AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-9-87
Vol. 52 No. 174
Pages 33915-34192

federal register

Wednesday
September 9, 1987

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

Contents

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

Agricultural Marketing Service
RULES
Milk marketing orders:
Iowa, 33915
PROPOSED RULES
Milk marketing orders:
Upper Midwest, 33943

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Marketing quotas and acreage allotments:
Tobacco
Correction, 33943

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation

American Battle Monuments Commission
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 33957

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Recombinant derived pseudorabies virus vaccine field testing, 33982

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Cooperative agreement awards:
Technology, Policy and Industrial Development Center/ Massachusetts Institute of Technology, 33993
Meetings:
Minority AIDS initiatives; fiscal year 1988 draft program, 33994

Commerce Department
See also International Trade Administration; National Technical Information Service; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 33983

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles;
China, 33983

Conservation and Renewable Energy Office
RULES
Residential energy conservation program and commercial and apartment conservation program, 34138

Education Department
NOTICES
Grants; availability, etc.
Handicapped persons; postsecondary education program Funding priorities, 34104
Grants; availability, etc.:
Handicapped persons; postsecondary education program, 34104

Energy Department
See also Conservation and Renewable Energy Office; Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Meetings:
National Petroleum Council, 33984

Energy Information Administration
NOTICES
Meetings:
American Statistical Association Committee on Energy Statistics, 33984

Environmental Protection Agency
RULES
Air programs; State authority delegations:
Connecticut, et al., 33934
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 33933
Hazardous waste:
Land disposal facilities; corrective action programs development
Correction, 33936
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Oxyfluorfen, 33935
PROPOSED RULES
Hazardous waste:
Corrective action orders, issuance of land and hearings, 33960
NOTICES
Meetings:
FIFRA Scientific Advisory Panel, 33991
Science Advisory Board, 33992
Pesticide programs:
Confidential business information and data transfer to contractors, 33990, 33991
(2 documents)
Pesticides; experimental use permit applications:
Dow Chemical Co. et al., 33988
Pesticides; temporary tolerances:
Thiodicarb, 33989

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 34046

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Aircraft, etc.:
Identification and fuel system modification records retention, 34096
Airworthiness directives:
Boeing, 33917
Garrett Turbine Engine Co., 33918
Control zones
Correction, 33919
PROPOSED RULES
Airworthiness directives:
Boeing, 33947, 33949 (2 documents)
McDonnell Douglas, 33948, 33950 (2 documents)
Rulemaking petitions; summary and disposition, 33952
NOTICES
Advisory circulars; availability, etc.:
Sport parachute jumping, 34043

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Rates for dominant carriers, 33962
NOTICES
Television broadcasting:
FCC Form 330 for the international television fixed service; availability, 33992

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
Corn, 33942
Texas citrus, 33941

Federal Emergency Management Agency
PROPOSED RULES
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 33960
NOTICES
National Defense Stockpile goals:
Germanium, 33992
National Defense Stockpile policy determination, 33993

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 33985
Applications, hearings, determinations, etc.:
Boston Edison Co., 33985
Florida Gas Transmission Co., 33988
Transcontinental Gas Pipe Line Corp., 33988

Federal Maritime Commission
RULES
Maritime carriers and related activities in foreign commerce:
Service contracts filing, etc.; recordkeeping, 33936

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 34046

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 34046

Federal Trade Commission
RULES
Prohibited trade practices:
Amerco et al., 33921
NOTICES
Premerger notification waiting periods; early terminations, 33993

Fiscal Service
NOTICES
Organization, functions, and authority delegations:
Securities and Accounting Services Office, 34044

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Shasta crayfish and Tipton kangaroo rat, 33980

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Lasalocid
Correction, 33930
Food additives:
Adjuvants, production aids, and sanitizers—
Chlorine dioxide solution (stabilized); correction, 34047
Hydrogenated 4, 4'-isopropylidene-diphenolphosphite ester resins, 33929
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic drug products (OTC)
Correction, 34047
PROPOSED RULES
Food for human consumption:
Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins, 33952
Medical devices:
Dental devices—
Classification; correction, 34047

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Public Health Service; Social Security Administration

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 34118
Mortgage and loan insurance programs, etc.:
Income definition, 34108
NOTICES
Mortgage and loan insurance programs, etc.:
Federally mandated exclusions from income, 34116

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Blackfeet, Crow, Fort Belknap, Fort Peck, and Wind River agencies, MT, 33994

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Foreign oil and gas taxes; foreign tax credit limitation and election period, 33930
PROPOSED RULES
Excise taxes:
Real estate investment trusts and regulated investment companies, 33953

International Trade Administration
RULES
Export licensing:
Commodity control list—
Editorial corrections and clarifications, 33919

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Grand Trunk Western Railroad Co., 33996

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 33994

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetal mine safety:
Ionizing radiation standards, 33956

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Conoco Inc., 33995

National Archives and Records Administration
RULES
Records management:
Federal records disposition, 34134

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Theater Advisory Panel, 33996

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations—
Alabama et al., 33995

National Technical Information Service
NOTICES
Patent licenses, exclusive:
SmithKline Beckman et al., 33983

Nuclear Regulatory Commission
RULES
Radiation protection standards:
Byproduct, source, or special nuclear material, significant events; telephone reporting, 33916
NOTICES
Environmental statements; availability, etc.:
Advanced Nuclear Fuels Corp., 34028
Georgia Power Co. et al., 34028
Operating licenses, amendments; no significant hazards considerations:
Biweekly notices, 33997
Applications, hearings, determinations, etc.:
Consolidated Edison Co. of New York, Inc., 34029

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Biological materials deposit for patent purposes, 34080

Presidential Documents
EXECUTIVE ORDERS
Committees; establishments, renewals, terminations, etc.:
Privatization, President's Commission (EO 12607), 34190
Family policymaking criteria; regulations (EO 12606), 34188

Public Health Service
See also Centers for Disease Control; Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Centers for Disease Control
Director; smokeless tobacco products, 33994

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 34030
Municipal Securities Rulemaking Board, 34031–34033 (3 documents)
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 34034
Philadelphia Stock Exchange, Inc., 34034
Applications, hearings, determinations, etc.:
Bankers Life Assurance Co. of Nebraska et al., 34034
Citicorp, 34036
Discover Credit Corp., 34037
MONY Life Insurance Co. of America, et al., 34038
Pacific Select Fund, 34039

Social Security Administration
RULES
Social security benefits and supplemental security income:
Mental impairments evaluations; medical professionals qualifications, 33921

State Department
NOTICES
Agency information collection activities under OMB review, 34041
Meetings:
International Radio Consultative Committee, 34041

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations; evaluation of State responses to ten-day notices, 34050
Permanent program submission:
New Mexico, 33956

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

Transportation Department
See also Federal Aviation Administration; Urban Mass Transportation Administration
RULES
Aviation proceedings:
Airline service quality performance, 34056, 34077 (2 documents)
NOTICES
Agency information collection activities under OMB review, 34041
Aviation proceedings:
Hearings, etc.—
U.S.-Philippines air transport agreement, 34042

Treasury Department
See also Fiscal Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 34044

Urban Mass Transportation Administration
NOTICES
Environmental statements; availability, etc.:
San Francisco Public Utilities Commission, CA, 34043

Separate Parts In This Issue

Part II
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 34050

Part III
Department of Transportation, 34056

Part IV
Department of Commerce, Patent and Trademark Office, 34080

Part V
Department of Transportation, Federal Aviation Administration, 34096

Part VI
Department of Education, 34104

Part VII
Department of Housing and Urban Development, 34108

Part VIII
Department of Housing and Urban Development, 33118

Part IX
National Archives and Records Administration, 34134

Part X
Department of Energy, Office of Conservation and Renewable Energy, 34138

Part XI
The President, 34186

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

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.

3 CFR
Executive Orders:
12606 34188
12607 34190

7 CFR
1079 33915
Proposed Rules:
413 33941
432 33942
724 33943
1068 33943

10 CFR
20 33916
456 34138
458 34138

14 CFR
39 (2 documents) 33917, 33918
43 34096
45 34096
71 33919
91 34096
234 (2 documents) 34056, 34077
255 34056
Proposed Rules:
39 (5 documents) 33947–33952

15 CFR
373 33919
399 33919

16 CFR
13 33921

20 CFR
404 33921
416 33921

21 CFR
178 (2 documents) 33929, 34047
310 34047
341 34047
369 34047
558 33930
Proposed Rules:
189 33952
872 34047

24 CFR
215 34108
236 34108
813 34108
882 34108
888 34118
912 34108
913 34108

26 CFR
1 33930
Proposed Rules:
5h 33953
55 33953

30 CFR
Proposed Rules:
57 33956
842 34050
843 34050
931 33956

36 CFR
1220 34134
1228 34134
Proposed Rules:
404 33957

37 CFR
Proposed Rules:
1 34080

40 CFR
52 33933
60 33934
180 33935
270 33936
Proposed Rules:
22 33960
24 33960

44 CFR
Proposed Rules:
5 33960

46 CFR
581 33936

47 CFR
Proposed Rules:
Ch. I 33962

50 CFR
Proposed Rules:
17 33980

Rules and Regulations

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area; Temporary Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action temporarily relaxes for September, October and November 1987 the supply plant shipping requirements under the Iowa milk order. The revision is made in response to a request by the operator of a pool supply plant who ships milk to distributing plants regulated by the order. The revision would prevent uneconomic movements of milk.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of Shipping Percentages: Issued August 13, 1987; published August 18, 1987 (52 FR 30922).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

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

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the Iowa order (7 CFR Part 1079).

Notice of proposed rulemaking was published in the **Federal Register** (52 FR 30922) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October and November 1987. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 25, 1987. Two comments were received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 10 percentage points from the present 35 percent to 25 percent for the months of September through November 1987.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested the action in order to prevent uneconomic shipments of milk during September through November 1987. Beatrice said that the market's producer milk receipts during the April through June 1987 period showed an increase each month over the same month of 1986. The monthly increases for this period cited by Beatrice were 6.4, 2.0 and 3.9 percent, respectively. Beatrice indicated that receipts at their supply plants, while slightly decreasing in April, had increased by 2.4 percent in June and that they expect their receipts for the balance of 1987 to increase about 3.0 percent. Beatrice also indicated that without a downward revision in the supply shipping standards, it would have to uneconomically backhaul approximately 3.4 to 3.7 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirements to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Market data indicates that producer receipts for the period of January through July 1987 increased approximately 2.0 percent when compared to the same period of 1986. However, for the last four months of this seven-month period, producer receipts increased approximately 5.0 percent. Class I utilization as a percentage of producer receipts has been substantially below 30 percent for the last six months.

Two comments were received in response to the proposed action. Kraft, Inc., which operates a pool supply plant located in Earlville, Iowa, stated that producer receipts for June and July 1987 were substantially higher and that it expects producer receipts at their plant for the remainder of the year to be above the 1986 level. The other comment was for Wapsie Valley Creamery, Inc. who stated that their producer receipts were also substantially up for May, June, and July 1987.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing in the Iowa marketing area for the months of September, October and November 1987;

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

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments were filed in opposition to this action.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1079.7(b) of the Iowa milk order are hereby revised for the months of September, October and November 1987.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

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

§ 1079.7 [Temporarily revised in part]

2. In § 1079.7(b), the provision "35 percent" is revised to "25 percent" for the months of September, October and November 1987.

Effective date: Upon publication in the **Federal Register.**

Signed at Washington, DC, on September 3, 1987.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 87–20685 Filed 9–8–87; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Telephone Reporting of Significant Events Involving Byproduct, Source, or Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the telephone reporting of certain significant events involving byproduct, source, or special nuclear material. The amendment applies to all holders of licenses issued for the receipt, possession, use, or transfer of licensed byproduct, source, or special nuclear material that do not have an installed Emergency Notification System. The amendment is being made because current procedures require telephone reporting to an NRC Regional Office, rather than a central NRC office, and consequently often result in unnecessary delays before the event is reported to an appropriate NRC official. The amendment will require that all telephone calls reporting these significant events be directed to the NRC Operations Center, thus ensuring facility, expertise, timeliness, and consistency in the NRC response. Since, about two-thirds of these licensee reports are already directed to the NRC Operations Center, and since only the point of contact is being changed, it is anticipated that the impact, if any, on affected licensees will be negligible.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Morton R. Fleishman, Senior Nuclear Engineer, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–443–7975.

SUPPLEMENTARY INFORMATION: The NRC requires that its nuclear power reactor licensees have an Emergency Notification System that provides a direct telephone link to the NRC Operations Center. Section 20.403(d)(1) of 10 CFR Part 20 requires all licensees who have an installed Emergency Notification System to make reports of various significant events involving byproduct, source, or special nulcear material to the NRC Operations Center in accordance with 10 CFR § 50.72. However, unlike nuclear power reactor licensees, most fuel cycle and materials licensees do not have a direct telephone link to the NRC Operations Center. Section 20.403(d)(2) requires these licensees to make their telephone reports of these significant events to the appropriate NRC Regional Administrator. Experience has shown that the current procedures often result in unnecessary delays before the event is reported to an appropriate NRC official. In order to provide fuel cycle and materials licensees with the same degree of facility, expertise, timeliness, and consistency in responding to the telephone notification that the NRC provides to reactor licensees, the Commission has decided to direct all telephone calls concerning these significant events involving licensed material to the NRC Operations Center. Since about two-thirds of these licensee reports are already directed to the NRC Operations Center, it is anticipated that the impact, if any, on affected licensees will be negligible.

Only the initial point of contact for telephone calls is being changed in 10 CFR 20.403(d)(2). The NRC is not changing the telegram, mailgram, or facsimile requirements in § 20.403(d)(2); licensees will still be required to send these to the appropriate NRC Regional Office listed in Appendix D of Part 20.

Because this is an amendment dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register.** Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with a matter of agency conduct, i.e., a change in the location to which telephone calls should be placed concerning significant events involving licensed material.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis was not prepared for this amendment to the regulations. For the affected licensees, telephone notification for significant events is already required by the regulations and the amendment merely changes the initial point of contact. Hence, the economic impact on the licensees is insignificant.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because this amendment does not apply to 10 CFR Part 50 licensees.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 20.403, paragraph (d)(2) is revised to read as follows:

§ 20.403 Notification of incidents.

* * * * *

(d) * * *

(2) All other licensees shall make the reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center [1] and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

Dated at Bethesda, Maryland, this 26th day of August 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-20661 Filed 9-8-87; 8:45 am]

BILLING CODE 7590-01-M

[1] Commercial telephone number of the NRC Operations Center is (202) 951-0550.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-94-AD; Amdt. 39-5718]

Airworthiness Directives; Boeing Model 767 Series Airplanes and Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Model 767 series airplanes and Model 757 series airplanes equipped with Rolls Royce RB211 series engines by individual telegrams. This AD requires the installation of a guard device between the two engine fuel control switches to preclude inadvertent simultaneous shutdown of both engines. This action is prompted by a recent incident that occurred when the flight crew inadvertently shut off the fuel control switches to each engine while intending to operate the electronic engine control (EEC) switches.

DATES: Effective September 14, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87-13-51, dated July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, FAA, Seattle Aircraft Certification Office; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On July 1, 1987, the FAA issued telegraphic AD T87-13-51, applicable to Boeing Model 767 series airplanes and Model 757 series airplanes equipped with Rolls Royce RB211 series engines, which requires the installation of a guard device between the two engine fuel control switches to inhibit simultaneous activation of the fuel control switches.

This action was prompted by an incident that occurred on June 30, 1987, where a Boeing Model 767, on climbout, had a cockpit message indicating a failure of the electronic engine control (EEC) on one engine. The flight manual procedure for such a failure message is to retard both thrust levers to a mid position and place both EEC switches to the "OFF" position. In following this procedure, the crew inadvertently shut off the fuel control switches to both engines instead of the EEC switches, which are located in the same vicinity on the control panel. The airplane was at approximately 1,600 feet at the time of the shutdown and engine restart was initiated immediately. Both engines were recovered at approximately 500 feet altitude.

This is the second incident in which both engines have been shut down while the crew was following a procedure that involves actuation of the EEC switches. The previous incident occurred on March 31, 1986, and involved a normal takeoff procedure where the EEC's were off for takeoff and then turned on after lift off. Both events occurred at low altitude and required immediate crew action to restart the engines.

Normal crew training emphasizes actuating only one engine control switch at a time; however, both the EEC and the fuel control switches on the Model 767 are located such that it is possible to actuate the switches of either one for both engines simultaneously with one hand.

In addition, the FAA has determined that Boeing Model 757 airplanes equipped with Rolls Royce RB211 series engines have similar engine limiter control (ELC) switches in the same location as the EEC switch on the Model 767; therefore, this action is being made applicable to those airplanes as well.

Since this condition is likely to develop in other airplanes of these type designs, this emergency airworthiness directive is being issued to require the installation of a guard device between the two engine fuel control switches which will inhibit simultaneous activation of the fuel control switches. This is considered to be an interim action until final action has been identified, at which time the FAA may consider further rulemaking action.

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant or major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 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 adding the following new airworthiness directive:

Boeing: Applies to Model 767 series, and Model 757 series airplanes equipped with Rolls Royce RB211 series engines, certificated in any category. Compliance is required within 10 days after the effective date of this AD, unless previously accomplished.

To preclude inadvertent simultaneous shutdown of both engines, accomplish the following:

Install a switch guard between the two engine fuel control switches in accordance with the following instructions.

A. Fabricate switch guard as follows:

1. Shape to be a half cylinder .7-inch radius or 1.4-inch diameter.

2. 1.0-inch long with curved edges rounded approximately .06-inch radius.

3. Material: Acrylic or other suitable material.

B. Bond switch guard to top of fuel control light plate, Part Number S233T100-503 or -532, using epoxy cement such as BAC 5010 Type 70 or EC 2216 from 3M Company or other suitable epoxy.

C. Locate switch guard as follows:

1. Centered between the two fuel control switches.

2. Rounded side up.

3. Flat sides facing switches.

4. Forward side flush with forward edge of light plate.

Note: All dimensions are approximate. Minor deviations in size, shape, or material are acceptable if approved by the assigned Air Carrier Principal Maintenance Inspector.

This amendment becomes effective September 14, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87-13-51, issued July 1, 1987, which contained this amendment.

Issued in Seattle, Washington, on August 21, 1987.

Temple H. Johnson,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20599 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 82-ANE-10; Amdt. 39-5707]

Airworthiness Directives; Garrett Turbine Engine Co. (GTEC), TSE331-3 and TPE331-1, -2, -3, -4, -5, and -6 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment adopts a new airworthiness directive (AD) which requires periodic replacement/rework and x-ray inspection of third stage turbine stator assemblies on TSE/TPE331 series engines. The AD is needed to prevent thermal fatigue of the sheet metal inner seal support and/or failure of the outer sheet metal ring to nozzle casting butt weld which has resulted in uncontained third stage turbine wheel failures.

DATES: Effective—September 14, 1987.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register of September 14, 1987.

ADDRESSES: The applicable Alert Service Bulletins may be obtained from: Garrett Airline Service Division, Technical Publications, Department 65-70, P. O. Box 29003, Phoenix, Arizona 85072; telephone (602) 225-2969/2973. A copy of the Alert Service Bulletins are contained in Rules Docket No. 82-ANE-10, Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Frank L. Forster, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

SUPPLEMENTARY INFORMATION: The FAA has determined that failure of either the inner seal support or outer ring to nozzle casting weld joint could cause an uncontained separation of the third stage turbine rotor assembly. Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires periodic replacement/rework and x-ray inspection of the third stage turbine stator assembly on TSE/TPE331 series engines. After issuing AD 84-01-04, Amendment 39-4792 (49 FR 2467), in which paragraph (g) requires a one time replacement of P/N 868379-1 third stage stators with subsequently approved stators on certain TSE/TPE331 series engines, the FAA and manufacturer have determined, based on service experience, that the manufacturer's recommended replacement interval of 6,000 hours for the sheet metal inner seal support is inadequate. Therefore, a Notice of Proposed Rulemaking (NPRM) proposing the periodic replacement/rework of the third stage turbine stator assembly was published in the **Federal Register** on April 17, 1987 (52 FR 12545). The comment period closed on June 17, 1987, and no comments were received.

Since the above referenced action, another TPE331 series engine experienced an uncontained turbine wheel event attributed to failure of the third stage stator. This failure was determined to be due to inadequate weld penetration of the butt joint between the outer sheet metal and nozzle casting. This new failure mode was not addressed in the NPRM. Therefore, this AD contains an x-ray inspection requirement, in addition to the requirements proposed in the NPRM, to prevent the third stage stator from shifting aft and contacting the third stage turbine disk.

Since this condition is likely to exist or develop on other TSE/TPE331 series engines of the same type design, this AD requires periodic replacement/rework and x-ray inspection of the third stage stator assembly.

In view of the issuance of this AD, the requirements contained in paragraph (g) of AD 84-01-04, Amendment 39-4792, are no longer necessary and that AD will be amended by separate action to delete paragraph (g).

In view of the recent failure mentioned above, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that further notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

CONCLUSION: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (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 adding to § 39.13 the following new airworthiness directive (AD):

Garrett Turbine Engine Company (GTEC):

Applies to GTEC engine models TSE331-3, and TPE331-1, -2, -3, -5, and -6 series engines with P/N 868379-1, or P/N 868379-3 third stage stators.

Compliance is required as indicated, unless already accomplished. To prevent uncontained turbine wheel failures, accomplish the following:

(a) Replace P/N 868379-1 (if installed) with P/N 868379-3 third stage stator assembly per schedule below. GTEC Alert Service Bulletin (ASB) No. TPE/TSE331-A72-0384 provides instructions for reidentification of third stage stator assemblies from P/N 868379-1 to P/N 868379-3. Rework P/N 868379-3 stator assembly per schedule below, and thereafter at intervals not to exceed 4,500 hours in service, in accordance with the accomplishment instructions in GTEC ASB No. TPE/TSE331-A72-0384, Revision 3, dated July 1, 1987. Rework of the third stage stator assembly must include installation of a new sheet metal inner seal support.

