institution. This fair value accounting treatment cannot be avoided merely by delaying formal repossession. Under paragraph 34 of FASB–15, a repossession in substance must be accounted for at fair value in accordance with paragraph 28. Paragraph 84 of FASB–15 requires such accounting "if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt." The Board and the Corporation will use the guidelines established by the Securities and Exchange Commission ("SEC") as set forth in its Interpretive Release Number 33–6679 to determine when a repossession in substance has occurred. Under these guidelines, a repossession in substance will be deemed to have occurred when:

(i) The borrower has little or no equity in the collateral, considering the current fair value of the collateral; and

(ii) The creditor can only expect proceeds for the repayment of the loan to come from the operation or sale of the collateral; and

(iii) The borrower has either—

(A) Formally or effectively abandoned control of the collateral to the creditor; or

(B) Retained control of the collateral but, because of its current financial condition or economic prospects, it is unlikely that the borrower will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

These determinations will be made on a case-by-case basis. A number of factors will be considered in determining whether a repossession in substance has occurred because it is unlikely that the borrower can rebuild equity in the "foreseeable future." Among these are the institution's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout agreement. As the SEC noted in its Interpretive Rule:

> [O]ngoing debtor commitment is a factor in assessing whether collateral has in substance been repossessed * * * [R]epossession accounting may not be necessary when the debtor continues good faith efforts toward successful operation of the collateral and eventual repayment of the loan; provided, however, that the creditor can demonstrate a reasonable basis for concluding that the loan will be ultimately collectible.

(2) Assets received in full satisfaction of a loan must be recorded at their fair value. Any excess of the carrying value of the loan over the fair value of assets received in satisfaction of the loan must be recognized as a loss. The carrying value of the loan is the loan balance, adjusted for any unamortized premium or discount, less any allowance provided or any amount previously charged off, plus recorded accrued interest.

(i) TDR may involve a modification of the terms of the loan. This modification may include, but is not limited to, a reduction in the stated interest rate, an extension of maturity at a favorable interest rate, a reduction in the face amount of the debt (principal), a reduction in accrued interest, or a combination of the above. The proper treatment of a TDR involving a combination of a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the loan is set forth in paragraph (j) of this section. Both before and after a TDR is implemented, an adequate allowance for loss must be provided in accordance with FASB–5. Under GAAP, this allowance must be based on net realizable value to determine the appropriate carrying value of the loan being restructured.

(1) If the total expected future cash receipts (including both principal and interest) reasonably expected to be collected under the modified repayment terms are less than the carrying value of the loan on the institution's books, after any necessary FASB–5 adjustment, then a loss on restructuring must be recognized to the extent of that deficiency. Under these circumstances, no interest income will be recognized over the life of the restructured loan.

(2) If the total expected future cash receipts are equal to or exceed the carrying value of the loan, after any necessary FASB–5 adjustment, no loss on restructuring need be reported. Interest income will be recognized over the life of the loan to the extent that future receipts exceed the carrying value of the loan. Institutions should recognize this income using an effective interest rate that will yield a constant rate of interest over the remaining life of the loan.

(3) Some restructurings may involve indeterminate future cash receipts. To the extent that the minimum future cash receipts are less than the carrying value of the loan, the institution must recognize a loss. This loss must be recognized under paragraph 32 of FASB–15, unless under the modified terms the contingent future cash receipts needed to make the total future cash receipts under the modified terms equal to the carrying value of the loan, after any necessary FASB–5 adjustment, are both probable and are reasonably estimable.

(j) Some TDRs may involve both a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the remaining loan. In these circumstances, the restructuring must be accounted for by a two-stage process under paragraph 33 of FASB–15. First, the carrying value of the loan is reduced by the fair value of the property received, as calculated pursuant to paragraph 13 of FASB–15. Second, the total amount of the expected future cash receipts is compared to the remaining carrying value of the loan. Any loss recognized is limited to the excess of the remaining carrying value of the loan over such total future cash receipts. If the total expected cash receipts exceed the remaining recorded amount of the loan, no loss need be recognized, and any future interest income should be recognized at a constant effective interest rate over the life of the loan.