Third stage stator time in service since new or rework	Replacement and/or rework schedule
Less than 4,000 hours.	Prior to accumulating 4,500 hours in service.
4,000 to 5,000 hours.	Within 500 hours in service after the effective date of this AD, or prior to accumulating 5,200 hours in service, whichever occurs first.
Greater than 5,000 hours.	Within 200 hours in service after the effective date of this AD.
Time unknown...	Within 200 hours in service after the effective date of this AD.

(b) Perform a one-time x-ray inspection of all P/N 868379-1 and P/N 868379-3 third stage stators in accordance with the accomplishment instructions of GTEC ASB No. TPE331-A72-0559, dated July 1, 1987, except those stators listed by S/N in Table 1 of the above ASB, per the following schedule:

Third stage stator time in service since new	X-ray schedule
Less than 4,000 hours.	Prior to accumulating 4,500 hours in service.
4,000 to 5,000 hours.	Within 500 hours in service after the effective date of this AD, or prior to accumulating 5,200 hours in service, whichever occurs first.
Greater than 5,000 hours.	Within 200 hours in service after the effective date of this AD.
Time unknown...	Within 200 hours in service after the effective date of this AD.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 4344 Donald Douglas Drive, Long Beach, California 90808.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Los Angeles Aircraft Certification Office, may adjust the compliance time specified in this AD.

Alert Service Bulletin Nos. TPE/TSE331-A72-0384, Revision 3, dated July 1, 1987, "Reidentify or Replace Third Stage Stator and Establish Rework Interval" and TPE331-A72-0559, dated July 1, 1987, "Inspect and/or Replace Third Stage Stator Assembly", identified and described in these documents, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Garrett Airline Service Division, Technical Publications, Department 65-70, P.O. Box 29003, Phoenix, Arizona 85072; telephone (602) 225-2969/2973. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 82-ANE-10 , between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holiday.

This amendment becomes effective on September 14, 1987.

Issued in Burlington, Massachusetts, on August 6, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87-20603 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-26]

Revision to Phoenix-Luke AFB, AZ, Control Zone; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY:

In FR document 87-19027 beginning on page 31384 in the issue of Thursday, August 20, 1987, make the following correction:

§ 71.171 [Corrected]

On page 31385, in the first column, in § 71.171, in the second line, under Phoenix-Luke AFB, AZ [Revised], "32°32'06" N., long. 112°22'56" N.); within 2" should read "33°32'06" N., long. 112°22'56" W.); within 2".

FOR FURTHER INFORMATION CONTACT: Mr. Frank T. Torikai at (213) 297-1648.

Deborah E. King,

Acting Manager, Program Management Staff.

[FR Doc. 87-20615 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 70755-7155]

Editorial Corrections and Clarifications Based on Amendments to the Commodity Control List

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which lists those commodities subject to Department of Commerce export controls. This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes editorial clarifications that conform certain regulatory provisions to recent regulatory amendments to the Commodity Control List, as outlined below.

(1) Supplement No. 4 to Part 373 of the Regulations lists certain entries of the CCL that have special Distribution License restrictions. A reference to "aromatic polyamides" is amended in order to insert the correct paragraph

reference to the recently-revised CCL entry covering aromatic polyamides.

(2) Three entries of the CCL are amended by removing references to Spain. These entries have said that a validated export license is not required for exports to Spain or to countries listed in certain supplements to Part 373 of the Regulations; recent regulatory amendments have added Spain to these supplements and the specific reference to Spain is redundant.

(3) The "Technical Data" paragraph of several entries on the CCL is revised for the sake of clarity and consistency. The affected entries cover aircraft, helicopters, and other transportation equipment.

(4) Two CCL entries are amended by stating that exports under a GLV (limited value) license may be made to Canada. These changes, like the other regulatory amendments in this document, are editorial in nature and do not represent any change in export policy.

(5) Two CCL entries are amended by removing language incorrectly stating that they contain software related to the commodities covered by those entries. Such software is set forth in a recently-established Supplement No. 3 to Part 379. A Cross-reference to a nonexistent CCL entry is also removed.

EFFECTIVE DATE: This rule is effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effect date. This rule also is exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Public Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 694(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 373 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PARTS 373 AND 399—[AMENDED]

1. The authority citation for Parts 373 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. In Supplement No. 4 to Part 373, the entry "1746A: [2]" is amended by revising the phrase "as defined in paragraph (d)" to read "as defined in paragraph (c)".

§ 399.1 [Amended]

3. In Supplement No.1 to § 399.1 (the Commodity Control List) Commodity Group 3 (General Industrial Equipment), ECCN 3363A is amended by removing the phrase "Spain and" from the *Validated License Required* paragraph, and ECCN 4363B is amended by removing the phrase "Spain and to" from the *Validated License Required* paragraph.

4. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), the *Technical Data* paragraph(s) for ECCNs 1460A, 4460B, 5460F, 6460F, and 6499G is revised to read as follows:

Technical Data: Exports of most technical data relating to civil aircraft, civil aircraft equipment, and parts, accessories, or components thereof require a validated license to all destinations except Canada. See § 379.4(d)(1) for exceptions to this policy.

5. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 4530B is amended by revising the *GLV $ Value Limit* paragraph to read "$2,000 for Country Groups T & V and Canada; $0 for all other destinations."

6. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1532A is amended by removing the phrase "and Software Therefor" from the heading titled "List of Precision Linear and Angular Measuring Systems and Specially Designed Components * * * " that immediately follows the *G-COM Eligibility* paragraph.

7. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by revising the entry heading, the cross-reference immediately following the heading, and the cross-reference immediately before the "List of Stored Program Controlled Communication Switching Equipment or Systems * * * ", as follows:

ECCN 1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor for the use of these equipment or systems.

(See also Part 379 for controls on technical data.)

* * * * *

Technical Notes: * * *

(For a complete list of definitions of terms used in this ECCN, see Advisory Note 8 below; see also ECCN 1565A for additional definitions relating to electronic computers and Supp. No. 3 to Part 379 for definitions relating to "software.")

List of Stored Program Controlled Communication Switching Equipment or Systems, and Specially Designed Components Therefor for the Use of these Equipment or Systems Controlled by ECCN 1567A:

* * * * *

8. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals and Their Manufactures), ECCN 4698B is amended

by removing the phrase "Spain and to" from the *Validated License Required* paragraph.

9. In Supplement No.1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 4721B is amended by revising the *GLV $ Value Limit* paragraph to read "$2,000 for Country Groups T & V and Canada; $0 for all other destinations."

Dated: August 24, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-20617 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9193]

Prohibited Trade Practices, and Affirmative Corrective Actions; Amerco et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Phoenix, Ariz.-based respondent, U-Haul International, Inc., the nation's largest renter of trucks and trailers, and its Las Vegas, Nev.-based parent company, AMERCO, from initiating or participating in any judicial or administrative proceeding in which their main purpose is to harass or injure any competitor or potential competitor. Additionally, respondents are required for ten years: (1) To give the FTC prior notice before participating in any bankruptcy proceeding of a competitor; (2) to obtain FTC approval before filing a plan of reorganization to acquire a competitor in bankruptcy; (3) to provide the FTC with a copy of any lawsuit filed against a competitor; and (4) to obtain FTC approval before acquiring any competitor worth $5 million or more.

DATE: Complaint and Order issued May 18, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Gerald T. Gregory, S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: On Friday, February 27, 1987, there was published in the **Federal Register**, 52 FR 6003, a proposed consent agreement with analysis In the Matter of AMERCO, a corporation, and U-Haul International, Inc., a corporation for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.15 Competitors and their products. Subpart—Combining Or Conspiring: S.13.407 To disparage competitors or their products. Subpart—Corrective Actions And/Or Requirements: S.13.533-37 Formal regulatory and/or statutory requirements; S.13.533-50 Maintain means of communication. Subpart—Interfering With Competitors Or Their Goods: S.13.1080 Interfering with competitors or their goods; S.13.1085 Harassing.

List of Subjects in 16 CFR Part 13

Truck and trailer rental, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-20632 Filed 9-8-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Qualifications of Medical Professionals Evaluating Mental Impairments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: Section 8 of the Social Security Disability Benefits Reform Act of 1984, Pub. L. 98-460, requires that we make every reasonable effort to have a qualified psychiatrist or psychologist complete the medical portion of the case review and any residual functional capacity (RFC) assessment in unfavorable initial determinations in mental impairment cases. This provision is effective for initial disability determinations made on or after December 9, 1984. As a result of this new provision of the law, we are adding this requirement to the Social Security Administration (SSA) regulations and also explaining in these regulations the qualifications necessary to be considered a qualified psychologist and what we will consider as every reasonable effort to obtain the services of a qualified psychiatrist or psychologist.

DATES: These regulations will be effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Pub. L. 98-460, there was no statutory requirement in the Social Security Act (the Act) specifying the qualifications of persons making disability determinations. The responsibility for making disability determinations in the State was delegated to a team consisting of a State agency medical consultant who was a physician and a State agency disability examiner. The medical consultant provided the professional expertise in evaluating the impairment and performed a variety of other medical functions associated with the disability decision, including assessing impairment severity and describing the functional capabilities allowed and limitations imposed by the impairment. For cases involving mental impairments, the medical consultant member of the State agency decisionmaking team was generally a psychiatrist.

Some States have experienced difficulties in attracting and retaining a sufficient number of psychiatrists as medical consultants. To help remedy this situation and to encourage States to use qualified mental health professionals to review all mental impairment cases, we authorized States to use program psychologists to review cases involving mental impairments. However, when a psychologist did the medical review or provided the residual

functional capacity (RFC) assessment, a physician's cosignature was needed, since our regulations required that medical judgments be made by a physician.

The Social Security Disability Benefits Reform Act of 1984 requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable RFC assessment in unfavorable initial determinations where there is evidence of a mental impairment. This statutory requirement applies to disability determinations under section 221 (a), (c), (g), and (i) of the Act. In the legislative history of this law, Congress noted that, if the Secretary were unable to assure adequate compensation for the services of qualified psychiatrists or psychologists, it would be within the Secretary's authority to contract directly for those services. Thus, the congressional conference agreement has addressed those conditions which previously impeded the States from obtaining qualified medical professionals. Those conditions were the lack of availability of psychiatrists and inability to obtain their services because of inappropriate and inadequate provisions for their compensation. The new provision will help ensure that adequate and accurate disability decisions are made in the critical area of mental impairment case evaluation.

To implement this provision of the statute, we are issuing new and revised regulations which will require that State agencies and SSA make every reasonable effort to use a qualified psychiatrist or psychologist in making disability determinations in mental impairment cases before an unfavorable initial determination is made. They explain what is meant by "qualified" psychologist and permit a qualified psychologist to perform as a psychological consultant member of the disability determination team in cases involving mental disorders. These regulations discuss the responsibility for the disability determination in combined mental and nonmental impairment cases. They also describe State agencies' and SSA's responsibilities in ensuring that every reasonable effort is made to have qualified psychiatrists and psychologists review determinations involving mental impairments before an unfavorable initial determination is made. These regulations carry out the law by making clear the requirement that a qualified psychiatrist or psychologist must participate, if reasonably possible, in the determination of claims where the evidence indicates the existence of a mental impairment. This evidence may include the individual's specfic allegations of an emotional or mental disorder, information provided by medical and nonmedical sources with knowledge of the individual, and direct observations by State agency or SSA personnel describing the individuals behavior. These new sections explain who will make the overall determinations of impairment severity in combined mental and nonmental impairment cases. The language also clarifies the fact that SSA is also required to make every reasonable effort to have qualified psychiatrists or psychologists review State agency initial unfavorable determinations.

Under the statutory amendment, a qualified psychologist may now serve as a psychological consultant in mental impairment cases. For disability program purposes, a "qualified" psychologist must:

(1) Be licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(2)(a) Possess a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(b) Be listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(3) Possess 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

These qualifications are consistent with those promoted by the American Psychological Association and used by the Federal Employees Health Benefits Program, Civilian Health and Medical Programs for the Uniformed Services, and other health care programs. As a medical decisionmaker, a qualified psychologist will be permitted to review the medical evidence concerning a mental impairment, determine the existence or nonexistence of a severe mental impairment, make the determination as to whether the mental disorder meets or is medically equivalent to the criteria in the Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1), and assess RFC for mental disorders where required. This will have no adverse effect on the use of psychiatrists since, as physicians, they have always been "qualified" medical consultant members of the State agency disability determination team. Thus, psychiatrists will continue to function as before with respect to making disability determinations.

The regulations define what steps will be taken to ensure that every reasonable effort is made to obtain these specialists' services, including SSA contracting directly for the services.

In order to obtain the public's views and comments before proceeding with these amendments, we published these regulations along with a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 50920) on December 13, 1985. We have carefully considered all the comments pertaining to the proposed amendments and we have answered the issues raised in these comments later in the preamble.

We are revising 20 CFR 404.1503, 404.1526, 404.1546, 404.1615, 416.903, 416.926, 416.946, and 416.1015 to reflect the statutory provision, which was effective on December 9, 1984. The revised regulations explain who will make the overall determinations of impairment severity in combined mental and nonmental impairment cases. We are clarifying the fact that SSA is also required to make every reasonable effort to have qualified psychiatrists and psychologists review State agency initial unfavorable determinations.

We are revising 20 CFR 404.1526(b) and (c) and 416.926(b) and (c) and 404.1546 and 416.946 to substitute, where appropriate, the term "medical consultant" for the term "physician". We define a qualified psychologist as a "psychological consultant". The Notice of Proposed Rulemaking defined medical consultants to include psychologists. We are separately designating psychologists in these final rules to clearly distinguish them from physicians. New §§ 404.1616 and 416.1016 explain what is meant by "qualified" psychologist and include a qualified psychologist as a psychological consultant for disability determinations in mental impairment cases.

We are reinserting in §§ 404.1615(e) and 416.1015(e) the statement that reads: "The State Agency will certify each determination of disability to us on forms we provide." This language was already in the regulations and we have decided to retain it in these final rules.

New §§ 404.1617 and 416.1017 specify the State and SSA responsibilities in meeting the "reasonable effort" requirement. Since the regional office (RO) is part of SSA, we have decided not to refer to the RO as a separate component of SSA.

The statute on which these regulations are based applies to disability determinations made on or after December 9, 1984, which is 60 days after the date of enactment, October 9, 1984.

Public Comments

We received comments from 16 people and organizations pertaining to specific changes and new rules we had proposed. Most of the comments came from individuals and professional organizations with expertise in the diagnosis and treatment of mental disorders. Some of the comments received were submitted by legal aid services involved in representing disability claimants. We also received suggestions from persons involved in administration of the disability program at the State level.

Most of the comments were favorable to our proposed rules to ensure that mental impairment cases are reviewed, if reasonably possible, by qualified psychiatrists and psychologists. These commenters believe that mandating psychiatrist or psychologist review before a mental impairment case is denied will prevent improper denials. Some commenters agree that only professionals with extensive experience in dealing with the chronically mentally ill can accurately assess the claimant's ability to cope with the demands of substantial gainful work. Both the American Psychiatric Association and the American Psychological Association supported our regulatory efforts to carry out the statutory mandate and restated their commitment to continue working with us in our recruitment efforts.

On the other hand, some commenters suggested that the final version of these regulations contain further or additional changes. We have carefully considered all of these suggestions and, where appropriate, made appropriate revisions in the regulations.

Following is a discussion of the suggestions made by the public in response to the NPRM and an explanation of our disposition of them. For ease of reference, we discuss these suggestions under the corresponding section headings of the regulation. Many of the comments received necessarily had to be condensed, summarized, or paraphrased. However, we have tried to express everyone's view adequately and to respond to the issues raised.

Sections 404.1503 and 416.903—Who makes disability and blindness determinations.

Comment: Two commenters suggest that we permit clinical social workers as well as psychiatrists or psychologists to review and evaluate mental impairment cases; one of these comments suggested that licensed clinical social workers be included with clinical psychologists as qualified to evaluate mental impairments and the other commenter suggested that social workers conduct a review in addition to that of the psychologist or psychiatrist.

Response: The statute upon which these regulations are based makes clear that a qualified psychiatrist or psychologist must review mental impairment cases, if reasonably possible, before an adverse decision is made. Therefore, we cannot adopt the suggestion that a licensed clinical social worker be considered "qualified" to act as a medical or psychological consultant. However, we recognize the value of evidence provided by clinical social workers regarding the claimant's mental impairment and daily functioning. Where appropriate, we do obtain information from social workers and utilize such evidence in making disability determinations.

Comment: One commenter suggests we change these proposed regulations to include any physician who has post-Board experience of at least 2 years in managing persons with a mental handicap. The commenter believes this would provide a pool of physicians who can make decisions on mental impairment cases.

Response: Because the law mandates review by a psychiatrist or psychologist, if reasonably possible, before an adverse decision is made in a mental impairment case, we are unable to adopt this suggestion.

Section 404.1526 and 416.926—Medical equivalence

We received no comments on these proposed regulations changes.

Sections 404.1546 and 416.946—(Amended)

Only favorable comments were received on our proposed revision to these existing regulations.

Sections 404.1615 and 416.1015—Making disability determinations

Comment: One commenter suggests we add a provision to proposed §§ 404.1615(d) and 416.1015(d) to indicate that in a combined impairments case, a psychologist is competent to determine the effects the nonmental impairment(s) have on the mental impairment.

Response: A psychologist, generally, does not have the necessary medical education, training and expertise to evaluate physical and other nonmental impairments. Therefore, we believe it is inappropriate to require a psychologist to render a medical judgment he or she may not be qualified to make. However, these regulations do not prohibit a qualified psychologist from considering the effects of a nonmental impairment on the mental impairment. Therefore, it is not necessary to add this statement to the regulations.

Comment: This same commenter believes that in cases of multiple mental and nonmental impairments, we should require a different physician to make the final RFC determination, taking into account the opinions of the psychiatrist or psychologist on the partial mental RFC assessment.

Response: As a physician, a psychiatrist is qualified by medical education, training and expertise to evaluate impairments due to mental and other medical conditions. Adoption of this suggestion would inappropriately imply otherwise. However, if a State agency feels it is necessary to refer a combined impairment case that has been reviewed by a psychiatrist to another physician for an additional review of the RFC, these regulations do not prevent it from doing so.

Comment: Two commenters state that SSA must take a more unified approach to assessing RFC in cases of multiple impairments. These commenters believe that proposed §§ 404.1615(d) and 416.1015(d) imply that the effects of a nonmental impairment on a mental impairment and vice versa are not considered in determining disability. They believe this is in violation of Pub. L. 98–460 and suggest the statutory requirement that we consider the combined effects of all impairments be built into these proposed regulations. These commenters also indicate that we should include a mechanism to ensure that all information is combined and considered before a final determination is made.

Response: The rules for evaluating multiple impairments are already in place in regulations §§ 404.1523 and 416.923. In those sections we state that "in the case of a medically severe combination of impairments, the combined impact of all the impairments will be considered throughout the disability determination process." We believe our proposal for deciding which consultant makes the overall determination of severity is an appropriate mechanism which will ensure that all information is considered in combined mental/nonmental impairment cases.

Sections 404.1616 and 416.1016—Medical or psychological consultant

Comment: One commenter made favorable comments about our proposed standards for a qualified psychologist, but suggested we consider an added requirement for certification by the American Board of Professional Psychologists (ABPP).

Response: The qualifications we are adopting consider only education and experience. Moreover, because of the small number of psychologists who are ABPP diplomats, we believe this additional requirement would restrict unnecessarily the pool of qualified psychologists available to the State agencies.

Comment: One person objects to our proposed criteria for determining who is a "qualified" psychologist. The commenter states that a psychologist who does not have a doctorate degree in psychology will not be qualified to perform as a psychological consultant in mental impairment cases. This commenter suggests the proposed alternative provisions in §§ 404.1616(2)(b) and 416.1016(2)(b) for listing in a national register of health care providers in psychology be deleted because such a national register will include masters degree level psychologists.

Response: Since only three States license psychologists at the masters degree level, the vast majority of psychologists who will meet our proposed qualification standards involving licensing/certification at the independent practice level of psychology and supervised experience in health service will necessarily be those who possess a doctoral degree in psychology. We believe deletion of the proposed optional requirement involving a national register would inappropriately exclude those psychologists with a masters degree and more than two years experience who obtained a State license many years ago and were included in a national register under a "grandfather" clause. Therefore, we cannot adopt this comment.

Comment: This same commenter suggests doctorate level psychologists should also have 2 years of supervised clinical experience as a psychologist in "mental" health services.

Response: We believe this fine distinction is unnecessary since it is unlikely that the supervised clinical experience a psychologist at the doctoral level would pursue would be in a field other than mental health.

Comment: One commenter expressed concern that the proposed regulations will exclude health service providers in psychology whose doctorate degree in psychology is lettered other than Psy. D. or Ph. D.

Response: These regulations state no preference for one doctorate level psychologist over another. Therefore, an individual who possesses a doctorate degree in psychology, regardless of the way the degree is described or "lettered", and meets the other standards specified in the regulations may serve as a psychological consultant in mental impairment cases.

Comment: One commenter states that we should develop standards which prohibit discrimination by a medical consultant on the basis of race, color, national origin or sex.

Response: We believe this additional qualification standard is unnecessary because various civil rights laws and regulations are already in place elsewhere which prohibit discrimination on the basis of race, color, national origin or sex.

Comment: One commenter expressed concern about our proposed requirements involving a doctoral degree in psychology with a specialty in clinical psychology. This commenter points out that doctoral degrees in psychology are not awarded in subfields such as clinical or counseling, but, rather in psychology per se. The commenter believes that limiting eligibility to those psychologists who received doctoral degrees from "a program in clinical psychology" will inappropriately exclude otherwise qualified psychologists who successfully completed a doctoral program in counseling psychology, for example, and are as well qualified as clinical psychologists to provide assessment of and treatment services to individuals with mental disorders. This commenter also indicates the proposed standard will unduly restrict the pool of qualified mental health professionals to perform disability determinations involving mental impairments.