(k) Some TDRs may involve the substitution or addition of a new debtor for the original borrower. Pursuant to paragraph 42 of FASB–15, such a restructuring should be accounted for according to its substance. If under the restructuring the substitute or additional debtor controls, is controlled by, or is under common control with the original borrower, or performs the custodial function of collecting certain of the original borrower's funds, FASB–15 provides that the restructuring should be accounted for as a modification of terms. If the substitute or additional debtor does not have such a control or custodial relationship with the original borrower, the restructuring should be accounted for as a new loan in full or partial satisfaction of the original borrower's loan. The new loan should be recorded at its fair value.

(l) As provided in § 563.23-4 of this subchapter, restructured loans are to be reported in all monthly and quarterly reports to the Board or the Corporation. In these reports and annual audited reports filed with the Board, all disclosures and information required by FASB-5 and FASB-15 should be provided. The carrying value of an asset received in full or partial satisfaction of the loan is not reportable as a restructured loan.

(m) Examiners will continue to monitor institutions' loan portfolios, including restructured loans. Loans will not automatically be classified merely because they have been restructured. Conversely, loans will not be exempt from classification merely because they have been restructured. Where appropriate under the criteria set forth in § 561.16c, a restructured loan may be classified.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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Part III

Environmental Protection Agency

40 CFR Parts 51 and 52
Requirements for Preparation, Adoption and Submittal of Air Quality Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3238-4, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The "Guideline on Air Quality Models (Revised)" (1986), EPA 450/2-78-027R lists the air quality models required to estimate air quality impact for sources of air pollutants which appear at 40 CFR 51.166 and 52.21 (51 FR 32176). On September 9, 1986 (51 FR 32180), EPA issued a supplemental notice proposing to include four new modeling techniques to augment the guideline in response to requests urging the Agency to do so. Today's action establishes those additions to the guideline as Supplement A, incorporates changes as a result of public comment, and amends 40 CFR 51.166 and 52.21 to incorporate Supplement A.

DATES: These rules are effective on February 5, 1988. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; Telephone (919) 541-5562 or Jawad S. Touma, (919) 541-5381.

ADDRESSES:

Docket Statement: All documents relevant to development of this rule have been placed in Docket A-80-46, located in the Central Docket Section (South Conference Center, Room 4), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This Docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying documents.

Document Availability: The four new modeling techniques are incorporated as Supplement A (1987) to the "Guildeline on Air Quality Models (Revised)" (1986), Publication No. EPA 450/2-78-027R. Supplement A may be obtained upon written request from Source Receptor Analysis Branch, U.S. Environmental Protection Agency, MD-14, Research Triangle Park, NC 27711. Supplement A and the guideline are for sale from U.S. Department of Commerce, National Technical Information Service (NTIS), 5825 Port Royal Road, Springfield, VA 22161. Supplement A and the guideline are also available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 165(e)(3)(D) of the Clean Air Act (CAA) requires the Administrator to adopt regulations specifying with reasonable particularity models to be used to comply with the Act's prevention of significant deterioration (PSD) requirements. To carry out these requirements, the "Guideline on Air Quality Models (Revised)" (1986), EPA 450/2-78-027R was incorporated by reference (51 FR 32176) in regulations promulgated for PSD (40 CFR Parts 51.166 (formerly 51.24)[1] and 52.21). Because of this incorporation, revisions to the guideline must satisfy the rulemaking requirements of section 307(d) of the CAA. On September 9, 1986 (51 FR 32180), EPA proposed to include four changes to this guideline: (1) Addition of a specific version of the Rough Terrain Diffusion Model (RTDM) as a screening model, (2) modification of the downwash algorithm in the Industrial Source Complex (ISC) model, (3) addition of the Offshore and Coastal Dispersion (OCD) model to EPA's list of preferred models, and (4) addition of the AVACTA II model as an alternative model in the guideline. Written public comments were sought by October 9, 1986. However, due to requests from several groups, the comment period was extended until December 9, 1986 (51 FR 37418).

The following is a brief background with respect to some of the issues addressed in this rule. The "Guideline on Air Quality Models (Revised)" (1986) describes two levels of model sophistication: Screening and refined. Screening models provide a conservative estimate of the air quality impact of a source. The purpose of screening models is to eliminate from further consideration those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS) or the allowable prevention of significant deterioration (PSD) concentration increments. Refined models consist of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result, they provide a more accurate estimate of source impact and the effectiveness of control strategies. This rule addresses both screening and refined models.

With respect to RTDM, due to a present lack of scientifically sound and proven techniques for modeling in complex terrain (where the height of terrain exceeds the height of the source being modeled), EPA does not yet recommend a refined modeling technique, but relies on screening models. The need for refined air quality models to determine pollutant concentrations from sources in a complex terrain area is recognized. Thus, EPA/ORD has been working on model improvements; however, a refined model is unlikely to be proposed for regulatory use for another 12-18 months. The Utility Air Regulatory Group (UARG) and others, in a previous rulemaking, urged EPA to adopt the RTDM model as a refined model because RTDM is scientifically better than the existing EPA screening models and because these screening models are very conservative. EPA agreed that RTDM is scientifically better, but found that the model proposed by them underpredicts ambient concentrations by a wide margin. After several discussions with EPA, UARG agreed to a conservative version of RTDM, that is classified as a screening model, but is more accurate than other available models. EPA proposed this version of RTDM and sought public comment.

With respect to ISC, this model is presently an EPA refined model. EPA had been urged by the American Petroleum Institute (API) to approve a modified version of the building downwash algorithm in this model. API's evaluations had shown that the modified version was more accurate. It corrected underpredictions by the existing model when aerodynamic downwash occurs during certain meteorological conditions for stacks lower than Good Engineering Practice (GEP). However, EPA found that most of the data relied upon by API were collected at sources with small stack-to-building height ratios. For sources with larger stack-to-building height ratios, the use of the API approach would result in substantially lower concentration estimates, but there were no data to verify the accuracy of these lower estimates. Thus, EPA proposed a modified version of the API approach in order to avoid arbitrarily selecting lower

[1] EPA restructured 40 CFR Part 51 on November 7, 1986 at 51 FR 40656.

concentrations during downwash conditions for some stack configurations and sought public comment on this approach.

With respect to OCD, EPA had been asked by the Department of the Interior Minerals Management Service (MMS) to include the OCD model as a refined model, for application to sources located over water near the coastline. This model has been approved for use by the MMS in 50 FR 12248. EPA findings had shown that this model meets the criteria necessary to be included in the guideline as a refined model and represents an improvement in the state of knowledge relative to the existing model for application to sources over water. EPA Regions with many offshore sources have an interest in such a model. Thus, EPA proposed the OCD model for addition to the modeling guideline.

With respect to AVACTA II, EPA proposed adding this model to the guideline for use on a case-by-case basis. No explicit recommendation on its use is made. This model was submitted by the model developer in response to a solicitation of new refined models which are based on sound scientific principles (45 FR 20157).

For additional information on these four models, please refer to 51 FR 32180.

Response to Comments

Specific comments received can be found in Docket A-80-46, items V-D and V-H. All comments were consolidated according to the issues raised and are discussed along with full EPA responses in more detail in the "Summary of Comments and Responses on the September 1986 Supplemental Proposal to Revise the Guideline on Air Quality Models, April 1987," (Docket Item VI-G-1). Only the major issues raised by the commenters, along with EPA responses, are summarized below. Guidance and editorial changes associated with the resolution of these issues are incorporated in the appropriate sections of the guideline and are published as Supplement A (1987) to the "Guideline on Air Quality Models (Revised)" (1986). See Document Availability statement above.

A. Rough Terrain Diffusion Model (RTDM)—Model Status

Comment Summary (Approved RTDM): The majority of commenters urged EPA to adopt its proposal on the use of RTDM as a third-level screening model for use in rural complex terrain applications. Some also generally requested that EPA adopt RTDM as a refined model (i.e., can be used on a generic basis with site-specific data) because of technical merits.