Response: We recognize that a number of individuals with specialties in closely allied subdisciplines of psychology may have the same or similar range of expertise as clinical psychologists. As a class, however, nonclinical psychologists are likely not as expert in assessing behavioral pathology. We believe the requirement for training in a program in clinical psychology will help ensure that only individuals who are fully qualified to evaluate the full-range of mental disorders are obtained. The States have been hiring psychologists under similar standards for some time and there is no indication that the pool of qualified professionals has been adversely affected.

Comment: This same commenter recommends we strengthen our proposed requirement of 2 years supervised clinical experience to specify that one of those years be post degree (rather than post "masters" degree). The commenter points out that this suggested modification should not be interpreted as solely post doctoral degree which would exclude those qualified psychologists who obtained licensing at the masters degree level with more than the required 2 years experience and are listed in a national register of health services providers in psychology. Rather, the commenter believes that retention of our proposed standard will not encourage psychologists to obtain an additional year of post doctoral supervision in the few States where it is not required for licensure or certification. In this commenter's view, the recommended deletion of the term "Masters" would enhance the qualifications of the pool of eligible psychologists.

Response: The post "masters" degree experience designation was made to ensure that the post degree experience requirement is not misinterpreted as 1 year of experience attained post baccalaureate degree. We believe that the NPRM language makes this clear and we have retained the "masters" degree designation in these final regulations. This will not adversely affect those qualified psychologists who are listed in an appropriate national register, nor will it discourage psychologists from obtaining additional clinical experience at the highest degree level possible.

Comment: One person objects to our proposed standards because they establish qualifications for doctoral degree psychologists over nondoctoral clinicians who, this commenter believes, may have as strong a set of credentials.

Response: In developing these proposed qualification standards, it was necessary to develop standards which can be met by only those psychologists with sufficient professional training and expertise in the evaluation of all types of mental disorders. In light of the differences in training, experience, and general level of expertise below the doctoral level in diagnosing and treating behavioral pathology, we believe the doctoral level of training to be the minimum standard necessary for psychologists to be considered as qualified to make decisions regarding mental disorder cases, for disability program purposes.

Comment: One commenter questions why physicians, but not psychologists, are exempt from qualification standards. While not criticizing the proposed standards for psychologists, this commenter believes the lack of comparable qualification requirements for physicians is not justified.

Response: The statutory provision upon which these regulations are based mandates review by a qualified psychologist (or psychiatrist), if reasonably possible, before a mental impairment case can be denied. In passing this legislation, however, the Congress did not indicate which psychologist(s) it considers as qualified to review disability cases. Because there are numerous subfields in which a professional psychologist may specialize, it is necessary for us to develop specific standards which indicate the qualifications we believe necessary to evaluate the full range of mental impairments. We have not developed qualifications for physicians, because, generally, all physicians are subject to specific premedical and medical education requirements, prior to being awarded a medical degree, and subsequent internship and residency training, before they can be licensed to practice medicine. Since these requirements are generally consistent in all States, we believe it is not necessary to develop specific qualification standards for disability program physicians.

Comment: One commenter recommends that physicians trained at an authorized University Affiliated Facility (UAF) as authorized under the Developmental Disabilities Act, be the only doctors of any discipline allowed to evaluate applicants with a developmental disability. This commenter states there are few psychiatrists and psychologists who are trained to evaluate the functional abilities of people who have developmental disabilities such as mental retardation, cerebral palsy, epilepsy, autism and severe learning disabilities.

Response: These regulations do not prevent the States from obtaining the services of UAF trained physicians to review cases involving developmental disabilities. However, because the statute mandates review of a mental impairment case by a qualified psychiatrist or psychologist, if reasonably possible, before an adverse decision is made, including developmental disability cases involving evidence of a mental impairment, we cannot adopt this suggestion.

Sections 404.1617 and 416.1017—Reasonable efforts to obtain review by a qualified psychiatrist or psychologist

Comment: One commenter feels that the regulations should provide that qualified professionals must review only cases of conflicting or inadequate medical evidence. This person suggested that an extension of time should be granted for mental impairment case reviews because of the shortages of available qualified professionals who could perform these reviews.

Response: The law does not give us an option of restricting psychiatrist or psychologist reviews to those cases with conflicting or inadequate medical evidence. The law requires that all initial mental impairment cases that are denied, if reasonably possible, must have these specialist reviews. The law does not address the issue of additional processing time requirements because of the use of specialist review. We do not believe that the use of specialists to review mental impairment cases must necessarily delay the processing of these cases where the State is adequately staffed with psychiatrists and/or psychologists. We are opposed to issuing a regulation that could result in less timely service to claimants with mental impairments, especially in the absence of any indications that this would be consistent with the will of Congress.

Comment: Several commenters are concerned that the rules were not specific enough in defining Federal and State roles in ensuring that every reasonable effort is made to obtain qualified psychiatrists and psychologists to review mental impairment claims. One commenter believes the regulations made the Federal role essentially passive. This person indicates that SSA should mandate coordinated activity between the State and SSA. According to this commenter, the State and SSA should work together to resolve any staffing problems, rather than handling the problem sequentially, i.e., the State taking its actions first, then SSA. Another commenter believes that SSA should become involved in assisting the State in its recruitment efforts at an earlier stage, i.e., not to wait to assist the State until after all the State's other efforts were exhausted. Another person believes the regulations were not clear on the extent of the State's or SSA's roles in ensuring that every reasonable effort is made.

Response: Our approach to ensuring that every reasonable effort is made to obtain psychiatrists and psychologists to perform mental impairment case reviews is to regulate only to the extent necessary to ensure the Secretary's responsible stewardship of the States' management responsibilities in this area. We decided not to regulate the States' responsibilities specifically, because it would interfere with our objective of giving the State flexibility in obtaining and maintaining their staffs. Since individual State resources and needs vary, we believe, with help from SSA, each State can best determine its own staffing needs in this area and how best to meet those needs.

The regulations do provide that SSA will coordinate action with the State in assessing the State's unmet needs for additional psychiatrists or psychologists and in taking specific actions for obtaining the psychiatrists and psychologists. SSA is responsible for approving the necessary State budget, closely monitoring the State's recruitment activities, and assisting the State whenever possible. In carrying out this responsibility SSA is closely involved throughout the process of the State's recruitment activities.

Comment: One commenter believes the rules do not explain how the overall costs will be accommodated and do not give details of the amount of resources or criteria required to define "every reasonable effort."

Response: We have amended the final rules to state that where Federal resources are used on behalf of a State to acquire reviews of qualified psychiatrists and psychologists, the State's budget, where appropriate, will be reduced accordingly. This was done because obtaining these reviews is a basic State responsibility. However, because of the differences in each State's needs and capabilities, as well as variations in overall State and Federal budgets, we did not provide details of specific amounts of resources or other criteria required to meet the "every reasonable effort" requirement.

Comment: Two commenters believe the States' levels of compensation for psychiatrist and psychologist services are meager; these persons believe that steps should be taken to insure otherwise.

Response: These regulations provide that if a State cannot obtain psychiatrists and psychologists because of low salary rates or fee schedules, it

should attempt to raise the level of compensation to meet the prevailing rates for these services.

Comment: One commenter states that SSA should make provisions for direct contracting of specialist services where the State was unable to arrange for these services.

Response: These regulations provide that Federal contracts for the services of qualified psychiatrists or psychologists are included as Federal resources to be used where needed in obtaining these services.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. SSA estimates that these changes will have little or no impact on Title II or Title XVI benefit payments, since in most instances qualified psychologists and psychiatrists are already being used to evaluate disability cases involving mental disorders. The additional costs associated with these regulations will be less than $5 million in the first year that the regulations are effective. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only a small number of disability claimants under Title II and Title XVI of the Social Security Act.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: February 27, 1987

Dorcas R. Hardy,

Commissioner of Social Security.

Approval: June 11, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950____)

For the reasons set out in the preamble, Part 404, Subparts P and Q, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

20 CFR Part 404, Subpart P, is amended as follows:

1. The authority citation for Subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225 and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425 and 1302; sec. 505(a) of Pub. L. 96–265; 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1503 is amended by adding a new paragraph (e) to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

* * * * *

(e) *Initial determinations for mental impairments.* An initial determination by a State agency or the Social Security Administration that you are not disabled (or a Social Security Administration review of a State agency's initial determination), in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 404.1617 for what we consider "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

3. In § 404.1526 the last sentence of paragraph (b) is amended by substituting the words "medical or psychological consultants" for the word "physicians" and by adding the reference "(See § 404.1616.)" at the end of the sentence, and paragraph (c) is revised to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(c) *Who is a designated medical or psychological consultant.* A medical or psychological consultant designated by the Secretary includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a consultant.)

§ 404.1546 [Amended]

4. In § 404.1546 the first and second sentences are amended by substituting the words "medical or psychological consultant" for the word "physician" and the words "medical or psychological consultants" for the word "physicians" wherever they appear, and the third sentence is amended by substituting the words "any other medical or psychological consultant" for the words "any other physician".

20 CFR Part 104, Subpart Q, is amended as follows:

5. The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

6. Section 404.1615 is revised to read as follows:

§ 404.1615 Making disability determinations.

(a) When making a disability determination, the State agency will apply Subpart P, Part 404, of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical or

psychological consultant and a State agency disability examiner. (See § 404.1616 for the definition of medical or psychological consultant.) The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 404.1572 of this part for what we mean by "substantial gainful activity.")

(d) An initial determination by the State agency that an individual is not disabled, in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 404.1616 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 404.1617 for what we mean by "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

(e) The State agency will certify each determination of disability to us on forms we provide.

(f) The State agency will furnish us with all the evidence it considered in making its determination.

(g) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

7. A new § 404.1616 is added to read as follows:

§ 404.1616 Medical or psychological consultant.

A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes a psychologist will not be considered qualified unless he or she:

(a) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(b) (1) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(2) Is listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(c) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

8. A new § 404.1617 is added to read as follows:

§ 404.1617 Reasonable efforts to obtain review by a qualified psychiatrist or psychologist.

(a) The State agency must determine if additional qualified psychiatrists and psychologists are needed to make the necessary reviews (see § 404.1615(d)). Where it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional psychiatrists and psychologists because of low salary rates or fee schedules it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for psychiatrists' and psychologists' services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

(b) Federal resources may include the use of Federal contracts for the services of qualified psychiatrists and psychologists to review mental impairment cases. Where Federal resources are required to perform these reviews, which are a basic State agency responsibility, and where appropriate, the State agency's budget will be reduced accordingly.

(c) Where every reasonable effort is made to obtain the services of a qualified psychiatrist or psychologist to review a mental impairment case, but the professional services are not obtained, a physician who is not a psychiatrist will review the mental impairment case. For these purposes, every reasonable effort to ensure that a qualified psychiatrist or psychologist review mental impairment cases will be considered to have been made only after efforts by both State and Federal agencies as set forth in paragraphs (a) and (b) of this section are made.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subparts I and J, Chapter III of Title 20, Code of Federal Regulations, are amended as set forth below.

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.903 is amended by adding a new paragraph (e) to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(e) *Initial determinations for mental impairments.* An initial determination by a State agency or the Social Security Administration that you are not disabled (or a Social Security Administration review of a State agency's initial determination), in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 416.1017 for what we consider "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist willl evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant other than a qualified psychologist unless the mental

impairment alone would justify a finding of disability.

3. In § 416.926 the last sentence of paragraph (b) is amended by substituting the words "medical or psychological consultants" for the word "physicians" and by adding the reference "(See § 416.1016.)" at the end of the sentence, and paragraph (c) is revised to read as follows:

§ 416.926 Medical equivalence.

* * * * *

(c) *Who is a designated medical or psychological consultant.* A medical or psychological consultant designated by the Secretary includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a consultant.)

§ 416.946 [Amended]

4. In § 416.946 the first and second sentences are amended by substituting the words "medical or psychological consultant" for the word "physician" and the words "medical or psychological consultants" for the word "physicians" wherever they appear, and the third sentence is amended by substituting the words "any other medical or psychological consultant" for the words "any other physician".

20 CFR Part 416, Subpart J, is amended as follows:

5. The authority citation for Subpart J continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

6. Section 416.1015 is revised to read as follows:

§ 416.1015 Making disability determinations.

(a) When making a disability determination, the State agency will apply Subpart I, Part 416, of our regulations.

(b) The State agency will make disability determinations based only on the medical and nonmedical evidence in its files.

(c) Disability determinations will be made by a State agency medical or psychological consultant and a State agency disability examiner. (See § 416.1016 for the definition of medical or psychological consultant.) The State agency disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. (See § 416.972 of this part for what we mean by "substantial gainful activity".)

(d) An initial determination by the State agency that an individual is not disabled, in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 416.1017 for what we mean by "reasonable effort".) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Secretary may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a qualified psychologist serves as a psychological consultant, the psychologist will evaluate only the mental impairment, and a physician will evaluate the nonmental impairment. The overall determination of impairment severity in combined mental and nonmental impairment cases will be made by a medical consultant and not a psychological consultant unless the mental impairment alone would justify a finding of disability.

(e) The State agency will certify each determination of disability to us on forms we provide.

(f) The State agency will furnish us with all the evidence it considered in making its determination.

(g) The State agency will not be responsible for defending in court any determination made, or any procedure for making determinations, under these regulations.

7. A new § 416.1016 is added to read as follows:

§ 416.1016 Medical or psychological consultant.

A medical consultant must be a physician. A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. For disability program purposes, a psychologist will not be considered qualified unless he or she:

(a) Is licensed or certified as a psychologist at the independent practice level of psychology by the State in which he or she practices; and

(b) (1) Possesses a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or

(2) Is listed in a national register of health service providers in psychology which the Secretary of Health and Human Services deems appropriate; and

(c) Possesses 2 years of supervised clinical experience as a psychologist in health service, at least 1 year of which is post masters degree.

8. A new § 416.1017 is added to read as follows:

§ 416.1017 Reasonable efforts to obtain review by a qualified psychiatrist or psychologist.

(a) The State agency must determine if additional qualified psychiatrists and psychologists are needed to make the necessary reviews (see § 416.1015(d)). Where it does not have sufficient resources to make the necessary reviews, the State agency must attempt to obtain the resources needed. If the State agency is unable to obtain additional psychiatrists and psychologists because of low salary rates or fee schedules it should attempt to raise the State agency's levels of compensation to meet the prevailing rates for psychiatrists' and psychologists' services. If these efforts are unsuccessful, the State agency will seek assistance from us. We will assist the State agency as necessary. We will also monitor the State agency's efforts and where the State agency is unable to obtain the necessary services, we will make every reasonable effort to provide the services using Federal resources.

(b) Federal resources may include the use of Federal contracts for the services of qualified psychiatrists and psychologists to review mental impairment cases. Where Federal resources are required to perform these reviews, which are a basic State agency responsibility, and where appropriate, the State agency's budget will be reduced accordingly.

(c) Where every reasonable effort is made to obtain the services of a qualified psychiatrist or psychologist to review a mental impairment case, but the professional services are not obtained, a physician who is not a psychiatrist will review the mental impairment case. For these purposes, every reasonable effort to ensure that a qualified psychiatrist or psychologist review mental impairment cases will be considered to have been made only after

efforts by both State and Federal agencies as set forth in paragraphs (a) and (b) of this section are made.

[FR Doc. 87-20679 Filed 9-8-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 78N-0293]

Indirect Food Additives; Revocation of the Use of Hydrogenated 4,4'-Isopropylidene-Diphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by revoking the listing of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins for use as an antioxidant and stabilizer in polymers in contact with food. FDA is taking this action because it has received adverse toxicological data on the additive, and because it has not received any studies that resolve the questions about the safety of the use of this substance that have been created by these data. The agency proposed to revoke the listing of this food additive in the **Federal Register** of April 16, 1974 (39 FR 13667), and of June 15, 1979 (44 FR 34513).

Elsewhere in this issue of the **Federal Register**, the agency is proposing to list the additive in Part 189, Subpart C—Substances Prohibited From Indirect Addition to Human Food Through Food-Contact Surfaces.

DATE: Effective October 9, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by October 9, 1987.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, 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: In the **Federal Register** of January 17, 1968 (33 FR 569), FDA amended 21 CFR 178.2010 to provide for the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins in vinyl chloride polymer resins when such polymer resins are used in the manufacture of rigid bottles intended for contact with edible oils and all types of dressings for salads. The regulation was amended two additional times, on August 8, 1969 (34 FR 12885) and on November 18, 1969 (34 FR 18382), to provide for additional uses of the additive.

In the **Federal Register** of April 16, 1974 (39 FR 13667), FDA proposed to revoke the listing of the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins as an antioxidant and stabilizer because this compound bore a close chemical similarity to a compound that had caused neurological hindquarter paralysis during a dog feeding study. FDA received two comments on the proposal and additional toxicological data following publication of the 1974 proposed rule.

In the **Federal Register** of June 15, 1979 (44 FR 34513), FDA published a second proposed rule that responded to the comments on the 1974 proposal and discussed the new toxicological information that the agency had received. The new information included a study in which adverse neurological effects were observed in dogs fed hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins. The proposal also described the additional toxicological studies that would be required to determine a "no-effect" level to which appropriate safety factors could be applied to establish a safe level of use for the stabilizer.

During the comment period, a chemical company requested copies of the new toxicological studies that were used to support FDA's 1979 proposal. The company stated its intent to comment further on the proposal after it reviewed this information. However, the company did not comment on the proposal.

In view of the fact that no comments were received on the proposed rulemaking of June 15, 1979, concerning the revocation of the listing of the additive, and that no sponsor has agreed to perform the toxicology studies necessary to enable the agency to determine a safe level of use for this additive, the agency finds that § 178.2010 should be amended by revoking authorization for the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins. In addition, the agency is proposing elsewhere in this issue of the **Federal Register** to add this substance to Part 189, Subpart C—*Substances Prohibited From Indirect Addition to Human Food Through Food-Contact Surfaces.*

The agency has previously considered the environmental effects of this rule as announced in the proposed rule published on June 15, 1979 (44 FR 34513). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12044, the agency previously analyzed the potential economic effects of this final rule as announced in the 1979 proposal. The agency determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination. Additionally, in accordance with the requirements of Executive Order 12291, FDA has reevaluated the economic impact of this final rule. The agency has determined that the final rule is not a major rule as defined by Executive Order 12291. The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

Any person who will be adversely affected by this regulation may at any time on or before October 9, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that

a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 178.2010 [Amended]

2. Section 178.2010 *Antioxidants and/or stabilizers for polymers* is amended in paragraph (b) by removing from the list of substances the item "Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins * * *."

Dated: September 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-20609 Filed 9-8-87; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of July 2, 1987 (52 FR 24995), the Food and Drug Administration (FDA) published a final rule reflecting approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for use of a free-choice, mineral-vitamin Type C lasalocid feed for pasture cattle. The final rule inadvertently stated the incorrect "amount" of lasalocid in the regulation. This document corrects the "amount" of "68 grams per ton (0.0075 percent)" to read "1,440 grams per ton (0.16 percent)."

EFFECTIVE DATE: September 9, 1987.

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: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110, is sponsor of supplemental NADA 96-298 which provides for use of a 68-gram-per-pound Bovatec (lasalocid) Type A article to make a 0.16 percent free-choice, self-limiting Type C lasalocid feed for slaughter, stocker, feeder cattle, and dairy and beef replacement heifers on pasture for increased rate of weight gain (a feed containing 1.06 percent of a 68-gram-per-pound lasalocid Type A article). The drug is consumed at a rate of 60 to 200 milligrams per head daily. The "amount" in 21 CFR 558.311(e)(2)(ii) should read "1,440 grams per ton (0.16 percent)." This document amends the regulations accordingly.

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 558.311 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(2) * * *

(ii) *Amount.* 1,440 grams per ton (0.16 percent).

* * * * *

Dated: September 1, 1987.

Richard A. Carnevale,

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

[FR Doc. 87-20607 Filed 9-8-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8160]

Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes; Election Period for Foreign Tax Credit; Mailing Address for Withholding Exemption Statements and Forms

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the limitation on the foreign tax credit with respect to taxes paid on foreign oil related income. The Tax Reduction Act of 1975 changed the applicable tax law. The regulations provide the public with the guidance needed to comply with the subject limitation added by that Act and will affect all taxpayers claiming a foreign tax credit for taxes paid with respect to foreign oil related income. In addition, this document contains final Income Tax Regulations relating to the period during which a taxpayer may elect to claim the foreign tax credit. Also, this document contains final Income Tax Regulations relating to the mailing address to be used for filing Forms 1078 or withholding exemption statements.

DATES: The amendments to § 1.907(c)-1 are applicable for taxable years ending after December 31, 1974 and beginning before January 1, 1983. The amendment to § 1.901-1(d) is applicable for taxable years ending after December 31, 1953. The amendment to § 1.1441-5(c) is applicable October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T. Telephone 202-566-6384 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Limitation

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 907(c) (1) and (2) of the Internal Revenue Code. Amendments were proposed to conform the regulations to section 601(a) of the Tax Reduction Act of 1975 (89 Stat. 54). They do not reflect the changes in

section 907(c) made by section 211(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 449), hereafter referred to as TEFRA.

On June 27, 1984, the **Federal Register** published as final regulations amendments to the Income Tax Regulations (26 CFR Part 1) under section 907 of the Internal Revenue Code (49 FR 26208) (1984 final regulations). The notice which preceded the 1984 final regulations was published on November 17, 1980 (45 FR 75695) (1980 notice). Section 1.907(c)-1 (e) and (f) of the 1984 final regulations reserved certain rules that would apply in defining a taxpayer's foreign oil and gas extraction income and foreign oil related income. On June 27, 1984, the **Federal Register** published the notice of proposed rulemaking for those reserved rules (49 FR 26258) (1984 notice). A public hearing was neither requested nor held. After consideration of all comments regarding the 1984 notice, the amendments as set forth below are adopted by this Treasury decision.

Election Period

This document also contains an amendment to § 1.901-1(d) of the Income Tax Regulations (26 CFR Part 1) under section 901(a) of the Internal Revenue Code.

Mailing Address

In addition, this document amends § 1.1441-5(c) of the Income Tax Regulations (26 CFR Part 1) under section 1441 of the Internal Revenue Code.