Response: Based on the comments, EPA maintains its proposal to recommend RTDM with specified default options as a third-level screening model for estimating air quality impact from stationary point sources in rural complex terrain. However, EPA's review of available studies demonstrates that RTDM, as a refined model, can substantially underpredict concentrations. Since no new analysis was presented by the commenters to alter this conclusion, EPA does not agree with the commenter's proposal to adopt RTDM as a refined model in Appendix A of the guideline at this time. RTDM with full on-site data may be used as a refined model on a case-by-case basis by following the demonstration criteria described in § 3.2.2 of the guideline.

Comment Summary (Do Not Approve RTDM): One commenter opposed EPA's proposal to even adopt RTDM as a screening model because: (1) The highly conservative nature of the currently approved complex terrain screening models compensates to some extent for not addressing other meteorological phenomena where high concentrations can occur and for which RTDM does not provide an estimate (e.g., on the lee side of hills, or during fumigation and stagnation conditions in deep valleys); (2) both the Westvaco and Widows Creek data bases show a substantial number of instances in which the concentrations at specific monitoring stations were underpredicted by RTDM.

Response: From the information presented to EPA through the public comment and review process, it is apparent that RTDM as proposed by EPA, with assigned pre-determined values irrespective of site-specific conditions, is more accurate, while still providing conservative estimates. It is also based on better scientific theory than existing complex terrain screening models. The commenter did not provide credible scientific data to sustain the argument that a model must be highly conservative to encompass concentrations produced by all meteorological phenomena. The commenter appears to be arguing for disallowing the use of RTDM because it is less conservative and may result in less stringent emission limits than those provided by current models. EPA has anticipated the need for improved complex terrain models and has conducted over the last five years the Complex Terrain Model Development program. The goal of this research program is to develop reliable atmospheric dispersion models that are applicable to large pollutant sources located in complex terrain. RTDM, which deals with stable plume impaction, is a step in this direction. Research programs to consider other phenomena such as lee side effects and stagnation are underway or are being considered by EPA's Office of Research and Development and by others. Once this research fully addresses how to model these phenomena, there will be a need for a reasonably accurate, yet simple screening model that yields conservative estimates, which is the role filled by the RTDM model.

The various tests of the RTDM model have been summarized and referenced in the EPA proposal (51 FR 32180). EPA believes that these tests provide an adequate demonstration of this model's ability, with specified default parameters, to provide sufficiently accurate but consistently conservative concentration estimates. Rather than limit the issue of accuracy to a receptor-by-receptor basis as suggested by the commenter, EPA's position has always been that the performance of any model, whether for complex terrain or some other application, should be based on the ability to predict highest concentrations on a network-wide basis. EPA has found that under- and overprediction varies from site to site. This has been demonstrated for even the widely used flat terrain model MPTER. In applying models to evaluate attainment of short-term deterministic ambient standards or PSD increments, EPA has always examined whether the highest, second-highest value in the network, and not the value at a specific monitoring site, is within the NAAQS limits. For this type of application RTDM is conservative.

Comment Summary (Impact Assessment): One commenter stated that the proper basis for assessment of the impact of RTDM's approval is not current emission limits but rather the alternative emission limits that would result from applying currently approved EPA rough terrain models to sources whose limits are not now based on approved models. The commenter claims that there would be a greater total increase in emissions than calculated by EPA.

Response: EPA does not agree with the commenter's statement that emission limits based on currently approved EPA complex terrain screening models should have been used for all sources in evaluating the impact of the RTDM model. In its analysis, EPA considered all existing sources in complex terrain that have emission limits based on the Valley and COMPLEX I screening models. For these sources current emission limits were compared with those that would be derived from RTDM, as the commenter desired. However, many sources in complex terrain have emission limits set on some basis other than the currently approved models. EPA also compared these emission limits with those emission limits that would be based on RTDM. Since EPA does not plan to impose retroactively the revised modeling guideline to change the emission limits for these latter sources, the comparison with RTDM is appropriate. It would be wholly inappropriate to base a comparison on emission limits derived from Valley or COMPLEX I where these models were not actually used. Contrary to the commenter's claim, the thorough analysis by EPA, placed in the Docket, showed that the magnitude of the potential increase in national emissions associated with the use of RTDM will not be appreciable.