Explanation of Provisions

Limitation

Prior to the enactment in 1975 of section 907, foreign oil and gas producers were generating excess foreign tax credits attributable to their producing operations. The excess credits arose because the effective foreign tax rate on income from the extraction of oil and gas often far exceeded the U.S. rate on that income. In addition, there were serious questions whether payments made to certain countries, that were called taxes and were claimed as foreign tax credits, were in reality deductible royalty payments. Moreover, the excess credits generated by extraction income could be used to offset the U.S. tax on the producer's other foreign-source income even though that other income was frequently low taxed income completely unrelated to the oil and gas business.

In order to address these problems, Congress enacted section 907 (a) and (b). In the first instance, section 907(a) limits the producer's creditable foreign oil and gas extraction taxes to a certain percentage of foreign oil and gas extraction income (FOGEI). FOGEI is foreign-source taxable income derived from the extraction of minerals from oil or gas wells or from the sale or exchange of assets used in the extraction activity.

Secondly, section 907(b) (as in effect prior to TAFRA) provides that these extraction taxes on FOGEI, as limited by section 907(a), along with the producer's creditable taxes on income from downstream trades or businesses (other FORI) may only be allowed by reason of section 904 as credits against the U.S. tax on foreign oil related income (FORI) (and not other income). FORI is composed of FOGEI and "other FORI." "Downstream" trades or businesses include the processing of minerals from oil or gas wells into primary products, marketing and transporting the minerals or primary products, and the selling or exchanging of assets used in these trades or businesses.

Interest Income

The 1980 notice of proposed rulemaking (45 FR 75695) generally defined FOGEI narrowly so as to include within the definition only income which a producing country would tax excessively. For example, in a situation where an oil and gas producer is required to make monthly payments of royalties and taxes to the producing country, the producer may temporarily invest the funds which it sets aside to make the monthly payments in assets that generate interest income. Under the 1980 notice, the interest income earned on those temporary investments would not have been either FOGEI or other FORI. The special section 907(b) foreign tax credit limitation would, therefore, not have applied with the result that foreign taxes, if any, paid on that income, even though attributable to the extraction activity, would have been creditable against income that was not foreign oil related income.

The 1984 notice provided, and this regulation adopts without change, the rule that FOGEI and other FORI is defined to include interest on reasonable amounts of working capital and other amounts that are directly related to the conduct by the taxpayer of extraction, processing, and other activities described in section 907(c) (1) and (2).

Service and Rental Income

The 1980 notice contained a rule (proposed § 1.907(c)-1(b)(2)) providing that income from the performance of extraction services would be extraction income even in the absence of an economic interest in the minerals in place, if the consideration received for those services depended in whole or in part on the amount of minerals discovered or extracted. The 1984 final regulations eliminated the above specific provision for extraction services. Those regulations provided, however, that income that is directly related to (rather than directly derived from) the conduct of the section 907(c) (1) and (2) activities may be FOGEI or other FORI. The definition of directly related income was reserved. The 1984 notice defined directly related income to include only income derived from the performance of certain described services and from the lease or license of property used by the lessor, licensor, or another person in the active conduct of the section 907(c) (1) and (2) activities. The earlier 1980 "income base on output" test was eliminated. These final regulations reinstate the income based on output test. Accordingly, the definition of directly related FOGEI includes income from extraction services which is based on output.

Election Period

This provision amends § 1.901-1(d) to state that a taxpayer may elect the foreign tax credit at any time during the 10-year period of limitations prescribed by section 6511(d)(3)(A) of the Internal Revenue Code.

Mailing Address for Withholding Exemption Statements and Forms 1078

Section 1.1441-5 provides that a person claiming to be exempt from withholding shall provide a withholding agent duplicate copies of either Form 1078 or a statement asserting citizenship or residency in the United States. This provision revises § 1.1441-5(c) to provide that the withholding agent shall mail one copy of the filed document to the Internal Revenue Service Center, Philadelphia, PA 19255.

Discussion of Comments

Limitation

The comments from the public received on the 1984 notice stated that the income based on output test which was abandoned in the 1984 notice should be reinstated. The commentators asserted that the income based on output test is supported by the legislative history of section 907. They pointed out that the House Report on section 907 as introduced in 1974 reflects the intention that FOGEI should be interpreted broadly to include income from any arrangement where the facts

demonstrate that the income is "essentially profits from the extraction of crude oil." H.R. Rep. No. 1502, 93rd Cong. 2d Sess. 45 (1974). This intention was expressed in the context of the specific recognition by the Ways and Means Committee of "the changing relationships between the foreign governments of the countries where oil and gas wells are located and the petroleum companies operating in those countries . . . ." H.R. Rep. No. 1502, *supra* at 64.

In this regard and in response to the comments, these final regulations reinstate the income based on output test.

One commentator requested that the final regulations clarify that the proceeds (including interest) received from the nationalization (or expropriation) of an asset (or oil concession) of a petroleum company used in an activity described in section 907(c) (1) or (2) may be either FOGEI or other FORI. In response to this comment, these final regulations so provide that those proceeds will be FORGEI or other FORI under § 1.097(c)-1(e)(6).

Special Analyses

It has been concluded that these regulations are interpretative and that the notice and public comment procedural requirements of 5 USC 553 do not apply. Accordingly, these regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6), and a Regulatory Flexibility Analysis is not required and has not been prepared. It has been determined that these regulations are not major regulations subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required and has not been prepared.

Drafting Information

The principal author of these final regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices in the Service and Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR 1.861-1 Through 1.997-1

Income taxes, Aliens, Exports, DISC, FSC, Foreign Investment in U.S., Foreign tax credit, Source of income, United States investment abroad.

26 CFR 1.1441-1 Through 1.1465-1

Income taxes, Aliens, Foreign corporations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.1441-5 (c) also issued under 26 U.S.C. 1441 (c). * * *

Par. 2. Section 1.901-1 is amended by revising paragraph (d) to read as follows:

§ 1.901-1 Allowance of credit for taxes.

* * * * *

(d) *Period during which election can be made or changed.* The taxpayer may, for a particular taxable year, claim the benefits of section 901 (or claim a deduction in lieu of a foreign tax credit) at any time before the expiration of the period prescribed by section 6511(d)(3)(A) (or section 6511(c) if the period is extended by agreement).

* * * * *

Par. 3. Section 1.907(c)-1 is amended by adding the text of paragraphs (e) (3), (4), (5), and (6) and (f) to read as set forth below.

§ 1.907(c)-1 Definitions relating to FORI and FOGEI.

* * * * *

(e) *Terms and items common to other FORI and FOGEI.*

* * * * *

(3) *Interest on working capital.* Other FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities listed in paragraphs (b) and (c) of this section.

(4) *Exchange gain or loss.* Exchange gain (and loss) may be other FORI and FOGEI.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraphs (e) (3) and (4) of this section are allocated among other FORI, FOGEI, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year-to-year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be FOGEI or other FORI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. Also, if an oil company's oil concession or assets used in extraction activities described in section 907(c)(1)(A) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income derived from that nationalization or expropriation (including interest on the income paid pursuant to the nationalization or expropriation) is FOGEI. Likewise, if a company's assets used in the activities described in section 907(c)(2) (B) through (D) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income (including interest on the income paid pursuant to the nationalization or expropriation) derived from the nationalization or expropriation will be other FORI. For this purpose, nationalization or expropriation is deemed to be a sale or exchange. In further example, assume that an oil company has an exclusive right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purchase of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is other FORI described in section 907(c)(2)(D). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be other FORI).

(f) *Directly related income*—(1) *In general.* This paragraph (f) includes in other FORI and FOGEI income from the

performance of directly related services (as defined in paragraph (f)(2) of this section) or from the lease or license of related property (as defined in paragraph (f)(3) of this section). This paragraph (f) does not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (f)(4) of this section) has FOGEI described in paragraph (b) of this section (other than paragraph (b)(4) thereof) or other FORI described in paragraph (c) of this section (other than paragraph (c)(7) thereof), or

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property described in paragraph (f) (2) and (3) of this section, respectively, is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Subdivision (ii) of this paragraph (f)(1) will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEI and other FORI (as both described in subdivision (i) of this paragraph (f)(1)).

A person described in subdivisions (i) or (ii) of this paragraph will, however, have directly related services income which is FOGEI if the income is so classified by reason of the income based on output test set forth in paragraph (f)(2)(i)(B) of this section.

(2) *Directly related services*—(i) *FOGEI.* (A) Income from directly related services will be FOGEI, as that term is defined in paragraphs (b) (1) and (3) of this section, if those services are directly related to the active conduct of extraction (including exploration) of minerals from oil and gas wells. Paragraph (b)(1) of this section provides that, in order to have extraction income, a person must have an economic interest in the minerals in place. However, paragraph (b)(3) of this section recognizes that income arising from "other circumstances" is extraction income if that income is in substance attributable to the extraction of minerals.

(B) An example of "other circumstances" under paragraph (b)(3) of this section is the "income based on output test." This income based on output test provides that, if the amount of compensation paid or credited to a person for services is dependent on the amount of minerals discovered or extracted, the income of the person from the performance of the services will be directly related services income which is FOGEI. This test will apply whether or not the person performing the services has, or had, an economic interest in the minerals discovered or extracted.

(ii) *Other FORI.* With regard to the determination of directly related services income which is other FORI, directly related services are those services directly related to the active conduct of the operations described in section 907(c)(2) (B) through (D). Those services include, for example, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954–6(d) (other than paragraph (d)(4) thereof) which relate to foreign base company shipping income.

(iii) *Recipient of the services.* Directly related services described in paragraph (f)(2) (i) and (ii) of this section may be performed for any person without regard to whether that person is a related person.

(iv) *Excluded services.* Directly related services do not include insurance, accounting or managerial services.

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907(c)(1)(A) or (c)(2) (A) through (D). The leases or licenses described in this paragraph (f)(3) include, for example, a lease of a means of transportation under a bareboat charter hire, of drilling equipment used in extraction operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (f)(3) applies without regard to whether the parties are related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (f) if (i) that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "controlled foreign corporation"; or (ii) that person is a partnership or partner described in section 707(b)(1).

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation for the purpose of applying the gross-income rules in paragraph (f)(1)(ii) and (iii) of this section.

Par. 4. Section 1.1441–5 (c) is revised to read as follows:

§ 1.1441–5 Claiming to be a person not subject to withholding.

* * * * *

(c) *Disposition of statement and form.* The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 21, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–20677 Filed 9–8–87; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3167–8; NC–023]

Approval and Promulgation of Implementation Plans; North Carolina; Control of Conical Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 12, 1986, the North Carolina Division of Environmental Management submitted a request for approval of 15 NCAC 2D.0523, Control of Conical Incinerators. This regulation sets forth requirements relating to the use of conical incinerators in the burning of wood and agricultural waste; in particular, the regulation addresses the elimination of airborne pollutants and the monitoring of ambient particulate concentrations.The new regulation fulfills a need for more definitive control of conical incinerator usage by strengthening the existing regulations currently being enforced.

DATES: This action will be effective on November 9, 1987, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such a notice may be submitted to Ms. Pamela Adams at the EPA Regional Office address listed below.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch,

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams, Air Programs Branch, EPA Region IV at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Regulation 15 NCAC 2D.0523, Control of Conical Incinerators, is an entirely new regulation that strengthens the existing regulations currently being enforced. Currently, officially adopted regulations 2D.0521 (Control of Visible Emissions) and 2D.0505 (Control of Particulates from Refuse Burning Equipment) apply to conical incinerators. Section (f) of the new regulation states that conical incinerator shall not violate Regulation 2D.0521.

With respect to particulate emissions, the new regulation dictates a conical incinerator design scheme capable of reducing the particulate emissions to one pound per ton of feed material burned. Therefore, the new control of conical incinerator regulation complies with regulation 2D.0505. Actual application of the current incinerator regulation to conical incinerators would be extremely difficult since no practical method of source testing these incinerators has yet been devised. Approval of 15 NCAC 2D.0523, Control of Conical Incinerators, fulfills a need for more definitive control of conical incinerator usage by establishing equipment and monitoring specifications designed to eliminate airborne pollutants.

Final Action

Since 15 NCAC 2D.0523, Control of Conical Incinerators, serves to strengthen existing regulatory provisions, and since the current regulatory provisions are capable of causing the national ambient air quality standards to be achieved and maintained, approval of 15 NCAC 2D.0523, Control of Conical Incinerators, is technically consistent with EPA policy and requirements. Therefore 15 NCAC 2D.0523 is hereby approved.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 9, 1987, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 9, 1987.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan (SIP) for North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: March 9, 1987.

Lee M. Thomas,

Administrator.

Subpart II, Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1770 is amended by adding paragraph (c)(51) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the North Carolina State Implementation Plan were submitted by the State of North Carolina Division of Environmental Management on June 12, 1986.

(i) Incorporation by reference.

(A) A new regulation entitled Control of Conical Incinerators, 15 NCAC 2D.0523, which became effective on January 1, 1985.

(B) A letter dated July 7, 1987, from the State of North Carolina Division of Environmental Management clarifying the adoption and effective dates of 15 NCAC 2D.0523.

(ii) Other material—none.

[FR Doc. 87-20550 Filed 9-8-87; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 60

[FRL-3258-6]

Standards of Performance for New Stationary Sources; Delegation of Authority for the States of Connecticut, Maine, New Hampshire and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the new source performance standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). The EPA hereby notifies the public that it has delegated the authority for certain recently promulgated Subparts of 40 CFR Part 60 to four of the State Air Pollution Control Agencies in Region I.

EFFECTIVE DATE: See supplementary information.

ADDRESSES: Applications and/or reports required under all NSPS source categories for which EPA has delegated authority to respective States should be addressed to:

State of Connecticut

Air Compliance Unit, Department of Environmental Protection, 165 Capitol Avenue, Hartford, CT 06106

State of Maine

Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333

State of New Hampshire

Air Resources Division, Department of Environmental Services, 64 North Maine Street, Caller Box 2033, Concord, NH 03302-2033

State of Rhode Island

Division of Air and Hazardous Materials, Department of Environmental Management, 75 Davis Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Janet M. Sessions (APS-2311), EPA Region I, Air Management Division, JFK Federal Building, Boston, MA 02203, (617) 565-3249; FTS 835-3249.

SUPPLEMENTARY INFORMATION: The States of Connecticut, Maine, New Hampshire and Rhode Island were delegated authority for the General Provisions and specified Subparts of 40 CFR Part 60 in letters from EPA dated September 30, 1982. These letters detailed the conditions of each delegation, and thereby established a mechanism of automatic delegation of newly promulgated standards when specifically requested by the States. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted. The effect of these delegations is to shift primary program responsibility for the newly promulgated Subparts of 40 CFR Part 60 from EPA to State governments. Some States do not have full authority over the programs; limitations are noted where appropriate.

Delegations for each State are listed below:

State of Connecticut

Limitations: None; full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective January 27, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of Maine

Limitations: None; full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective May 12, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of New Hampshire

Limitations: None, full authority delegated.

Delegations: Subparts of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective January 29, 1987,

Kb (Volatile Organic Liquid Storage Vessels for which Construction, Reconstruction, or Modification Commenced after July 23, 1984), effective June 10, 1987.

State of Rhode Island

Limitations: Administrative delegation only.

Delegation: Subpart of 40 CFR Part 60 as follows:

Db (Industrial-Commercial-Institutional Steam Generating Units), effective April 8, 1987.

Effective immediately, all applications, reports, and other correspondence required under the NSPS standards should be sent to the above State addresses, as well as to the EPA.

This notice announces the delegations granted since December 1986. In addition, these delegation agreements provide that authority over future revisions to previously delegated standards will automatically be delegated to the State agency. Also, these delegation agreements provide for automatic delegation of new standards. These delegations do not create any new regulatory requirements affecting the public.

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

List of Subjects in 40 CFR Part 60

Air pollution control, Electric utility steam generators, Petroleum refineries.

Dated: August 25, 1987.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 87-20651 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 180

[PP 5E3269/R907; FRL 3258-8]

Pesticide Tolerances for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide oxyfluorfen and its metabolites in or on the raw agricultural commodities broccoli, cabbage, and cauliflower. This regulation to establish maximum permissible levels for residues of oxyfluorfen in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: September 9, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 5E3269/R907], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 29, 1987 (52 FR 28314), in which it was announced that the Interregional Research Project No. (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 5E3269 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Florida, Hawaii, Illinois, Maryland, North Carolina, Tennessee, Virginia, and the U.S. Department of Agriculture. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined 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 new agricultural commodities broccoli, cabbage, and cauliflower at 0.05 part per million (ppm).

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

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance 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. 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, Reporting and recordkeeping requirements.

Dated: August 28, 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 is amended by adding and alphabetically inserting the raw agricultural commodities broccoli, cabbage, and cauliflower in paragraph (a), to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Broccoli	0.05
* * * * *	
Cabbage	0.05
* * * * *	
Cauliflower	0.05

[FR Doc. 87-20653 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 270

[FRL-3258-4]

Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in regulations which appeared in the **Federal Register** on June 22, 1987 [52 FR 23447] which related to RCRA permit application requirements for corrective action from regulated units.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Fagan at (202) 382-4497.

SUPPLEMENTARY INFORMATION: Under a final regulatory amendment published on June 22, 1987, RCRA facility owner/operators may now develop, at the discretion of the Regional Administrator, ground water corrective action programs after issuance of the RCRA permit to the facility, under a schedule of compliance. The June 22 **Federal Register** notice contained an inadvertent omission which requires correction. Specifically, 40 CFR 270.14(c)(8)(v) specified that written authorization to develop a corrective action program under a permit schedule of compliance must be obtained "prior to submittal of the permit application." The word "complete" was mistakenly omitted; the provision should have read "prior to submittal of the complete permit application."

* * * * *

Date: August 27, 1987.

Thaddeus L. Juszczak,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following correction is made in FRL-3184-9, Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities published in the **Federal Register** on June 22, 1987 [52 FR 23447].

§ 270.14 [Amended]

§ 270.14(c)(8)(v) on page 23450 which reads, "The permit may contain a schedule for submittal of the information required in paragraphs (c)(8) (iii) and (iv) provided the owner or operator obtains written authorization from the Regional Administrator prior to submittal of the permit application" is revised to read as follows:

"The permit may contain a schedule for submittal of the information required in paragraphs (c)(8) (iii) and (iv) provided the owner or operator obtains written authorization from the Regional Administrator prior to submittal of the complete permit application."

* * * * *

[FR Doc. 87-20652 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 86-29]

Filing of Service Contracts and Availability of Essential Terms

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission is amending its rules governing service contracts to address problems the Commission has experienced in obtaining adequate service contract records. This rule defines service contract records and requires ocean common carriers and conferences to maintain these records in a readily accessible or retrievable manner for a period of five years from the termination of each contract. Further, service contract records must be made available to the Commission within 30 days from the date of a written request. Two additional provisions of the final rule are being held in abeyance until further notice by the Commission. One requires service contract records to be maintained in the United States unless a responsible official of a carrier or conference certifies in writing that they will be supplied to the Commission on request. The other permits the Commission to cancel a carrier's or conference's right to maintain records outside the United States, if service contract records are not made available to the Commission.

DATE: Effective November 9, 1987, except for § 581.10 (c) and (d) which are indefinitely stayed.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street

NW., Washington, D.C. 20573-0001, (202) 523-5796.
Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Section 8(c) of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1707(c), authorizes ocean common carriers or conferences to enter into service contracts with shippers or shippers' associations, subject to the requirements of the Act and the regulations of the Federal Maritime Commission ("Commission"). The Commission's rules governing the use of service contracts presently require, among other things, that ocean common carriers and conferences maintain service contract shipment records for a period of five years from the termination of each contract. 46 CFR 581.10(a). In addition, service contracts are required to include "[a] description of the shipment records which will be maintained to support the contract"; and "[t]he address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 581.10." 46 CFR 581.4(a)(2)(ii) (A) and (B).

The Commission's interim rules implementing the 1984 Act, 49 FR 18852, May 3, 1984, 22 S.R.R. 813, required service contract shipment records to be maintained by a resident representative *in the United States* for a period of five years from the completion of the contract. However, when the Commission adopted final service contract rules, it decided against requiring records to be kept in the United States, because there appeared to be no compelling necessity to do so at the time. The Commission made it clear, however, that if any difficulties were encountered in obtaining service contract information in the future, it would consider reimposing a United States recordkeeping requirement. Docket No. 84-21, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts*, 49 FR 45370, November 15, 1984, 22 S.R.R. 1424.

The Commission initiated this rulemaking proceeding on November 13, 1986, 51 FR 41132, to address problems experienced by the Commission in obtaining service contract records. Approximately twenty-five percent of the service contract audits scheduled by the Commission's Bureau of Investigations had been delayed for varying periods of time. In some cases, the Commission had to wait over eight months to receive the requested information from carriers or conferences. Moreover, the fact that some service contract records were located overseas resulted in additional delays caused by foreign government involvement in the process of producing requested records. In addition, the kinds of records maintained by carriers have not always proven to be sufficient to enable the Commission to verify compliance with a contract.

The proposed rule would define "service contract records" and require that ocean common carriers and conferences: (1) Maintain service contract records in the United States in an organized, readily accessible manner; (2) identify the location of records and recordkeeper(s); and (3) produce service contract records within 15 days from the date of a written Commission request.