Miscellaneous Items: To correct programming errors identified by the model developer during the comment period, EPA is substituting Version 3.2 of RTDM for Version 3.1 in this rulemaking. EPA has tested Version 3.2 of RTDM that was submitted by this developer and has found the changes to be correct, necessary and with little impact on maximum estimated concentrations.

EPA agrees with another commenter's views to make readily available to the public all EPA-recommended models. EPA has notified the RTDM model developer of EPA's intent to release RTDM through NTIS for public distribution in a manner similar to other models recommended for regulatory applications. (Docket Items VI–I–1, VI–D–1).

Conclusion

EPA reaffirms its proposal to modify the guideline to list RTDM as a third level screening model for estimating air quality impact from stationary point sources in rural complex terrain. Users who may wish not to commit the additional resources necessary to use RTDM as a third-level screening model are not required to do so; the existing initial or second-level screening techniques remain available for use. The RTDM model is available as part of Change 3 to UNAMAP Version 6.

B. Rough Terrain Diffusion Model (RTDM)—Data Input

Comment Summary (Use of Remote Sensing Devices): Commenters stated that specifying stack top wind measurements precludes the use of SODAR which can provide reliable wind measurements at heights typical of plume transport.

Response: EPA does not intend to preclude the use of remote sensing devices (e.g., SODAR) to directly measure wind speed and direction at plume transport height, provided that the necessary data quality assurance and recovery rate requirements are met. Section 5.2.1.4 of the guideline is being revised to explicitly state that SODAR may be used to measure winds as indicated here.

Comment Summary (Wind Input): Commenters stated that EPA should not require the use of on-site, stack top level wind measurements. While use of stack top winds may be preferable, and while it may be appropriate for EPA to ask RTDM users to gather such data, other wind data can be used if necessary without having a significant adverse effect on the model's performance. They further added that, as a minimum, the use of on-site surface level data should be allowed on a 2-year interim basis until upper level on-site wind data are available. Other commenters, however, supported EPA's position to require stack top wind data.

Response: EPA's recommendation to use measurements representative of wind flow at stack top is consistent with the prevailing scientific opinion that use of stack top winds is superior in complex terrain, as the commenters acknowledge, and that in complex terrain these winds cannot be estimated accurately from surface level measurements. The use of stack top winds is also consistent with present modeling guidance given in section 9.3.3.2 of the guideline which was subject to an earlier rulemaking.

Based on the limited analysis presented by the commenters, EPA does not agree that more conservative estimates are always obtained when lower level winds (than at stack top height) are used as input to RTDM. EPA's rationale for its recommendations is that the scientific integrity of this model is enhanced with the input of these winds. EPA has made known its position on wind data since July 1985 and thus there has been ample time to plan for, if not complete much of, the data collection process. For these reasons, the need for an interim period, during which the best scientific data are exempt from use in RTDM, is not technically justified.

Nevertheless, the Agency does not wish arbitrarily to preclude any source from using RTDM for lack of necessary data input. Thus, the Agency encourages source owners to allow for time necessary to (1) gather input data needed for new models, (2) execute the model to determine the emission limit; and (3) submit the documentation for rulemaking action. Since EPA is interested in the most scientifically credible analysis, the Agency will work with the source to develop reasonable schedules for collecting and using these data in RTDM.

Conclusion

EPA reaffirms its recommendation that, for input to RTDM as a third-level screening model, winds should be measured at stack top height. For stacks greater than 100m, the measurement height may be limited to 100m in height relative to stack base. Appropriate allowance for the use of measurement from remote sensing devices is also provided. EPA's rationale is that the best data from the scientific point of view (i.e., winds representative of conditions at stack top height) should be input to this model to improve confidence in the predicted concentrations.