Comments to the proposed rule were submitted by: (1) U.S. Atlantic—North Europe Conference, North Europe—U.S. Atlantic Conference, Gulf-European Freight Association, and North Europe—U.S. Gulf Freight Association ("North Europe Conferences" or "NEC"); (2) Asia North America Eastbound Rate Agreement, Australia/Eastern U.S.A. Shipping Conference, and Mediterranean—U.S.A. Freight Conference ("Asia/Australia/Med Conferences"); (3) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference ("Japanese Conferences"); (4) North Europe—U.S. Pacific Freight Conference ("NEUSPFC"); (5) Sea-Land Service, Inc. ("Sea-Land"); (6) United States Lines, Inc. ("USL"); (7) American President Lines, Ltd. ("APL"); [1] (8) Council of European and Japanese National Shipowners' Associations ("CENSA"): and (9) U.S. Department of Transportation ("DOT"). In addition, the Commission received a copy of a Note Verbale from the U.S. Department of State that had been presented to it by the Embassy of Japan.[2]

Subsequent to the initiation of this rulemaking proceeding and the submission of comments, the Commission adopted a final rule in Docket No. 86-6, *Service Contracts*, 52 FR 23989, June 26, 1987, that substantially revised its existing service contract regulations and placed them in a separate part of the Code of Federal Regulations. As a result, many of the provisions addressed by the proposed rule have been renumbered and in some instances modified to accommodate the final rule in Docket No. 86-6.

The following is a section-by-section summary and analysis of the various comments received. Any comment not specifically addressed has nonetheless been fully considered by the Commission and found to be unnecessary to the disposition of this proceeding.

Proposed § 580.7(a)(5)

Section 580.7(a)(5) of the proposed rule defines "service contract records" as:

> . . . such information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading, or equivalent shipping documents, with riders, attachments, invoices, and corrections, and any other documents which establish that the terms of the contract are being or have been met.

Most commenting parties believe the proposed definition is too broad and therefore in need of some modification. The North Europe Conferences have proposed an alternative definition of the term service contract records.

The Asia/Australia/Med Conferences believe that the proposed definition of service contract records is unnecessary, contending that conferences should retain the discretion and flexibility to maintain the records they believe are necessary, e.g., bills of lading or summaries of shipments under a contract. They further contend that if the Commission needs documents other than those maintained by a conference, it can make a specific request directed to the party in actual possession of such documents.

The Japanese Conferences express concern over the volume of documents the Commission expects contract parties to maintain in support of their contracts, and the storage space that this would require. Similarly, NEUSPFC states that retention of member line shipping and accounting records by the conference would require doubling or tripling the present conference staff. NEUSPFC also claims that additional space would be needed to store records, and argues that additional costs would have to be borne by a depressed liner industry. Additionally, NEUSPFC states that it is not a depository for member line records and does not have underlying documents in the usual course of business.

Sea-Land states that a carrier should preserve the minimum documentation necessary to confirm performance of the contract, which would include a freighted ocean bill of lading. Sea-Land

[1] Sea-Land, USL and APL are members of one or more of the above-referenced conferences, but filed individual comments to the proposed rule.

[2] This document was received by the Commission after the close of the comment period.

suggests that by deleting some of the documents specified in the proposed definition, the rule would be more workable and effective.

CENSA believes the proposed definition of service contract records may introduce confusion as to whether a conference or its member lines bears the responsibility for maintaining different type of records. CENSA, therefore, proposes that the final rule only require the maintenance of those records "customarily maintained as business records in the ordinary course of business." CENSA Comments Apendix at 1.

The Commission proposed a broad definition of contract records in view of the apparent diversity of records that are maintained by carriers and conferences. The Commission did not intend to require that *all* of the records mentioned in the definition be maintained by each conference or carrier. Rather, it intended that a conference or carrier maintain its own "unique set of records," whatever they may be. The Commission is only concerned that the records enable it to verify that the terms of the contract are being or have been met. However, in light of comments received and in order to avoid any misinterpretation of the rule, the definition of service contract records has been modified by deleting the terms "riders," "attachments," "invoices," and "corrections" from the proposed definition. We are retaining, however, reference to "freighted ocean bills of lading," because the Commision considers them to be standard documents involved in the shipment of cargo under service contracts. In addition, because the Commission has recently adopted a final rule in Docket No. 86–6 which revises the general service contract regulations and places them in a new part, the definition of "service contract records" will now appear at 46 CFR 581.1(o).

Proposed § 580.7(b)(3)(vi)

Section 580.7(b)(3)(vi) of the proposed rule requires that the service contract clearly state "[t]he types of service contract records which will be maintained" by the ocean common carrier or conference.

The North Europe Conferences argue that the Commission should not require such provisions in service contracts, because they are neither "essential terms" as defined by statute and regulation, nor are they commercial terms which contracting parties normally negotiate.

NEUSPFC also maintains that the proposed rule should not be adopted. It argues that a conference may not always receive specific records from member lines and that, in some cases, the records received will consist of copies of relevant bills of lading and, in others, a computerized statement from the member line's accounting department. The other commenters, however, offer no objections to the rule's proposed requirement that the service contract state the type of records which will be maintained.

The Commission continues to believe that information as to the type of records a carrier or conference must maintain and make available should be set forth in the service contract. This procedure ensures that both parties to the contract are aware of the Commission's recordkeeping requirements. A clear statement regarding the types of records that a carrier or conference must maintain and make available will also avoid future misunderstandings and confusion and should allow records to be produced more conveniently and expeditiously. Therefore, the Commission will continue the requirement it recently adopted in Docket No. 86–6, *i.e.* that service contracts contain "[a] description of the shipment records which will be maintained to support the contract." 46 CFR 581.4(a)(2)(ii)(A).

Proposed § 580.7(b)(3)(vii)

Section 580.7(b)(3)(vii) of the proposed rule requires service contracts to state:

> The specific location in the United States of service contract records; and the name, title, address and telephone number of the individual who will make records available to the Commission pursuant to § 580.7(j).

In response to comments, the Commission's recently adopted rule in Docket No. 86–6 also contains the requirement that service contracts include "[t]he address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 581.10." 46 CFR 581.4(a)(2)(ii)(B). This provision will therefore remain in effect. The only other aspect of proposed § 580.7(b)(3)(vii) that generated comment was its reference to the "specific location in the United States of service contract records." These comments are treated below in the discussion of proposed section 580.7(j)(1).

Proposed § 580.7(j)(1)

Proposed § 580.7(j)(1) states that:

> Every ocean common carrier or conference shall maintain in the United States service contract records in an organized, readily accessible manner for a period of five years from the termination of each contract.

The North Europe Conferences, Asia/Australia/Med Conferences, the Japanese Conferences, NEUSPFC, Sea-Land, and CENSA object to the requirement of proposed § 580.7(j)(1) that carriers and conferences maintain service contract records in the United States. In general, the conference commenters argue that there are legal problems with a U.S. record location requirement. They assert that such a requirement would interfere with the sovereignty of a foreign nation by requiring removal of documents regarding transactions occurring within the territory of that nation. NEC further states that Congress intended the Commission to administer the 1984 Act with sensitivity to the interest of the United States' trading partners. Many commenters believe that the Commission can utilize its subpoena authority under section 12 of the 1984 Act, 46 U.S.C. app. 1711, to compel the production of documents, if necessary. In addition, NEC, the Asia/Australia/Med Conferences, the Japanese Conferences, NEUSPFC, Sea-Land, and CENSA contend that a U.S. record retention requirement would create immense administrative and economic burdens.

DOT offers an alternative approach to the U.S. record location requirement. DOT proposes that an exemption pursuant to section 16 of the Act, 46 U.S.C. app. 1715, be granted to carriers or conferences that agree to produce the documents requested by the Commission, whether located in the United States or not.

The primary intent of these rules is to ensure the timely availability of service contract records to the Commission. Although the Commission could obtain such records under section 12 and section 15 of the 1984 Act, 46 U.S.C. app. 1711 and 1714, it could also require that such records be mantained within the United States. Imposition of such a requirement would be a proper exercise of the Commission's authority to issue regulations necessary to carry out the 1984 Act.

The final rule, therefore, contains a variant of the alternative suggested by DOT—service contract records must be maintaned in the United States, but can be kept elsewhere if a responsible official certifies that they will be made available to the Commission upon request. In addition, the rule will provide that if service contract records are not made available, a carrier's or conference's right to maintain such records outside the United States, pursuant to the certification process, can be cancelled by the Commission. The

Commission does not, however, wish to impose unnecessary administrative or economic burdens on the ocean transportation industry or on itself. Recent audits of service contract records undertaken by the Commisson's staff have not met with significant difficulties. Moreover, no instance of foreign government resistance to the production of such records has been encountered during this period. For these reasons, and based on indications of cooperation provided by commenting conferences and carriers with respect to the voluntary production of service contract documents, the Commission has decided to impose a U.S. recordkeeping requirement, but not to implement it at this time. The Commission will accordingly stay the effective date of § 581.10 (c) and (d) of the final rule for an indefinite period of time. This will provide the Commission an opportunity to more fully assess the administrative burdens that a certification procedure will place upon it. Moreover, additional experience under a non-U.S. recordkeeping requirement may indicate that the Commission is able to obtain all necessary documents as carriers and conferences improve their recordkeeping processes and follow through on their offers of cooperation. In the event that the Commission decides to terminate the stay of these provisions, it will afford all affected parties ample advance notice.

As for the remainder of the proposed section, commenters generally believe that the five-year recordkeeping requirement is too long. NEC suggets that the five-year recordkeeping provision be reduced to a period of two years. Further, NEC suggests that the rule require the maintenance of relevant records in a "readily retrievable manner," rather than "in an organized and readily accessible manner."

The Commission is adopting the five-year retention requirement. This requirement is consistent with the five-year period within which the Commission can begin a proceeding to assess a civil penalty for violations under the Act. *See* 46 U.S.C. app. 1712(f)(2). The maintenance of service contract records for five years will permit the Commission to carry out its regulatory responsibilities and will permit it to assess and collect civil penalties for any violations of the 1984 Act. However, the rule has been amended to provide that the records maintained be either "accessible" *or* "retrievable" for a period of five years.

Proposed § 580.7(j)(2)

Proposed § 580.7(j)(2) states that:

Every ocean common carrier or conference shall submit upon written request of the Director, Bureau of Investigations or the Director of any District Office, requested service contract records within 15 days of the date of request of the Commission.

All commenters believe that a 15-day period for the production and submission of service contract records is unreasonable, and suggest that a 30-day period would be more appropriate. In support of the 30-day period, Sea-Land states that additional time is needed because conferences must obtain relevant documents from each of their constitutent members in order to present an aggregated record. USL and APL state that similar time problems exist when several offices of a single carrier are involved.

The Commission is enlarging the period for the production of service contract records to 30 days. Allowing additional time to produce such records is particularly appropriate given the Commission's stay of the requirement that service contract records be maintained in the United States. Carriers and conferences are cautioned, however, that failure to submit the requested documents or information within the prescribed period could result in the Commission issuing compulsory process, invoking the civil penalty procedure, revoking the stay of the U.S. document retention requirement, or taking other appropriate action. In addition, the Commission notes that in the case of a conference service contract, whether or not including all members, the conference has the responsibility to collect and make available requested service contract records. The Commission will look to the conference in such instances.

The Federal Maritime Commission has determined that the final rule adopted is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organization units, and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget ("OMB") for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). This collection was approved by OMB through April 30, 1987, and later extended to October 31, 1987, under OMB control number 3072-0009. However, in its Notice of Action, dated January 7, 1987, OMB suggested that the Commission submit a new supporting statement in justification of paragraph (j)(1) of the proposed rule. OMB questioned the need to maintain duplicate service contract records in the United States, when paragraph (j)(2) of the proposed rule requires carriers or conferences to produce such records within 15 days of a Commission request. Inasmuch as the Commission's final rule has stayed the requirement that service contract records be maintained in the United States, it is no longer necessary to submit additional justification for this requirement at this time. The Commission's stay action should obviate OMB's concerns. Should the Commission determine to remove the stay in the future, it will resubmit the rule for OMB clearance.

List of Subjects in 46 CFR Part 581

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Part 581 of Title 46, Code of Federal Regulations, is amended as follows:

PART 581—[AMENDED]

1. The authority citation to Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 581.1 is amended by redesignating paragraphs (o), (p), (q), (r), (s) and (t) as paragraphs (p), (q), (r), (s), (t) and (u) and by adding a new paragraph (o) as follows:

§ 581.1 Definitions.

* * * * *

(o) *Service contact records* means such documents and information as will enable the Commission to verify compliance with the terms of a service

contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met.

* * * * *

3. Section 581.10 is amended by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d) as follows:

§ 581.10 Record keeping and audit.

(a) Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(b) Every common carrier or conference shall, upon written request of the Director, Bureau of Investigations or the Director of any District Office, submit requested service contract records within 30 days from the date of the request.

(c) Service contract records shall be maintained in the United States; provided, however, that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (b) of this section.

(d) If service contract records are not made available to the Commission as provided in paragraph (b) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (c) of this section.

4. Paragraphs (c) and (d) of § 581.10 are stayed until further notice of the Commission.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-20452 Filed 9-8-87; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

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

Federal Crop Insurance Corporation

7 CFR Part 413

[Amendment No. 2; Doc. No. 4644S]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Texas Citrus Crop Insurance Regulations (7 CFR part 413), effective for the 1989 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Texas Citrus Crop Insurance Regulations only through the 1988 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations § 401.115, Texas Citrus Endorsement, effective for the 1989 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 413 will be effective only through the end of the 1988 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Texas Citrus Endorsement will be published as an endorsement to 7 CFR Part 401 (§ 401.115, Texas Citrus Endorsement), and become effective for the 1989 and succeeding crop years. Upon final publication, the provisions of the Texas Citrus Crop Insurance Regulations, now contained in 7 CFR Part 413, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 413 be effective for the 1987 and 1988 crop years only.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Texas Citrus Crop Insurance Regulations (7 CFR Part 413), as follows:

PART 413—[AMENDED]

1. The authority citation for 7 CFR Part 413 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 413 is revised to read as follows:

Subpart—Regulations for the 1987 and 1988 Crop Years

Done in Washington, DC, on August 19, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–20693 Filed 9–8–87; 8:45 am]

BILLING CODE 3410–08–M

---

7 CFR Part 432

[Amendment No. 2; Doc. No. 4640S]

Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Corn Crop Insurance Regulations (7 CFR Part 432), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Corn Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.111, Corn Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than October 9, 1987 to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 432 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Corn Endorsement will be published as an endorsement to 7 CFR Part 401 (*§ 401.111, Corn Endorsement*), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Corn Crop Insurance Regulations, now contained in 7 CFR Part 432, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 432 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 432

Crop insurance, Corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart heading to the Corn Crop Insurance Regulations (7 CFR Part 432), as follows:

PART 432—[AMENDED]

1. The authority citation for 7 CFR Part 432 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 432 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years.

Done in Washington, DC, on August 19, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-20694 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 724

Tobacco Acreage Allotment and Marketing Quota Regulations; Correction

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed Rule, Correction.

SUMMARY: This action corrects the preamble of the proposed rule published at 52 FR 27203 on Monday, July 20, 1987, to set forth the date by which comments on the proposed rule must be received.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013 (202) 382-0200.

The preamble for the proposed rule which would amend CFR Part 724 which was published on July 20, 1987, at 52 FR 27203 is corrected by revising the paragraph captioned "Dates" to read as follows: "**DATES:** Comments must be received on or before October 9, 1987, to be assured of consideration."

Signed in Washington, DC, on August 24, 1987.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-20624 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A41]

Milk in the Upper Midwest Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an expedited basis a change in the pool distributing plant definition of the Upper Midwest order. The change would permit the operator of one or more distributing plants and one or more soft-products (cream items, cottage cheese and yogurt but excluding ice cream) plants located within the marketing area to treat such plants as one plant, or unit, for pooling purposes. The change was considered at a public hearing held July 7-8, 1987, in Minneapolis, Minnesota.

The change is necessary to reflect current marketing conditions and to insue orderly marketing in the marketing area. Marketing conditions are such that prompt amendatory action is required with respect to this issue. Therefore, a recommended decision and opportunity to file exception thereto have been omitted. Other issues considered at the July hearing will be dealt with in a later decision on this record.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling in order to achieve greater efficiencies in the procurement of raw milk supplies. The amended order will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceding: Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900) at Minneapolis, Minnesota, on July 7-8, 1987. Notice of such hearing was issued on June 19, 1987, and published June 25, 1987 (52 FR 23843).

Interested parties were given until July 20, 1987, to file post-hearing briefs on whether the proposals considered at the hearing should be handled on an expedited basis, and until August 14 to file post-hearing briefs on the merits of the proposals as published in the hearing notice.

The material issues on the record of the hearing relate to:

1. Pool plant qualification standards for reserve supply plants.
2. Pool plant qualification standards for distributing plants.
3. Whether an emegency exists to warrant the omission of a recommended decision on issues No. 1 and 2.

This decision deals only with issues No. 2 and 3. The remaining issues of the hearing will be considered in a later decsion on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

2. *Pool plant qualification standards of distributing plants.* The pool distributing plant qualification standards under the Upper Midwest order should be changed to allow the operator of one or more distributing plants and one or more soft-products plants (plants which process cream items, cottage cheese and yogurt, but not ice cream) that are located within the marketing area to treat such plants as one plant, or unit, for pooling purposes. In order to be part of such a unit, each plant in the unit that does not meet the Class I route disposition requirements for distributing plants must use at least 50 percent of the bulk Grade A fluid milk received at or diverted from the plant to produce packaged cream products, yogurt and cottage cheese. Also, all plants within a unit must be located within the marketing area, and the unit operator must file a written request for unit status before such status would be effective.

The current order provisions require a pool distributing plant to distribute a percentage of its Grade A bulk fluid milk receipts as fluid milk products on routes in an amount at least equal to the marketwide Class I utilization percentage for the same month of the preceding year. In addition, at least 15 percent of a distributing plant's bulk fluid milk receipts must be disposed of on routes in the marketing area for the plant to qualify for pooling.

Marigold Foods, a proprietary handler regulated under the Upper Midwest

order, proposed that the order provide for unit pooling of distributing plants and plants processing some Class II products when the plants in the unit are all operated by the same handler, are located within the marketing area, and unit status is requested in advance. Marigold operates three distributing plants pooled under the Upper Midwest order and located at Rochester, Minneapolis and Duluth, Minnesota; an ice cream plant at Rochester, and a Class II soft-products plant at Farmington, Minnesota.

According to the spokesman for Marigold, the handler formerly processed its Class II soft products on the premises of its Rochester, Minnesota, distributing plant. The witness stated that when Marigold approached the large cooperative from which it leases the Rochester plant about the possibility of building an addition to accommodate expansion of Marigold's soft-product production, the cooperative declined. The witness said that Marigold then leased, and later purchased, the premises in Farmington, Minnesota, at which Marigold processes its Class II soft products and skims approximately 25 percent of the Farmington plant's receipts for the shipment of skim milk to Marigold's Minneapolis distributing plant.

The Marigold spokesman testified that the regular supply of milk to the combined fluid milk/Class II soft-product operation in Rochester was uninterrupted by the relocation of the Class II soft-product portion of the plant's output to Farmington. He stated that a portion of the previously combined milk supply for Rochester was shipped instead to Farmington, establishing patterns of milk movements to that facility as well as to the Rochester distributing plant. However, the witness pointed out, under the terms of a "call" for milk to supply the fluid, or Class I market, deliveries to the Farmington plant do not qualify as a shipment by a supplier to a distributing plant as would deliveries to the formerly combined operation in the Rochester plant.

The witness for Marigold stated that during the fall months of 1986, when the market administrator issued a "call" for additional milk supplies for fluid use, Marigold incurred costs of approximately $20,000 in moving packaged fluid milk products from its Minneapolis plant to be distributed from the Farmington plant. According to the witness, the objective of such costly inefficient movements of milk was to qualify the Farmington plant as a distributing plant. With distributing plant status, the witness said, the Farmington plant was able to attract a supply of raw milk from suppliers who needed to meet the percentage of deliveries to pool distributing plants required by activation of the "call" provisions during the months of September through November 1986. The witness testified that during the same period it was necessary for one of Marigold's regular raw milk suppliers to incur costs of $10,000 in order to provide skim milk for Marigold's Minneapolis plant due to the difficulty of obtaining supplies for the Farmington plant, from which skim milk had been shipped to Minneapolis.

The witness concluded that the proposed amendment to the pool distributing plant definition would restore Marigold to the same position that existed vis-a-vis the order when all of the handler's Class II soft products were produced in the Rochester distributing plant. In addition, he said, adoption of the proposal would allow avoidance of the unnecessary and inefficient hauling and handling practices that otherwise would be necessary to obtain the supply of milk needed for Marigold's entire operation in the event of future activation of the order's "call" provision. According to the witness, Marigold would be the only handler affected by adoption of the proposed amendment.

The Marigold proposal was supported by spokesmen for Land O'Lakes, Mid-America Dairymen, Associated Milk Producers, Inc., Farmers Union Milk Marketing Cooperative and National Farmers Organization. The Land O'Lakes witness testified that formation of a distributing plant unit would be a more efficient and less costly means of assuring a milk supply to Marigold's total operation than the unnecessary hauling and handling practices used to retain a milk supply for the Farmington plant during the months of 1986 when the "call" provision was in effect. He also stated that adoption of the proposal would make it simpler for raw milk suppliers to maintain existing supply relationships with their customers. The Mid-American Dairymen representatives pointed out that adoption of Marigold's proposal would not affect the use value of milk pooled under the order. No opposition to the proposal was expressed in testimony at the hearing or in post-hearing briefs.

The proposed change in the pool distributing plant definition should be adopted. The changes in the pool status of Marigold's Class II soft-products processing caused only by the relocation of those activities clearly has impaired Marigold's ability to obtain an adequate and reliable supply of milk for its operation as a whole during times when a "call" is in effect. Marigold apparently can continue to obtain a supply of milk for its Farmington plant at such times, but only by engaging in inefficient and uneconomic hauling and handling practices. The problem of obtaining a sufficient milk supply at Farmington apparently arises only during a "call" situation. While it is evident that "calls" for fluid milk supplies have been an infrequent occurrence, it is also likely that they will occur regularly during the fall months of short milk production while milk supplies are expected to be tight.

Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and Class II soft products in another. With the ability to form a unit of plants processing fluid and Class II products at different locations, a handler may achieve economies of scale while maintaining an adequate supply of milk for the complete operation.