C. Industrial Source Complex (ISC) Model

Comment Summary (Do Not Support EPA's Proposal): For a variety of reasons, several commenters did not support the modification to the building downwash algorithm in the ISC model as exactly proposed by EPA. Some claimed that the EPA proposal to select the worst of two estimates (from the API version and the original ISC model) was inconsistent with the API approach. Some claimed that the proposed approach has no physical basis and is based on model-to-model comparisons. In addition, the version of the ISC model proposed by EPA contained some features that were not included in the version of ISC proposed by API. Another claimed that the API approach to treat downwash was not sufficiently tested by EPA before being proposed.

Response: In the present ISC model, the effect of building wakes on plume spread occurs abruptly for effective stack heights less than Good Engineering Practice (GEP) formula height. Wind tunnel studies have suggested as a refinement that it is important to compute plume enhancement (the vertical and crosswind spreading of the plume due to building wakes) as a continuous function of stack height. Based on this information, API proposed a linear "decay" function. Although there is uncertainty about the correct shape of this "decay" factor, EPA felt that the API approach was reasonable and proposed it.

After further analysis of the data provided by API, EPA found that most of these data were collected at sources with small stack height to building height ratios (H_s/H_B) of approximately 1.5. A change in the shape of the linear decay factor could have a modest effect on concentrations for these sources, but a substantial effect on sources with $H_s/H_B>1.5$. Since it was uncertain how accurately the API linear treatment works for these latter cases, EPA originally proposed to select the highest of two estimates (from the API version and the original ISC model) in order to avoid arbitrarily selecting lower concentrations. EPA's concern about the potential underprediction of the proposed API version stems from the apparent systematic tendency for the present ISC model to underestimate downwash concentrations. Thus, for large sources, which usually have $H_s/H_B>1.5$, the misapplication of the API results would result in a further, more serious, underestimation of potential impact during downwash conditions. The intent of EPA's original proposal can be accomplished by limiting the use of the API modifications to sources with $H_s/H_B\leq1.5$ while requiring sources with $H_s/H_B>1.5$ to use the ISC model in UNAMAP Version 6.

The API modifications were adapted in a different version of the ISC model than that originally proposed by API because of timing. API explored the possibility of making these refinements during the Third Conference on Air Quality Modeling in January 1985. However, documentation of these refinements was not submitted to EPA until early 1986. By that time, the ISC model was already in the process of being changed, from UNAMAP Version 5 to Version 6, also a result of public comment at the third modeling conference. Thus, EPA could only propose the API downwash algorithm in conjunction with the new UNAMAP Version 6 of ISC.

Comment Summary (Alternative Approach: ISC–6MOD): The model developer submitted an alternative approach which incorporates in principle the ideas contained in the original API proposal to modify the downwash algorithm but minimizes the differences with the ISC UNAMAP Version 6 by incorporating many of the new features of the ISC model, except for stack tip downwash and buoyancy-induced dispersion. The commenter stated that two features not included are implicitly accounted for in the API scheme to treat downwash. The commenter referred to this proposed version as ISC-6MOD which is most similar in concept to the model originally proposed by API and does not result in significantly different maximum concentrations.

Response: EPA believes that the data and rationale presented by the commenter support the ISC–6MOD approach, which is based on the ISC model in UNAMAP Version 6. However, data presented in support of applying ISC–6MOD show that use of these modifications is limited to H_s/H_B less than 1.5, especially in terms of the higher observed concentrations which are of regulatory concern. Where the H_s/H_B ratio is greater than 1.5, EPA believes that the data presented to date do not support the ISC–6MOD approach; the basic downwash approach in ISC UNAMAP Version 6 should continue to be used.

Conclusion

EPA agrees with the alternative approach presented by the model developer and believes that it represents the best scientific method available at this time. EPA has revised its modeling guidance and modified the ISC model in UNAMAP Version 6 to include the ISC–6MOD downwash algorithm in the regulatory default option for sources with $H_s/H_B\leq1.5$. However, for sources with $H_s/H_B>1.5$, there is no scientific basis to change the ISC model. Since the basic building downwash algorithm proposed by API and the performance improvements remain essentially intact with ISC–6MOD approach, and since the existing ISC model will continue to be used when these modifications are inapplicable, EPA believes that the alternative approach effectively accomplishes the same goal as the original proposal and does not constitute a significant change. Thus, a re-proposal of the modified downwash algorithm (ISC–6MOD) is not necessary. The modified ISC model is available as part of Change 3 to UNAMAP Version 6.