As proposed by Marigold, each plant within the unit that would not be a pool distributing plant on the basis of its own disposition would have to use at least 50 percent of its receipts for the disposition of fluid milk products, cream products, yogurt, eggnog and cottage cheese. Under cross-examination, the Marigold witness stated that adoption of the proposal with a percentage higher than the proposed 50 percent would meet Marigold's needs. However, no reason was given for increasing the proposed percentage. Adoption of the proposed 50-percent level will assure that the plant is used primarily for processing the specified items, with some flexibility to divert unneeded producer milk to other outlets and to accommodate the continued skimming of bulk milk receipts at Farmington for the shipment of skim milk to Marigold's Minneapolis plant.

Only plants located inside the marketing area would be eligible for inclusion in a unit. This will provide some assurance that the plant is associated with the Upper Midwest market in terms of its milk procurement area. Multi-plant handlers often operate plants in more than one market. It would not be appropriate to pool a plant under the order if it were located beyond the procurement area of regulated plants. A similar qualification provision applies to pool reserve supply plants.

As a condition to qualify for unit pooling, a handler would be required to

notify the market administrator in writing prior to the first day of the month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. If any change such as the addition or subtraction of plants to or from the unit or termination of the unit is desired, the handler would be required to notify the market administrator prior to the month in which such a change is to be effective.

3. *Need for emergency action.* The notice of hearing provided for taking evidence to determine whether emergency marketing conditions exist that would warrant ommission of a recommended decision with respect to the issues considered at the hearing. The request for emergency action by proponents was based on the view that the Department would not have sufficient time after the hearing to issue both a recommended decision and a final decision and make any resulting action effective in time to affect the availability of milk supplies to pool distributing plants during the fall 1987 months of expected short production. A decision on Proposal No. 1, which would require that reserve supply plants meet mandatory shipping percentages in order to be pooled during the months of August through December, should not omit the opportunity for interested persons to file exceptions. Proposal No. 3 would merely remove obsolete language from the pool plant definition. There were no testimony on any need for adoption of Proposal No. 3 on an emergency basis, and no emergency is seen to exist. Emergency action should be taken only with respect to Proposal No. 2, which allows a multi-plant handler with at least one distributing plant and one or more Class II soft-products plants located within the marketing area to treat such plants as a unit for pooling purposes.

At the hearing and in post-hearing briefs, the six cooperative association proponents of Proposal No. 1 and another cooperative association urged prompt action with respect to establishing mandatory shipping percentages for reserve supply plants. Proponents argued that "calls" for milk were issued for the months of September through November 1986 and that market supply conditions in the fall of 1987 will be similar to those that occurred in the fall of 1986. The proponents therefore advocated emergency action for the purpose of avoiding the need for a "call" during the fall months of 1987. Proponents asserted that the "call" mechanism is appropriate only under emergency conditions, and is cumbersome and defective as a mechanism for routine use. Use of the "call" provision was characterized as creating uncertainty, lack of planning between suppliers and customers, and resulting uneconomic marketing conditions.

Emergency action on Proposal No. 1 was opposed by two cooperative associations and an association of proprietary handlers who opposed adoption of mandatory shipping percentages. The opponents of mandatory shipping standards cited the market administrator's authority to call on suppliers for needed milk supplies as an emergency means of assuring that the Class I needs of the market will be met.

A recommended decision on the issue of mandatory shipping percentages for reserve supply plants should not be omitted. Although there may be a need for more milk deliveries to distributing plants this fall than reserve supply plants are willing to ship, that emergency can be dealt with as well by use of the "call" provision as by the adoption of shipping requirements. The imposition of mandatory shipping percentages during the 1987 season of short supply will do no more to assure advance planning and coordination between suppliers and customers than the "call" provision does. If mandatory shipping requirements are adopted, they will serve to encourage suppliers and their customers to plan ahead to meet bottling needs only if the market participants are aware of such requirements well in advance of having to operate under them. The "call" provisions currently existing in the order should be as appropriate for dealing with the emergency supply conditions expected this fall as would hastily adopted mandatory shipping standards.

In addition to the fact that the tight supply conditions expected this fall do not warrant emergency adoption of required shipping percentages, the degree of disagreement between hearing participants over the merits of adopting mandatory shipping standards makes a recommended decision, with opportunity to file exceptions, desirable. Whether performance standards for reserve supply plants are adopted or not, interested persons should have an opportunity to comment on the decision.

Expedited action on Proposal No. 2 is warranted on the basis that, according to the post-hearing brief filed by Marigold Foods, an emergency does exist with regard to propoentnt's procurement of milk supplies this fall. Marigold states that it is evident that the market administrator will have to issue a "call" to suppliers in order to obtain an adequate supply of milk for the market's fluid needs for the fall months of 1987 as he did for the same period of 1986. In such circumstances, Marigold obviously will encounter the same difficulty in securing a supply of milk for its total operation as it encountered last fall. There are no provisions in the order that would assist Marigold in obtaining a supply of milk for its total operation in the way that the "call" provisions operate to secure an adequate supply of milk for fluid use. Emergency action on Proposal No. 2 is the only means of assuring that Marigold will be able to obtain a supply of milk for its entire operation without resorting to inefficient and uneconomic methods of handling and hauling milk.

Although the need for omission of a recommended decision regarding Proposal No. 2 was not discussed at the hearing, that possibility was included in the hearing notice. In addition, proponent Marigold Foods argued for emergency action on Proposal No. 2 in its post-hearing brief, as did the six cooperative proponents of Proposal No. 1 and Associated Milk Producers, Inc. Although the opponents of mandatory shipping percentages submitted briefs opposing emergency action in the proceeding, their comments were directed toward emergency action on Proposal No. 1. Those persons supported adoption of Proposal No. 2 in testimony at the hearing. Therefore, there appears to be no real opposition to the expedited adoption of a unit pooling provision for a multi-plant handler, and such action appears to be justified.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous

findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating and handling of milk, and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

June 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on September 2, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the miminum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for CFR Part 1068 continues to read as follows:

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

2. In § 1068.7, Pool plant, add a new paragraph (a)(3) as follows:

§ 1068.7 Pool plant.

* * * * *

(a) * * *

(3) A unit consisting of at least one pool distributing plant and one or more additional plants of a handler shall be considered as one plant for the purpose of meeting the requirements of this paragraph, subject to the following conditions:

(i) For each plant within the unit which does not qualify as a pool distributing plant pursuant to paragraphs (a)(1) and (2) of this section, the combined disposition of skim milk and butterfat in products specified in § 1068.40(a), § 1068.40(b)(1) in packaged form, and § 1068.40(b)(4)(i) is 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator;

(ii) All plants within the unit are located within the marketing area; and

(iii) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

* * * * *

United States Department of Agriculture, Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1068.1 to 1068.86, all inclusive, of the order

regulating the handling of milk in the Upper Midwest marketing area 7 CFR Part 1068 which is annexed hereto; and

II. The following provisions:

§ 1068.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of June 1987, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1068.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

By _____ (Signature)

_____ (Name) (Title)

_____ (Address)

Attest _____

Date _____

[FR Doc. 87-20625 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-96-AD]

Airworthiness Directives: Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require inspection of the indicator switches in the wing and engine anti-ice control panel, replacement of the panel if certain switches are installed, and repetitive functional testing of the panel. This proposal is prompted by reports of incomplete switch latching and switch contamination in installations of these switches in applications other than the anti-ice control panel. This condition, should it occur on the anti-ice control panel, could result in inoperative wing and engine anti-ice systems with no annunciation to the flight crew.

DATE: Comments must be received no later than October 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. 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. Communciations should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved 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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Certain lighted push-button indicator switches used in the wing and engine anti-ice control panel on Boeing Model 757 series airplanes have been found to exhibit malfunctions in service, including incomplete latching and contamination in applications other than the anti-ice control panel.

The switches are of the alternate on-off type and they determine the position of valves that control the flow of hot engine bleed air to areas of the wing and engine cowling where ice can accumulate during flight. Incomplete latching or contamination can result in loss of continuity through a switch although the indication is that it is on. Should this occur, the selected anti-ice system could become inoperative and that condition would not be annunciated to the flight crew.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-30A0013, dated April 30, 1987, which describes inspection of switches in certain wing and engine anti-ice control panels to determine which switches are installed, replacement of the anti-ice control panel with a panel incorporating improved switches, and functional testing of the anti-ice control panel to ensure correct switch operation.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of switches in certain Boeing Model 757 anti-ice control panels, replacement of the panel if certain switches are installed, and repetitive functional testing in accordance with the service bulletin previously mentioned.

It is estimated that 80 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 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 the AD on U.S. operators is estimated to be $9,600.

For these reasons, 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 few, if any, Boeing Model 757 airplanes are operated by small entities.

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 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 (14 CFR 39.13) 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 adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, equipped with Boeing P/N 233N3204-11 and 233T3241-1 Wing and Engine Anti-Ice Control Panels, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inoperative wing or engine anti-ice system with no annunciation to the flight crew, accomplish the following:

A. Within the next 500 hours time-in-service after the effective date of this AD, inspect the switches in the wing and engine anti-ice control panel in accordance with paragraph III.B. of Boeing Alert Service Bulletin 757-30A0013, dated April 30, 1987, or later FAA-approved revisions. If Korry switches are installed which are not marked with green dots next to the date code on the lens cap assembly and on top of the master module, prior to further flight, replace the control panel with one having serviceable switches, in accordance with paragraph III.C. of the service bulletin.

B. Upon completion of the inspection, and replacement if necessary, required by paragraph A., above, and thereafter at intervals not to exceed 500 hours time-in-service, perform a functional test of the wing and engine anti-ice control panel, in accordance with paragraph III.D. of Boeing Alert Service Bulletin 757-30A0013, dated April 30, 1987, or later FAA-approved revisions. If any functional test is unsatisfactory, prior to further flight, replace the control panel in accordance with the service bulletin and continue to accomplish functional tests, as required by this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to operate airplanes to a base for the accomplishment of the inspections 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 the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac, Acting Director,
Northwest Mountain Region.

[FR Doc. 87-20602 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-84-AD]

Airworthiness Directives: McDonnell Douglas Model DC-9-81, -82, and -83 Airplanes, Fuselage Numbers 909 Through 1369

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-80 series airplanes, which would require the inspection and modification of the power feeder cable installation to preclude premature chafing. This proposal is prompted by a report of an APU generator feeder cable electrically shorting to the airplane structure. This condition, if not corrected, could lead to a fire on board the airplane below the cabin floor.

DATE: Comments must be received no later than October 9, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-84-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A McDonnell Douglas Model DC-9 operator reported that, while taxiing in to the terminal area, sparks were emitting from the aft end of the airplane through the outflow valve opening. The flightcrew also reported that the "APU Generator Feeder Fault" annunciation was illuminated. Subsequent maintenance inspection revealed that the Auxiliary Power Unit (APU) generator feeder cable had chafed at the clamped location transitioning below the floor, and had electrically shorted to the supporting clamp. Follow-up investigation by the manufacturer revealed that the supporting clamp, although mounted on non-conductive type material, had been installed using

an oversized screw which was contacting the airplane structure. The investigation also indicated that abnormal stress imposed by the power feeder cable routing caused the insulating pad to separate from the metal portion of the clamp which initiated the chafing action.

Eleven cases of chafed generator power feeder cables resulting in shorting to the airplane structure have been reported by U.S. operators. In six of those cases, the requirements of AD 85-25-06, Amendment 39-5177 (50 FR 49833; December 5, 1985), to correct power feeder cable routing discrepancies, had been accomplished, but the power feeder cable trough and trough cover did not extend sufficiently through the below-floor transition location and caused the cable to contact the airplane structure. This condition, if not corrected, could result in a fire.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 24-94, dated May 28, 1987, which describes the inspection procedures and modification instructions to correct the generator power feeder cable installation on McDonnell Douglas Model DC-9-81, -82, and -83 model airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection and modification of the generator power feeder cable installation on McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes in accordance with McDonnell Douglas Model DC-9 Service Bulletin 24-94, Revision 1, dated May 28, 1987, and concurrently verify that the power feeder cable trough and trough cover extends properly below the floor at the forward and aft locations, as prescribed by Item F of the Accomplishment Instructions in McDonnell Douglas DC-9 Service Bulletin 24-78, Revision 2, dated March 20, 1986, or its production equivalent.

It is estimated that 248 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplished the required actions, and that the average labor cost would be $40 per manhour. The modification parts are being provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $89,280.

For these reasons, 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 few, if any, McDonnell Douglas Moded DC-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for the action is contained in the regulatory docket.

List of Subjects 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 (14 CFR 39.13) 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 adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 airplanes, Fuselage Numbers 909 through 1369, certificated in any category. Compliance required within 12 months after the effective date of this airworthiness directive (AD), unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installation, accomplish the following:

A. Inspect for power feeder cable damage and modify the power feeder cable installation in accordance with the Accomplishment Instructions of McDonnell Douglas Model DC-9 Service Bulletin 24-94, Revision 1, dated May 28, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Verify that the power feeder cable trough and trough cover extend correctly through both forward and aft below-floor transition areas, and correct, if necessary, in accordance with Item F of the Accomplishment Instructions in McDonnell Douglas DC-9 Service Bulletin 24-78, Revision 2, dated March 20, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 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 in order to comply with the requirements of 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 the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on August 10, 1987.

Frederick M. Isaac,
Acting Director, Northwest Mountain Region.

[FR Doc. 87-20604 Filed 9-8-87; 8:45 am]
BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-107-AD]

Airworthiness Directives: Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which would require replacing the existing Electronic Flight Instrument System (EFIS) symbol generators with updated symbol generators. This proposal is prompted by a report of the EFIS display going blank during certain flight conditions. This condition, if not corrected, could lead to blanking of the primary EFIS display during critical phases of flight.

DATE: Comments must be received no later than October 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-107-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the

FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems & Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited in 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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-107-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

It has been reported that the EFIS display on a Model 737-300 airplane went blank during certain electrical power transient conditions. The electrical transient caused by switching power, in combination with certain internal settings of the EFIS display unit, prevents the symbol generator computer from sending the necessary digital data to keep the EFIS display active, resulting in the display going blank. This condition, if not corrected, could result in the loss of the primary EFIS display during a critical phase of flight. The display can be recovered by manually cycling the EFIS Instrument Transfer Switch located on the pilot's overhead panel.

The FAA has reviewed and approved Boeing Service Bulletin 737-34-1220, dated April 30, 1987, which describes replacement of the existing EFIS symbol generator with an updated symbol generator.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the symbol generator in accordance with the service bulletin previously mentioned.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 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 the AD on U.S. operators is estimated to be $2,880.

For these reasons, 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 few, if any, Model 737-300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 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 Av)ation Regulations (14 CFR 39.13) 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 adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes listed in Boeing Service Bulletin 737-34-1220 dated April 30, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of the primary Electronic Flight Instrument System (EFIS) displays, accomplish the following:

A. Replace the EFIS symbol generators in accordance with Boeing Service Bulletin 737-34-1220 dated April 30, 1987, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the requirements of 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 the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20600 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-101-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -10F, -15, -30,-30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, which would require inspections and repair, as necessary, of the horizontal stabilizer constant and outer section integrally-machined skin panels, plus inspections and replacement of H-11 material bolts used for attachment of the horizontal

stabilizer constant section to the spar caps. This proposal is prompted by reports of cracks in the horizontal stabilizer skin panel and a failed bolt. This condition, if not corrected, could lead to structural failure of the horizontal stabilizer.

DATE: Comments must be received no later than October 12, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

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 contract 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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-101-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

This proposed AD is prompted by reports from four operators of cracks in the constant section of the integrally-machine skin panels (planks) of the horizontal stabilizer on one DC-10-10 and four DC-10-30 airplanes. One DC10-30 airplane also had a crack in the outer section of the rear skin panel. The airplanes had accumulated from 18,400 to 56,665 flight hours and 3,431 to 15,415 landings when the cracks were detected. Also, one opeator reported the failure of one H-11 material bolt used for the attachment of the horizontal stabilizer constant section upper rear spar cap to the outer section. These cracks have been attributed to stress corrosion. If not detected, extensive cracks of this type could significantly reduce the strength of the horizontal stabilizer, which could result in structural failure.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins A55-16, dated May 8, 1987, which describes the skin panel inspection procedures, the application of a corrosion inhibiting compound, and repair procedures; and A55-17, dated May 8, 1987, which describes the bolt inspection procedure and replacement instructions.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and repair, if necessary, of the horizontal stabilizer constant and outer section integrally-machined skin panel, plus inspections and replacement of H-11 material bolts used for attachment of the horizontal stabilizer constant section to the spar caps, in accordance with the service bulletins previously mentioned.

It is estimated that 196 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,880.

For these reasons, 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 few, if any, Model DC-10 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 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 (14 CFR 39.13) 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 adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a horizontal stabilizer skin panel or a spar cap bolt due to stress corrosion, accomplish the following:

A. Within the next 6 months after the effective date of this AD, unless already accomplished within the last 18 months, and thereafter at intervals not to exceed 2 years, inspect the horizontal stabilizer upper outer rear skin panel and apply LPS-3 (or equivalent) corrosion-inhibiting compound in accordance with mcDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision.

B. Within the next 6 months after the effective date of this AD, unless already accomplished within the last 6 months, and thereafter at intervals not to exceed one year, inspect the horizontal stabilizer spar cap bolts made from H-11 material in accordance with McDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

C. If a broken bolt is found, prior to further flight, replace the broken bolt with a new bolt in accordance with mcDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

D. If a crack is found in a skin panel:

1. Prior to further flight, repair or replace in accordance with mcDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, of later FAA-approved revision; or

2. If the crack is within limits defined in McDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision, accomplish the following:

a. Prior to further flight, apply LPS-3 (or equivalent) corrosion inhibiting compound in accordance with McDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision; and

b. Prior to further flight, inspect the horizontal stabilizer spar cap bolts and, if necessary, replace broken attachment bolts in accordance with McDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision; and

c. At intervals not to exceed 3 months from the last inspection, reinspect the skin panel and horizontal stabilizer spar cap bolts in accordance with paragraph A. and paragraph B., above.

E. If, at any inspection, a crack is found int he skin panel which is outside acceptable limits defined by paragraph D.2., above, prior to further flight, repair or replace in accordance with McDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revision.

F. Installation of a new inconel or multiphase bolt, as applicable, to replace an H-11 material bolt constitutes terminating action for the repetitive inspections required by this AD for that bolt.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of 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 the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). The documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long beach, California.

Issued in Seattle, Washington, on August 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-20601 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-CE-68-AD]

Petition of Mackey, Rozanski and Friedland for Modification of Airworthiness Directive 87-14-03

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking.

SUMMARY: This notice publishes for public comment a summary of the Mackey, Rozanski and Friedland petition dated August 12, 1987. This petition seeks the modification of Airworthiness Directive (AD) 87-14-03. The AD requires a wing spar inspection of Gulfstream Aerospace Corporation Model 112 and 114 series airplanes, and was issued as a result of reports of spar cracks. The petitioner contends that the specified modification does not constitute a permanent fix, and that it is inadequate in several areas including, but not limited to, the following:

1. That corner blocks are necessary to tie together the upper spar cap to the upper spar cap leg at selected locations to stabilize the outstanding leg of the upper spar cap;

2. That the fasteners used in connecting the intermediate rib to the square support tube are inadequate and should be enhanced due to a risk that the bolt/fasteners have an inherent risk of failure in bearing and shear, with an attendant risk of rupture in the wing tank fuel lines due to the proximity of the fasteners to the fuel lines;

3. That the forward square support tube attached to the intermediate rib in that the square support tube should be heat-treated;

4. That the use of blind fasteners creates a "soft spar plane" in the area of the aft rib at wing station 47.3;

5. That bucked rivets should be used instead of pole rivets; and,

6. That in installing the repair/modification, there is a more effective method of cutting the spar cap (the modification recommending cutting with a saw, which runs a risk of causing damage in the spar area).

DATE: Comments must be received on or before October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, ASW-150, DOT, FAA, Fort Worth, Texas 76193-0150 Telephone (817) 624-5155.

ADDRESSES: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket, Docket No. 86-CE-68-AD, 601 East 12th Street, 1558 Federal Building, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected in Room 915G weekdays, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition number and be submitted in triplicate to the Office of Regional Counsel, Kansas City, Missouri, at the above address. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments will be available for examination in the FAA docket.

Interested persons may obtain a copy of the petition by contacting the person listed above in the paragraph entitled **"FOR FURTHER INFORMATION CONTACT:."**

Although this notice refers to the contents of the petition as received by the FAA, it should be understood that the purpose of the reference is to receive public comments in accordance with FAA procedures governing petitions for rulemaking, and it does not propose a regulatory rule for adoption or recision, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to consider the merits of the proposal after it has had an opportunity to evaluate the petition matters presented and all comments received from the public.

The Petition

Accordingly, the Federal Aviation Administration publishes this notice for public comment on Mackey, Rozbanski and Friedland petition for modification of AD 87-14-03.

Issued in Kansas City, Missouri, on August 25, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87-20605 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 189

[Docket No. 87N-0055]

Substances Prohibited From Use in Human Food; Hydrogenated 4,4'-Isopropylidene-Diphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to add hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins to the list of substances that are prohibited from use in human food. Elsewhere in this issue of the **Federal Register**, the agency is removing the listing for hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins from the food additive regulations because of the absence of appropriate studies establishing safe conditions of use for this additive.

DATE: Comments by November 9, 1987.

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: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HHF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 16, 1974 (39 FR 13667), FDA proposed to revoke the use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins as an antioxidant and stabilizer because of this compound's close chemical similarly to a related compound. When fed at a high level, the related compound caused neurological hindquarter paralysis in a dog feeding study.

In the **Federal Register** of June 15, 1979 (44 FR 34513), FDA published a second proposed rule that responded to comments received on the 1974 proposal and that discussed new toxicological information concerning the additive itself. As discussed elsewhere in this issue of the **Federal Register**, the agency has no evidence that would establish that there is a safe level of use for this additive, and the agency is therefore revoking the authorization for use of hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010). Because there is no evidence of a safe level of use for this additive, the agency is also proposing to add this substance to the list of substances that are prohibited from use in food (21 CFR 189.300).

The agency has determined under 21 CFR 25.24(a)(8) 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.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this regulation would have on small entities, including small businesses. The agency has determined that, although the proposed regulation would remove an approved additive from food, the effect of this action on small entities will be minimal. The agency certifies that the publication of this proposal will not have a significant economic impact on a substantial number of small entities.

Interested persons may, on or before November 9, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that 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.

List of Subjects in 21 CFR Part 189

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 189 be amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR Part 189 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

2. By adding new § 189.300 to Subpart C to read as follows:

§ 189.300 Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins.

(a) Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins are the condensation product of 1 mole of triphenyl phosphite and 1.5 moles of hydrogenated 4,4'-isopropylidene-diphenol such that the finished resins have a molecular weight in the range of 2,400 to 3,000. They are synthetic chemicals not found in natural products and have been used as antioxidants and as stabilizers in vinyl chloride polymer resins when such polymer resins are used in the manufacture of rigid vinyl chloride polymer bottles.

(b) Food containing any added or detectable level of these substances is deemed to be adulterated in violation of the act based upon an order published in the **Federal Register** of (*insert date of publication in the* **Federal Register**) (____).

Dated: September 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-20608 Filed 9-8-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 5h and 55

[LR-104-86]

Excise Taxes Relating to Real Estate Investment Trusts and Regulated Investment Companies Under the Tax Reform Act of 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the manner and method of reporting and paying the 4% excise tax imposed on real estate investment trusts (REITs) and regulated investment companies (RICs). These excise taxes were added to the Internal Revenue Code by the Tax Reform Act of 1986. The proposed regulations would provide REITs and RICs with the guidance necessary to comply with the reporting requirements for these new excise taxes. This document also contains a proposed amendment to the Temporary regulations relating to certain elections by RICs under the Tax Reform Act of 1986.

DATES:

Dates for comments and requests for a public hearing. Written comments and requests for a public hearing must be delivered or mailed by November 9, 1987.

Proposed effective date. The proposed regulations would apply to REITs and RICs for calendar years beginning after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T LR-104-86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kane of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations (26 CFR Part 55) under chapter 44 of the Internal Revenue Code of 1986. These amendments provide guidance for the proper manner and method of reporting and paying the 4% excise tax imposed on REITs and RICs. The regulations are proposed to reflect the amendment to section 4981 and the addition of section 4982 made by sections 668 and 651, respectively, of the Tax Reform Act of 1986 ("Act") (Pub. L. No. 99–514, 100 Stat. 2085). This document also contains a proposed amendment to the temporary regulations relating to certain elections under the Act (26 CFR 5h.5). T.D. 8124, which added 26 CFR 5h.5, was published in the **Federal Register** (52 FR 3623) on February 5, 1987. The proposed amendment to the temporary regulations relates to the time for making the election available to RICs under section 4982(e)(4).

Explanation of Provisions

Excise Tax Procedures

Section 4981 imposes a nondeductible excise tax on any REIT which is equal to four percent of the excess, if any, of the required distribution for any calendar year over the distributed amount for such calendar year. New section 4982 imposes a similar nondeductible four percent excise tax on RICs. In general, these provisions require a REIT or a RIC to distribute an amount equal to the sum of specified percentages of its ordinary income and capital gain net income to its shareholders prior to the end of any calendar year in order to avoid the excise tax liability. A REIT generally must distribute within the calendar year 85 percent of its ordinary income and 95 percent of its capital gain net income, whereas generally a RIC must distribute within the calendar year 97 percent of its ordinary income and 90 percent of its capital gain net income. Amounts not required to be distributed currently must be distributed before the end of the following calendar year.

The regulations proposed by this document prescribe the manner and method of paying the excise taxes imposed under sections 4981 and 4982. If either a REIT or a RIC is liable for the excise tax imposed by sections 4981 or 4982, respectively, the excise tax must be reported on Form 8612 (REITs) or Form 8613 (RICs). The excise tax return must be filed on or before March 15 of the first calendar year subsequent to the calendar year to which the excise tax liability applies. Full payment of the excise tax liability must accompany the excise tax return. The excise tax return, together with the payment satisfying such excise tax, are to be filed at the place specified in the existing regulations under Part 55. District directors and directors of service centers have the discretion to grant extensions of time for filing the excise tax return of up to six months. However, an extension of time for filing the excise tax return generally shall not operate to extend the time for the payment of the excise tax or any part thereof. Thus, payment satisfying the excise tax liability must still be made on or before the prescribed due date for the excise tax return, *i.e.*, March 15.

Section 4981, as in effect prior to the amendments made by the Act, imposed an excise tax on the undistributed income of a REIT determined on the basis of the REIT's taxable year. The amendments made to section 4981 by the Act impose an excise tax on the undistributed income of a REIT determined on the basis of a calendar year, effective for calendar years after 1986. The proposed regulations interpret the amendments made to section 4981 by the Act so that a REIT with a taxable year ending after December 31, 1986, will not be liable for the excise tax under the pre-Act version of section 4981 for that year.

The proposed regulations do not address the determination of the proper amount of the excise tax imposed by sections 4981 and 4982. Any such issues which may be appropriately addressed by regulations will be considered when regulations are developed to reflect other amendments to the REIT and RIC provisions made by the Tax Reform Act of 1986.

Section 4982(e)(4) Election

Section 4982(e)(4) allows a RIC to elect to use the period ending November 30 or December 31 for purposes of computing capital gain net income under section 4982 if that date corresponds to the end of the RIC's taxable year. Once an election under section 4982(e)(4) has been made by a RIC, the election can only be revoked with the consent of the Secretary. Section 5h.5(a)(2)(vi) provides for the election under section 4982(e)(4) to be made on the excise tax return for RICs (Form 8613), and that the election must be made on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. Because RICs must also use Form 8613 to report and pay the excise tax imposed under section 4982, and because RICs are permitted to request an extension of time to file Form 8613, the proposed amendment to § 5h.5(a)(2)(vi) would permit an extension of time for making the election under section 4982(e)(4) in those situations where a RIC is granted an extension of time to file Form 8613.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act

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

Comments and Requests 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 time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of this document is Thomas J. Kane of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated on matters of both substance and style.

List of Subjects

26 CFR Part 5h

Income taxes, elections under various public laws: Deficit Reduction Act of 1984, Tax Reform Act of 1986.

26 CFR Part 55

Excise taxes, Real estate investment trusts, Regulated investment companies.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 5h and 55 are as follows:

PART 5h—[AMENDED]

Paragraph 1. The authority for Part 5h continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * * Section 5h.5 also issued under 26 U.S.C. 4982(e)(4).

Par. 2. Section 5h.5(a)(2)(vi) is revised to read as follows:

§ 5h.5 Time and manner of making certain elections under the Tax Reform Act of 1986.

(a) *Miscellaneous elections.* * * *

(2) *Time for making elections.* * * *

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under section 4982. The election shall be filed on or before the later of—

(A) March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective, or

(B) If the regulated investment company has been granted an extension of time to file a return for the excise tax under Code section 4982 for such excise tax period, the due date (including extensions thereof) for such return.

The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

* * * * *

PART 55—[AMENDED]

Par. 3. The authority for Part 55 is revised to read as follows (and the authority section under § 55.4981–1 is removed):

Authority: Sections 6001, 6011, 6071, 6091, and 7805 of the Internal Revenue Code of 1954 (68A Stat. 731, 732, 749, 752, 917; 26 U.S.C. 6001, 6011, 6071, 6091, and 7805). Section 55.4981–1 also issued under section 860(e), 92 Stat. 2849 (26 U.S.C. 860(e); section 860(g), 92 Stat. 2850 (26 U.S.C. 860(g)); and section 7805, 68A Stat. 917 (26 U.S.C. 7805) of the Internal Revenue Code of 1954). 26 U.S.C. 7805. Section 55.6011–1 also issued under 26 U.S.C. 6011(a); Section 55.6071–1 also issued under 26 U.S.C. 6071(a); Section 55.6091–1 also issued under 26 U.S.C. 6091(a); Section 55.6151–1 also issued under 26 U.S.C. 6151.

Par. 4. The title of Part 55 is revised to read as follows:

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 5. The title to Subpart A of Part 55 is revised to read as follows:

Subpart A—Excise Tax On Real Estate Investment Trusts

Par. 6. The heading of § 55.4981–1 is revised to read as follows:

§ 55.4981–1 Imposition of excise tax on certain real estate investment trust taxable income not distributed during the taxable year; taxable years ending on or before January 1, 1987.

Par. 7. Section 55.4981–1 is amended by:

(1) Inserting the words, "as in effect before amendment by the Tax Reform Act of 1986," immediately following the words "Section 4981" and "section 4981" wherever those words appear, and

(2) Inserting "and ending before January 1, 1987," immediately after "1979," in the last sentence.

Par. 8. A new § 55.4981–2 is added immediately after § 55.4981–1 to read as follows:

§ 55.4981–2 Imposition of excise tax with respect to certain undistributed income of real estate investment trusts; calendar years beginning after December 31, 1986.

Section 4981, as amended by the Tax Reform Act of 1986, imposes an excise tax on a real estate investment trust in the amount of four percent of the excess, if any, of the required distribution for a calendar year over the distributed amount for such calendar year. Section 4981, as so amended, applies only to calendar years that begin after December 31, 1986. For provisions relating to the imposition of an excise tax with respect to certain undistributed income of real estate investment trusts for taxable years ending before January 1, 1987, see § 55.4981–1.

Par. 9. Subpart B—*Procedure and Administration* is redesignated as Subpart C—*Procedure and Administration.*

Par. 10. A new subpart B is added to read as follows:

Subpart B—Excise Tax on Regulated Investment Companies

§ 55.4982–1 Imposition of excise tax on undistributed income of regulated investment companies.

Section 4982 imposes an excise tax on a regulated investment company in the amount of four percent of the excess, if any, of the required distribution for a calendar year over the distributed amount for such calendar year. Section 4982 applies only to calendar years beginning after December 31, 1986.

Par. 11. Section 55.6011–1 is revised to read as follows:

§ 55.6011–1 General requirement of return, statement, or list.

Every person liable for tax under Chapter 44 shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for such purpose and shall include therein the information required by the form and the instructions issued with respect thereto. For calendar years beginning after December 31, 1986, the return, which must be made on a calendar year basis, shall be filed by a real estate investment trust on Form 8612 and by a regulated investment company on Form 8613.

Par. 12. Section 55.6061–1 is revised to read as follows:

§ 55.6061–1 Signing of returns and other documents.

Any return required to be made by a real estate investment trust or a regulated investment company with respect to the tax imposed by chapter 44 shall be signed by a person authorized by section 6062 of the Code to sign the income tax return of the real estate investment trust or the regulated investment company. Any statement or other document required to be made with respect to the tax imposed by chapter 44 shall be signed by the person required or duly authorized to sign in accordance with the regulations, forms, or instuctions prescribed with respect to such statement or document. An individual's signature on a return, statement, or other document made by or for the real estate investment trust or the regulated investment company shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

Par. 13. Section 55.6071–1 is revised to read as follows:

§ 55.6071-1 Time for filing returns.

(a) *Returns for calendar years beginning after December 31, 1986.* A return required by § 55.6011-1 for any calendar year beginning after December 31, 1986, shall be filed on or before March 15 of the following calendar year. See § 55.6081-1 for rules relating to extensions of time for filing a return required by § 55.6011-1.

(b) *Returns for excise tax under section 4981 as in effect before amendment by the Tax Reform Act of 1986.* A return required by § 55.6011-1 for any excise tax under section 4981, as in effect before amendment by the Tax Reform Act of 1986, shall be filed at the time (including any extension of time granted or allowed under section 6081) that the real estate investment trust is required to file its income tax return under section 6012 for the taxable year for which the tax under section 4981, as in effect before amendment by the Tax Reform Act of 1986, is imposed.

§ 55.6091-1 [Amended]

Par. 14. Section 55.6091-1(a) is amended by adding the words "or regulated investment company" immediately after the words "real estate investment trust".

Par. 15. A new § 55.6151-1 is added to read as follows:

§ 55.6151-1 Time and place for paying of tax shown on returns.

The tax shown on any return which is imposed by Chapter 44 shall, without notice or assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§ 55.6071-1 and 55.6091-1. For provisions relating to the extension of time for paying the tax, see § 55.6161-1.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-20460 Filed 9-8-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administation

30 CFR Part 57

Ionizing Radiation Standards for Underground Metal and Nonmetal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to requests from the mining community, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed revisions to its ionizing radiation standards for underground metal and nonmetal mines.

DATE: Comments must be received on or before October 30, 1987.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA: Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Acting Associate Assistant Secretary for Mine Safety and Health; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 19, 1986 (51 FR 45678), MSHA published proposed revisions to its existing standards in 30 CFR Part 57 which address ionizing radiation hazards at underground metal and nonmetal mines. On August 13 and 14, 1987, MSHA held a public hearing in Denver, Colorado to allow all interested parties to present their points of view and submit supporting materials. The close of the record was scheduled for September 11, 1987. At the hearing, several participants agreed to submit substantial supplementary information to the Agency before September 11.

The Agency is aware that the National Institute for Occupational Safety and Health (NIOSH) is preparing a criteria document on radon daughters. Also, the National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation, "BEIR IV," may soon release its study on the effects of internal alpha radiation.

MSHA has been requested by both labor and industry groups to extend the comment period to allow for evaluation of these documents and supplementary submissions in their post-hearing comments. The Agency agrees that the complex issues in this rulemaking merit a full discussion on the record and is extending the comment period to October 30,1987.

Date: September 2, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-20659 Filed 9-8-87; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Public Comments and Opportunity for Public Hearing on Proposed Modifications to the New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted by the State of New Mexico to modify the New Mexico Permanent Regulatory Program (hereinafter referred to as the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to extending the time set for abatement of a Notice of Violation.

This notice sets forth the times and locations that the New Mexico program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. October 9, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed amendment will be held on October 5, 1987, beginning at 10:00 a.m., at the location shown under **ADDRESSES.**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

If a public hearing is requested, it will be held at the OSMRE Albuquerque Field Office at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the New Mexico program, the proposed amendment to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office listed under **ADDRESSES.** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102.

Office of Surface Mining Reclamation and Enforcement, Room 5315 A, 1100 L Street, NW., Washington, DC 20240.

New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Sante Fe, New Mexico 87501, Telephone: (505) 827-5970.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business September 29, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **ADDRESSES** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the New Mexico State Program

Information regarding the general background on the New Mexico State Program, including the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the New Mexico program, can be found in the December 31, 1980 **Federal Register** (45 FR 86459–86490).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 931.10, 30 CFR 931.11, 30 CFR 931.12, 30 CFR 931.13, 30 CFR 931.15, and 30 CFR 931.16.

III. Discussion of the Proposed Amendments

Section 30–12(c) of New Mexico's program requires that the total time for abatement under a Notice of Violation, including all extensions, shall not exceed ninety (90) days from the date of issuance. New Mexico proposes to amend its program to include provisions for extending the time set for abatement under a Notice of Violation for a period of more than ninety days when failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. New Mexico proposes to accomplish this regulatory change by deleting the current language found at Section 30–12(c) of New Mexico's program and replacing it with language which is nearly identical to the Federal language found at 30 CFR 843.12(c) and 843.12(f) through 843.12(i). New Mexico proposes to codify this amended language as 30–12 (c) through (h), and recodify existing sections 30–12(d) through (g) as 30–12 (i) through (1).

Therefore, OSMRE is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and are no less effective than its implementing regulations.

IV. Procedural Matters

1. Compliance with the National Environmental Policy Act: The Secretary has determined that, pursuant to section 702(d) of *SMCRA*, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On Agust 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by *SMCRA* and the Federal rules will be met by the State.

3. Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1987.

Raymond L. Lowrie

Assistant Director, Western Field Operations.

[FR Doc. 87–20660 Filed 9–8–87; 8:45 am]

BILLING CODE 4310–05–M

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Freedom of Information Act; Implementation

AGENCY: American Battle Monuments Commission.

ACTION: Proposed rule.

SUMMARY: The American Battle Monuments Commission proposes changes in its procedures for responding to public requests for access to records or information maintained by the Commission. The proposed regulations would implement and reflect recent amendments to the Freedom of Information Act.

DATE: Comments must be received on or before September 24, 1987.

ADDRESS: Comments may be mailed to: Colonel William E. Ryan, Jr., Freedom of Information Officer, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Martha Sell at (202) 272-0537, Freedom of Information Act Representative.

SUPPLEMENTARY INFORMATION: The American Battle Monuments Commission proposes to revise 36 CFR Part 404, its regulations for responding to public requests for access to records or information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The proposed regulations would implement and reflect recent amendments to the FOIA made by the Freedom of Information Act of 1986, Publ. L. 99-570, 1801-1804. They also reflect guidelines issued by the Office of Management and Budget by 52 FR 10012, March 27, 1987. The proposed regulations would also update and amplify the Commission's current regulations. The Commission invites public comment under 5 U.S.C. 552(a)(4)(A)(i), which requires notice and an opportunity for public comment. Only a fifteen day comment period has been established because much of the Commission's proposal follows the guidelines of the Office of Management and Budget, which have already been subject to notice-and-comment rulemaking, and because the adoption of these regulations is already overdue.

The Commission proposes to revise CFR 36 Part 404 to read as follows:

List of Subjects in 36 CFR Part 404

Freedom of information.

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.
404.1 Purpose.
404.2 General policy.
404.3 Response to requests.
404.4 Denial of access.
404.5 Appeals.
404.6 Fees to be charged.
404.7 Assessment and collection of fees.
404.8 Categories of requesters.
404.9 Waiver of fees.
404.10 Maintenance of statistics.

Authority: 5 U.S.C. 552 as amended.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i). This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

(a) Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the address listed below:

(1) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(2)Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(3) Superintendent, Manila American Cemetary, FPO San Francisco 96528.

(4) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU-AG-CRB, Drawer #38, APO Miami, FL 34004-5000.

(5) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044-3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office,

(2) Officer-in-Charge, ABMC Mediterranean Office,

(3) Directors, ABMC Washington Office,

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial,

(2) Inform the requester of his or her right to appeal the denial within 30 days,

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

(a) While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraph (a)(1)(i)—(a)(1)(vii) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in 404.9.

(1) The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(i) Manual searches of records. $9.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel.

(ii) Computer searches for records. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(iii) Copying fee. The machine copy fee for each page up to 8½ x 14 shall be $.25 per page. Copying fee shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(iv) $2.00 for each 8 x 10 inch black and white photograph.

(v) $3.00 for each 8 x 10 inch color photograph.

(vi) $1.75 per cemetery booklet.

(vii) $1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date billing is sent.

(2) Charges for unsuccessful searches. If ABMC estimates that charges for an unsuccessful search may exceed $10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fee as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) Aggregating requests. Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) Advance payments. ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed $25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraphs (a)(4) (i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) Form of payment. Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, sction (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

(a) There are four categories of FOIA requesters: Commercial; educational and noncommercial scientific institutions; representatives of the news media; and all others. The fees to be charged each of these categories of requesters are as follows:

(1) *Commercial.* When ABMC receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(2) *Educational and non-commercial scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(3) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commercial use.

Requesters must provide a reasonable description of the records sought;

(4) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

(b) [Reserved]

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Representative shall afford the requester the opportunity to show that he satisfies these two conditions.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain records of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

William E. Ryan, Jr.,

Colonel, AD, Freedom of Information Officer.

[FR Doc. 87-20622 Filed 9-8-87; 8:45 am]

BILLING CODE 6120-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 24

[FRL-3259-8]

Issuance of and Administrative Hearings on RCRA Section 3008(h) Corrective Action Orders for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposed rule.

SUMMARY: On August 6, 1987, at 52 FR 29222 EPA proposed a rule governing the conduct of administrative hearings requested by recipients of administrative enforcement orders issued pursuant to section 3008(h) of the Solid Waste Disposal Act as amended by the Resource Conversation and Recovery Act. That notice indicated that comments on the proposed rule would be accepted if received on or before September 8, 1987. Several interested parties have requested that the comment period be extended. In response to these requests EPA had decided to extend the comment period for an additional two weeks.

DATES: Comments on the proposed rule will be accepted if received on or before September 22, 1987.

ADDRESS: Interested members of the public must submit an original and two copies of their comments to: Steve Botts, mail code LE-134S, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Botts at (202) 382-5787.

Date: September 5, 1987.

Edward E. Reich,

Associate Enforcement Counsel for Waste, Office of Enforcement and Compliance Monitoring.

[FR Doc. 87-20867 Filed 9-8-87; 9:19 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Implementation of Executive Order 12600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) proposes to amend its Freedom of Information Act (FOIA) regulations to add a new section regarding predisclosure notification procedures for confidential commercial information as required by Executive Order (E.O.) 12600 of June 23, 1987.

DATE: Comments are due on or before November 9, 1987.

ADDRESS: Address comments to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Comments received will be available for public inspection at the above address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646-3840.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to issue proposed implementing regulations in conformance with the requirements of Executive Order 12600 which was published in the **Federal Register** on June 25, 1987, 52 FR 23781. Section 7 of E.O. 12600 of June 23, 1987, requires that the designation and notification procedures required by this Executive Order shall be established by regulation, after notice and public comment.

FEMA has determined that this document is not a major rule under E.O. 12291 since it will not have a significant economic effect on a substantial number of small entities. The basis for this determination is that any economic impact on small entities resulting from this proposed rule would be attributable to E.O. 12600, not to these regulations.

This proposed rule does not contain information collection requirements

which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Part 5

Freedom of Information Act, Production or Disclosure of Information.

Accordingly, for reasons set out in the preamble it is proposed to amend 44 CFR Chapter I, Subchapter A, as set forth below:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12600.

§ 5.52 [Amended]

2. Section 5.52 is amended by removing paragraph (c).

§§ 5.58, 5.59 and 5.60 [Redesignated as §§ 5.59, 5.60 and 5.61]

3. Sections 5.58, 5.59 and 5.60 are redesignated as § 5.59, § 5.60 and § 5.61 respectively.

§ 5.57 [Redesignated as § 5.58]

4. Section 5.57 *Exhaustion of administrative remedies* is redesignated as § 5.58 *Exhaustion of administrative remedies.*

5. A new § 5.57 is added to read as follows:

§ 5.57 Predisclosure Notification Procedures for Confidential Commercial Information.