D. Offshore and Coastal Dispersion (OCD) Model

Comment Summary: Comments were generally favorable on the proposal to adopt the OCD model as a refined model in the guideline. However, one stated that the OCD model should remain in Appendix B and not be designated as an EPA preferred model until the following technical issues are resolved: (1) The OCD model appears to be continually undergoing substantial revisions and it is uncertain whether current model evaluation summaries are applicable for the version of OCD currently in use; (2) detailed model evaluations of OCD using tracer data demonstrate significant underpredictions of peak measured concentrations.

Response: The OCD model was proposed as a preferred or Appendix A model because it is a unique approach needed to fill a void in the existing regulatory program. The version of the OCD model recommended by EPA is designated by the Department of the Interior, Minerals Management Service (MMS) as Version 3.0 (Rev 85329). EPA has asked and received confirmation from the MMS that the recommended version of this model was indeed used in the evaluation studies. (Docket Item VI–D–2). From the list of corrections shown by the commenter (Docket Item V–D–17, attachment E–1), it appears that these minor changes were needed to eliminate minor coding inconsistencies in the program.

The OCD model as recommended by EPA was evaluated by the MMS using three data bases (Docket Item V–D–9). A review of the model evaluation results shows no consistent tendency for underpredictions for the ten highest ranked concentrations. From a regulatory point of view, these are among the most important statistics since model estimates should demonstrate compliance with the national standards, which are not to be exceeded more than once per year. Naturally, EPA has some concern about the ability of the OCD to predict the highest concentration. However, here also, the underprediction of about 16–30% for two of the data bases are in contrast with the overprediction of about 85% in the third data base. EPA examined the example underprediction referred to by the commenter, and it appears that the commenter is referring to examples where a hybrid OCD model, not proposed, is used. This should not be confused with the version of OCD addressed in this rulemaking. Even so, the underprediction cited does not appear to be significant (i.e., 10–20 percent) and is within the error margin associated with other Gaussian models.

Conclusion

EPA has concluded to adopt OCD as a preferred model to be listed in Appendix A of the guideline because this model has met the solicitation requirements outlined in 45 FR 20157 including the practicality of the model, based on technical merit, for use in ongoing regulatory programs. The OCD model is available as PB85–246106 from the National Technical Information Service.

E. AVACTA II Model

There was no comment on the proposal to include this model as an alternative model in Appendix B of the "Guideline on Air Quality Models (Revised)" (1986). Models listed in that category may be considered for use on a case-by-case basis as described on page 3-8 of the modeling guideline. Thus, EPA adopts this model as proposed. The AVACTA II model is available from the model developer.

Classification

This rule does not change the conclusions regarding Executive Order (E.O.) 12291, Regulatory Flexibility Act, Economic Impact Assessment, or the need for any information collection requirements under the Paperwork Reduction Act which were previously stated in 51 FR 32176. Consequently this action is not considered major under E.O. 12291. EPA has submitted this regulation to OMB for review under E.O. 12291. EPA has submitted this regulation to OMB for review under E.O. 12291 and their written comments on the revisions and any responses have been placed in Docket A-80-46.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide, Incorporation by reference.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons, Incorporation by reference.

Date: December 24, 1987.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51, Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7601(a), 7620.

2. Section 51.166 is amended by revising paragraph (l) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(l) *Air Quality Models.* The plan shall provide for procedures which specify that—

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) which are incorporated by reference. The guideline (EPA Publication No. 450/2-78-027R) and Supplement A (1987) are for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia 22161. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) are inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52, Chapter I of Title 40 of the Code of Federal Regulations, is amended to read as follows:

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

Authority: 42 U.S.C. 7475(e), 7601(a), 7620.

2. Section 52.21 is amended by revising paragraphs (l)(1) and (l)(2) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) which are incorporated by reference. The guideline (EPA publication No. 450/2-78-027R) and Supplement A (1987) are for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia 22161. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on February 5, 1988. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) are inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

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[FR Doc. 88-177 Filed 1-5-88; 8:45 am]

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federal register

Wednesday
January 6, 1987

Part IV

Department of Health and Human Services

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Advisory Council on Health Care Technology Assessment Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of January 1988:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: January 7, 1988—1:30 p.m. to 5:30 p.m.; January 8, 1988—8:30 a.m. to 2:00 p.m.

Place: Dupont Plaza Hotel, Embassy A Room, 1500 New Hampshire Avenue, Northwest, Washington, DC.

Open for entirety of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include an expert panel presentation and discussion on the Federal technology assessment process, separate meetings of the Criteria and the Medicare Coverage Process Subcommittees and status reports to the full Council on the activities of these two Subcommittees.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-5650.

Agenda items are subject to change as priorities dictate.

Date: December 21, 1987.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-246 Filed 1-5-88; 9:30 am]

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

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.

LIST OF PUBLIC LAWS

Last List December 30, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 519/Pub. L. 100-216

To direct the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000. (Dec. 29, 1987; 101 Stat. 1450; 4 pages) Price: $1.00

H.R. 3289/Pub. L. 100-217

To amend the Export-Import Bank Act of 1945. (Dec. 29, 1987; 101 Stat. 1454; 1 page) Price: $1.00

H.R. 3427/Pub. L. 100-218

To allow the obsolete submarine United States ship Blenny to be transferred to the State of Maryland before the expiration of the otherwise applicable 60-day congressional review period. (Dec. 29, 1987; 101 Stat. 1455; 1 page) Price: $1.00

H.R. 3492/Pub. L. 100-219

Rural Crisis Recovery Program Act of 1987. (Dec. 29, 1987; 101 Stat. 1456; 2 pages) Price: $1.00

H.R. 3674/Pub. L. 100-220

United States-Japan Fishery Agreement Approval Act of 1987. (Dec. 29, 1987; 101 Stat. 1458; 24 pages) Price: $1.00

H.R. 3734/Pub. L. 100-221

To recognize the significance of the administration of the Federal-Aid Highway System and to express appreciation to Ray A. Barnhart for his dedicated efforts in improving the Federal-Aid Highway System (Dec. 29, 1987; 101 Stat. 1482; 2 pages) Price: $1.00

H.J. Res. 430/Pub. L. 100-222

Calling upon the Soviet Union to immediately grant permission to emigrate to all those who wish to join spouses or fiances in the United States. (Dec. 29, 1987; 101 Stat. 1484; 2 pages) Price: $1.00

H.R. 2310/Pub. L. 100-223

Airport and Airway Safety and Capacity Expansion Act of 1987. (Dec. 30, 1987; 101 Stat. 1486; 50 pages) Price: $1.50

H.R. 2974/Pub. L. 100-224

To amend title 10, United States Code, to make technical corrections in provisions of law enacted by the Military Retirement Reform Act of 1986. (Dec. 30, 1987; 101 Stat. 1536; 3 page) Price: $1.00

H.R. 403/Pub. L. 100-225

To establish the El Malpais National Monument and the El Malpais National Conservation Area in the State of New Mexico, to authorize the Masau Trail, and for other purposes. (Dec. 31, 1987; 101 Stat. 1539; 11 pages) Price: $1.00

H.R. 2583/Pub. L. 100-226

To authorize additional appropriations for the San Francisco Bay National Wildlife Refuge. (Dec. 31, 1987; 101 Stat. 1550; 2 pages) Price: $1.00

H.R. 2945/Pub. L. 100-227

Veterans' Compensation Cost-of-living Adjustment Act of 1987. (Dec. 31, 1987; 101 Stat. 1552; 4 pages) Price: $1.00

S. 1684/Pub. L. 100-228

Seminole Indian Land Claims Settlement Act of 1987. (Dec. 31, 1987; 101 Stat. 1556; 6 pages) Price: $1.00

H.J. Res. 436/Pub. L. 100-229

Providing for the convening of the second session of the One Hundredth Congress. (Jan. 2, 1988; 101 Stat. 1562; 1 page) Price: $1.00