(a) *In general.* Business information provided to FEMA by a business submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to business submitters.* FEMA shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter; or

(iii) The information is subject to prior express commitment of confidentiality given by FEMA to the submitter.

(2) For confidential commercial information submitted to FEMA on or after January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, FEMA shall afford a submitter seven working days within which to provide FEMA with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemptions of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privilege or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request, i.e., 10 working days after receipt of the request by FEMA or 20 working days after receipt of the request by FEMA if the time limits are extended under unusual circumstances permitted by the FOIA, may be considered a denial of access to records and the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that FEMA may review the submitter's objection to disclosure.

(e) *Notice of intent to disclose.* FEMA shall consider carefully submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever FEMA decides to disclose business information over the objection of a submitter, FEMA shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is seven working days after the notice of the final decision to release the requested information has been mailed to the submitter. FEMA shall inform the submitter that disclosure will be made by the specified disclosure date, unless the submitter seeks a court injunction to prevent its release by that date. When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel diclosure of business information covered by paragraph (c) of

this section, FEMA shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) FEMA determines that the information shall not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

Date: September 1, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-20611 Filed 9-8-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 87-313; FCC 87-263]

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has initiated a proceeding to reexamine the way it regulates the rates charged by dominant carriers for their interstate basic service offerings. The Commission proposes replacing rate-of-return regulations of dominant carriers other than Comsat with a system of direct price regulation by means of caps. The Commission tentatively concludes that in theory the price cap method of regulation would benefit consumers, promote innovation, and further the public interest more effectively than rate-of-return regulation. The Commission also tentatively concludes that the price cap method of regulation would be implemented for AT&T before being implemented for the local exchange carriers. The Commission seeks comments on these conclusions and other implementation issues and problems.

DATES: Comments must be filed on or before October 19, 1987, and reply comments on or before November 19, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Regina Harrison, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313.

Adopted: August 4, 1987.

Released: August 21, 1987.

By the Commission.

TABLE OF CONTENTS

	Paragraphs
I. Introduction	1-3
II. Background	4-6
III. The FCC Approach to Cost-of-Service Regulation	7-19
A. Description of the Current Process	7-12
B. Market Structure and Cost-of-Service Regulation	13-16
C. Advantages and Disadvantages of Cost-of-Service Regulation	17-19
IV. Legal Issues	20-23
V. Regulation by Price Caps	24-89
A. The Price Cap Model	24
B. Experience with Price Cap Regulation	25-32
C. Advantages and Disadvantages of the Price Cap Model	33-37
D. Finding an Acceptable Alternative	38-74
1. General Regulatory Requirements	40-43
2. Setting Price Limits	44-51
(A) The meaning of price caps	45-47
(B) Setting price floors	48-51
(C) Introducing regulation by price caps	52-57
(1) Services subject to caps	52-55
(2) Setting caps initially	56-57
3. Selecting Adjustment Factors	58-63
(A) Generalized price level adjustments	60-61
(B) Measurements of changes in productivity	62
(C) Other factors	63
4. Adjusting Price Caps	64-71
(A) Methodology for calculating cap adjustments	64-70
(B) Procedural issues	71
5. Impact of Price Caps Regulation on Current Commission Procedures	72-74
VI. Application of the Price Cap Approach	75-77
VII. Regulatory Flexibility Act Initial Analysis	78
VIII. Paperwork Reduction Analysis	79
IX. Ex Parte Requirements	80-82
X. Ordering Clauses	83-84

I. Introduction

1. The Federal Communications Commission bears a continuing obligation to review its policies and rules to determine whether they continue to further the public interest by promoting the objectives they were originally designed to achieve.[1] Either experience or changed circumstances may trigger such a review. In this case both experience and changed circumstances cause us now to open this proceeding, in which we shall rexamine the way we regulate the rates charged by dominant carriers for their interstate basic services offerings.

2. We begin this Notice with a brief history of the Commission's regulation of interstate common carriers. We then discuss the relative advantages and disadvantages of the cost-of-service or rate-of-return model of regulation that we now use to regulate the charges for dominant carriers' interstate services. We tentatively conclude that we are under no legal obligation to continue to use cost-of-service regulation, particularly if another method of regulation will lead to just and reasonable rates at a lower cost to society.[2] We then consider a different model for regulating dominant carriers, one we shall refer to as the "price cap" model. The essence of this approach is to regulate prices directly by means of caps.

3. Preliminary examination of the price cap model suggests that it could simultaneously protect consumers of less competitive services from exorbitant rates and encourage competition's continued growth in those market segments where it has already taken hold, accomplishing this at a lower cost to society than our current regulatory regime. Our goal in this proceeding is to determine if the price cap model could be adapted so that it better protects and promotes consumer welfare and the public interest in an efficient and reasonably priced telecommunications network than does cost-of-service regulation. We will not adopt any price cap method of regulating rates if we conclude, after review of the comments filed in

[1] *See generally Geller v. FCC*, 610 F. 2d 973, 979-80 (D.C. Cir. 1979).

[2] *See* 47 U.S.C. 151, 201(b) and 202(a).

response to this Notice, that the price cap model cannot be so adapted. If we find, however, that implementation of a price cap approach would further the public interest, we tentatively conclude that it would be implemented for AT&T before it would be for the local exchange carriers (LECs), in large part because its implementation for the LECs would raise administrative issues that appear to be more complex than those for AT&T.

II. Background

4. Section 1 of the Communications Act mandates that this Commission shall regulate interstate telecommunications services "so as to make available * * * to all the people of the United States * * * efficient, Nation-wide * * * communication service, with adequate facilities at reasonable charges * * *." [3] Within this mandate we find our responsibilities: (1) To protect universal service; (2) to foster technological advancement in the public communications network; (3) to protect ratepayers against a carrier's exercise of market power; and (4) to promote efficient provision of interstate services at reasonable rates. Title II makes the last obligation even more explicit by declaring unlawful "any unjust or unreasonable" "charge, practice, classification, or regulation" for interstate common carrier services. In order to meet these responsibilities, we currently rely upon a mix of tools, including competition, market rules,[4] and the powers given us by Titles I and II of the Act.[5]

5. Over the past twenty-five years we have on several occasions acted to revise or alter this mix of rules and policies. In each case, experience and market evolution were the catalysts prompting us to reexamine how we regulated providers of interstate telecommunications services. For example, the convergence of the communications and computer industries brought about by technological advances caused us to undertake our *First Computer Inquiry*; [6] experience and changing technology compelled us to reexamine the decisions we made there on two subsequent occasions. In the *Second Computer Inquiry*,[7] we separated interstate communications services using common carrier facilities into two distinct categories; basic services and enhanced services. We concluded that only the former should be regulated under Title II. We also concluded that the provision of customer premises equipment was not a common carrier service. We permitted AT&T to offer enhanced services and customer premises equipment only through affiliates separate from its common carrier operations. The *Third Computer Inquiry* [8] modified the rules governing participation of AT&T and the Bell Operating Companies (BOCs) in the basic and enhanced services markets. Finding that the disadvantages of the structural separation between these operations compelled by the *Second Computer Inquiry* far outweighed the advantages, the last proceeding concluded that non-structural safeguards would better serve the public interest.

6. In our *Competitive Carrier Docket*,[9] we focused upon providers of domestic basic services. Recognizing that not all of these service providers possessed the ability to control service prices, we reexamined the rules and policies we relied upon to assure that their service rates were just and reasonable. In a series of orders spanning five years, we identified those carriers unable to exert such market power, which we labelled non-dominant.[10] For these non-

---

[3] 47 U.S.C. 151.

[4] "Market rules" refer to direct constraints on regulatees' behavior, as opposed to indirect constraints, such as pricing rules. *See generally* Separate Statement of Commissioner Mimi Weyforth Dawson re: Am. Tel. and Tel. Co. Manual and Procedures for the Allocation of Costs, 94 FCC 2d 1118, 1146–47 (1983) (proposing a market rules approach for regulation of AT&T); R.L. Morris & R.S. Preece, FCC OPP Working Paper Series No. 7, *Negotiating for Improved Interconnection: The Incentives To Bargain* (Apr. 1982 rev.) (proposing a market values approach toward regulating interconnection between local telephone companies and other telecommunications firms). The separate subsidiary requirement for the provision of enhanced services formerly imposed on AT&T and the Bell Operating Companies (BOCs) in the *Second Computer Inquiry* and the requirement that AT&T and the BOCs provide open network architecture and comparably efficient interconnection to other enhanced service providers imposed by the *Third Computer Inquiry* are instances in which we have applied a market rules approach to regulating the behavior of these carriers. *See* para. 5, *infra*.

[5] Under section 4(i), the Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions," while section 4(j) permits it to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. 154(i)–(j). Section 201(b) of the Act also authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act]." 47 U.S.C. 201(b). Title II also contains provisions granting the Commission the powers commonly associated with public utility regulation. These powers include the authority to require a carrier to interconnect with other carriers and to establish through routes (47 U.S.C. 201(a)), to determine whether carriers' rates and conditions of service are just and reasonable (47 U.S.C. 201(b)) and without unreasonable preferences or discriminations (47 U.S.C. 202(a)). Section 203 authorizes the Commission to determine the information that must accompany carriers' tariff filings while section 204 of the Act empowers the Commission to suspend and investigate proposed changes in rates on its own initiative or in response to a petitioner's request. Should investigation establish the unlawfulness of rates, the Commission may prescribe just and reasonable terms to replace the offending conditions. 47 U.S.C. 205. Section 214 enables the Commission to control entry into and exit from the interstate services market and to control to some extent a carrier's expansion of its rate base. Title II also permits the Commission to: determine the value of the property a carrier includes in its rate base (47 U.S.C. 213); prescribe depreciation rates as well as accounting systems to be used by carriers subject to the Act (47 U.S.C. 220) and require such carriers to file any additional information the Commission may need to fulfill its statutory mandate (47 U.S.C. 218 and 213(f)).

[6] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971), *aff'd on recon.*, 34 FCC 2d 557 91972, *aff'd in principal part sub nom.* GTE Serv. Corp. v. FCC, 474 F. 2d 724 (2d Cir. 1973); *on remand*, 40 FCC 2d 293 (1973).

[7] Amendment of § 64.792 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384, *modified on recon.*, 84 FCC 2d 50 (1980), *modified on further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Indus. Ass'n v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. denied sub nom.* Louisiana Pub. Serv. Comm'n v. United States, 461 U.S. 938 (1983), *aff'd on second further recon.*, FCC 84–190, released May 4, 1984.

[8] Amendment of § 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), Report and Order, 104 FCC 2d 958 (1986), *clarified on recon.*, 2 FCC Rcd 3035 (1987).

[9] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, Notice of Inquiry and Proposed rulemaking, 77 FCC 2d 308 (1979); First Report and Order (*First Report*), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order (*Second Report*), 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, 47 FR 17308 (Apr. 22, 1982); Third Report and Order (*Third Report*), 48 FR 46791 (Oct. 14, 1983); Third Further Notice Of Proposed Rulemaking, 47 FR 28292 (June 21, 1983); Fourth Report and Order (*Fourth Report*), 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order (*Fifth Report*), 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd and remanded sub nom.* MCI Telecommunicaitons Corp. v. FCC, 765 F. 2d 1186 (D.C. Cir. 1985).

[10] *See First Report*, 85 FCC 2d 1 (1980) (specialized common carriers and resellers of terrestrial common carrier services operating in the contiguous 48 states designated non-dominant henceforth subject to streamlined regulation); *Second Report*, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983) (forebearance from even streamlined regulation appropriate for terrestrial resellers whenever it furthers the purposes of the Communications Act); *Third Report*, 48 FR 46791 (Oct. 14, 1983) (specialized common carriers and resellers of terrestrial common carrier services operating between any U.S. offshore points or Alaska and the contiguous states now covered by same regulatory policies as those operating within the contiguous states); *Fourth Report*, 95 FCC 2d 554 (1983) (forebearance applicable to all resellers of domestic common carrier services and specialized common carriers; domestic satellite carriers, miscellaneous common carriers and facilities-owning interexchange carriers affiliated with

Continued

dominant carriers we concluded that market forces enabled us to rely upon a less rigorous and less costly regulatory regime to protect ratepayers against unjust or unreasonable conduct.[11] Subsequently we found that changes in the international service markets warranted our applying our *Competitive Carrier* analysis to those markets with a concomitant change in how we regulated most of the entrants to those markets.[12] At the present time, only the interstate and foreign basic services of the local exchange carriers, AT&T, Alascom and Comsat remain subject to "cost-of-service" or "rate-of-return" regulation.[13] Both experience and changed circumstances now prompt us to begin a reexamination of how we regulate the service rates of AT&T, Alascom and the local exchange carriers (LECs).[14] Before we discuss in greater detail these forces for change, we begin with a brief description of our current regulatory procedures.

III. The FCC Approach to Cost-of-Service Regulation

A. Description of the Current Process

7. Under our statutory scheme, dominant carriers file tariffs prior to offering any new service or to changing the terms and conditions under which they offer an already tariffed service. While we have by rule shortened the notice period required before most tariff filings may become effective,[15] we may not require the carrier to give its subscribers more than a ninety-day notice period.[16] Before a tariff becomes effective, both Commission staff and interested members of the public review the proposed tariff, as well as what is frequently voluminous economic support filed to comply with our rules.[17] The purpose of the economic support data is to expedite that review. Frequently a tariff filing triggers petitions to reject the filing as unlawful or to suspend it while the Commission condujcts a more extensive investigation into its lawfulness. Unless this Commission finds the filing patently unlawful, we do not reject it. We may, however, exercise our authority under section 204 and delay the effective date of the tariff for up to five months while we conduct a more extensive inquiry into its lawfulness. If at the end of the five months we have been unable to complete our investigation, the tariff will become effective, subject in certain cases, however, to an accounting order, which offers subscribers some measure of protection.[18] If we neither suspend nor reject the tariff, it becomes effective automatically when the notice period expires. There is no finding of lawfulness attached to the effective filing, however, and, under section 208, any person may file a complaint challenging the tariff's lawfulness.

8. For the past twenty years, in both the initial tariff review process and the Section 208 complaint process, our touchstone for determining whether rate levels were lawful has been costs. "Costs" are an elusive concept, however. The concept becomes even more elusive when we discuss the costs of providing a service that shares joint or common costs with a plethora of other services. Even in a pure monopoly environment, effective cost-of-service regulation would require us to be able to determine whether: (1) The part of the carrier's rate base allocated to an individual service is properly calculated; [19] (2) the level of cash and noncash expenses is properly assigned and reasonable; (3) the forecasted demand for the service is reasonable; and (4) the rates proposed or in effect would appear to cover those costs and produce a fair rate of return. In order to make these determinations, we have conducted and must continue to conduct many proceedings. Some are undertaken routinely; others undertaken only in response to a specfic request or need. These actions, only some of which we now briefly describe, all affect, directly or indirectly, the costs dominant carriers may recover through revenue from a specific interstate service.

9. Part 63 of our rules includes the procedures with which a dominant carrier must comply before we would authorize it to construct, acquire or operate new interstate transmission facilities.[20] We adopted these rules to prevent carriers from inflating their rate bases with facilities, the costs of which could be recovered from interstate ratepayers even though such facilities were not necessary to the continued provision of quality service.[21] We also

---

certain of the independent telephone companies classified as nondominant carriers eligible for streamlined regulation): *Fifth Report*, 98 FCC 2d 1191 (1984) (forebearance extended to domestic satellite carriers, miscellaneous common carriers, interexchange carriers affiliated with certain independent telephone companies and certain carriers providing DEMS).

[11] We subsequently found that common carriers providing domestic public land mobile service were nondominant and that forebearance from federal tariff regulation of these carriers would be in the public interest. Preemption of State Entry Regulation in the Public Land Mobile Service, CC Docket No. 85–89, 51 FR 15498 (Apr. 24, 1986), *vacated and remanded on other grounds sub nom.* National Assoc. of Regulatory Util. Comm'rs v. FCC, Civ. No. 86–1205 (D.C. Cir. Mar. 30, 1987).

[12] International Competitive Carrier Policies, CC Docket No. 85–107, Report and Order, 102 FCC 2d 812 (1985), *recon. denied*, FCC 86–339 (released Aug. 7, 1986). In this proceeding we found that international services consisted of two distinct product markets: the international message telephone service (IMTS) market and the non-IMTS market; moreover, each country comprised a separate geographic market. We found all providers of non-ITMS services to be nondominant and eligible for streamlined regulation. In the IMTS market, only AT&T, the primary service providers of IMTS for noncontiguous domestic points and foreign owned or controlled providers of this service were found to be dominant. All other providers of IMTS were designated nondominant and henceforth subject to our streamlined tariff review process. As a result of this proceeding Comsat is considered a dominant carrier with respect to the provision of international space segment, multipurpose earth stations and television service.

[13] We use these terms to describe a comprehensive form of regulation developed to control not only the profit levels of these carriers, but also the contribution that each of their services may lawfully make to those profits. "Cost-of-service" regulation requires that we not only determine their allowable rate of return, but also whether: (1) Their investment is properly calculated and efficiently incurred; (2) the level of cash expenses is efficiently and economically incurred; (3) the level of noncash expenses such as depreciation and other accruals is properly reflected in the rate calculations; and (4) the rates proposed or in effect would cover these costs and produce a fair rate of return. Nader v. FCC, 520 F.2d 182, 204 (D.C. Cir. 1975). Through procedures and proceedings set forth in Part 65 of our rules, 47 CFR Part 65, we now make these determinations for total interstate operations of AT&T and the access services of the local exchange carriers. Through our tariff review process we make similar determinations for dominant carriers' individual service offerings. For a more thorough discussion of what this entails for both this Commission and these dominant carriers, see paras. 7–8, *infra*.

[14] We intend to restrict the application of any rule or policy changes resulting from this rulemaking proceeding to the interstate and international basic services of these carriers. When we discuss regulatory reform for AT&T specifically in this Notice, *see e.g.* paras. 59 and 62, we intend that our discussion cover regulation of Alascom too, even if we do not mention it explicitly. We recognize that if we adopt any of the pending proposals to alter our loading policy, the resulting impact upon the international facilities market might justify our considering a revision of the rules governing regulation of Comsat's jurisdictional services. *See* Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post–1988 Period, Notice of Proposed Rulemaking, 2 FCC Rcd 2109 (1987). For this reason, we intend to address the issue of regulatory reform for Comsat in a separate proceeding.

[15] *See* CFR 61.58.

[16] *See* 47 U.S.C. 203(b)(2).

[17] *See* 47 CFR 61.38.

[18] Section 204 permits the Commission to require a carrier to "keep accurate account of all amounts received by reason of [the previously suspended] charge for a new service or increased charge." 47 U.S.C. 204(a). If the investigation leads to the conclusion that some or all of the charges are unreasonable, the Commission may order the carrier to refund, with interest, to the affected subscribers that part of the charges that was found unreasonable.

[19] By rate base, we mean the net value of the carrier's property used and useful in providing regulated services.

[20] *See* 47 CFR part 63.

[21] *But see* para. 18, *infra*.

represcribe depreciation rates for the equipment used by AT&T and at least some of the LECs to provide interstate services.[22] Our represcription process, performed annually for one-third of these carriers, includes three-way meetings among our accounting staff, state commission staff, and each affected carrier, public notice of the proposed new depreciation rates and an opportunity for public comment before represcription occurs.

10. In CC Docket No. 86–111, we have directed dominant carriers to develop cost allocation manuals (CAMs) for apportioning costs between regulated and unregulated services. We have required that these CAMs comply with guidelines based upon a fully distributed cost (FDC) methodology.[23] The Separations Manual, now codified as Part 67 of our rules,[24] prescribes the rules these carriers must use to apportion costs between their interstate and intrastate operations. The cost studies required to apply these rules are very expensive. Rather than incur this cost, some of the smaller LECs use "average schedules" to determine the compensation to which they are entitled for their interstate access services. Using the proccedures set forth in Part 65, we represcribe on a biennial basis the rate of return that the LECs and AT&T must target their interstate services to earn.[25] With all these steps taken it becomes possible to define an interstate revenue requirement for these carriers.

11. The next step in the cost-of-service ratemaking process is to apportion that interstate revenue requirement among the carrier's interstate services. For AT&T, our Interim Cost Allocation Manual apportions its interstate costs among three service categories: MTS, WATS, and private line services.[26] Within these categories, AT&T is expected to allocate costs among services based upon FDC principles.[27] Its MTS Optional Calling Plans and volume discounts for private line services are excepted from this general costing requirement. Both the MTS Optional Calling Plans Guidelines Order and the Private Line Rate Structure Guidelines Order establish standards against which tariff filings covering these services will be measured to determine the reasonableness of the rate structure AT&T would propose.[28] If either AT&T's private line service offerings or its MTS and WATS offerings combined earn more than 50 basis points more than its prescribed target rate of return, Part 65 imposes a refund obligation upon the carrier.[29]

12. Part 69 of our rules allocates the interstate costs of a LEC among access elements and a category called interexchange operations.[30] It also prescribes the method by which several access elements' rates are to be computed. For the remaining elements, the LECs retain some flexibility to target individual access offerings above or below rates projected to earn the prescribed rate of return.[31] Part 65, however, groups the access elements into three categories and requires the LECs to refund earnings for these categories to the extent they exceed the prescribed target rate of return by more than a specified amount.[32]

B. Market Structure and Cost-of-Service Regulation

13. Though incomplete, the preceding description of our activities related to cost-of-service regulation clearly shows that the framework erected to support this mode of regulation is elaborate and often cumbersome. We have nonetheless needed this framework to conduct effective cost-of-service regulation. While we may think of cost-of-service regulation with this elaborate infrastructure as "traditional" regulation for dominant carriers, in fact, we did not turn to this form of regulation until the mid 1960's. For the preceding thirty years, we relied upon "continuing surveillance" of earnings levels to assure that the Bell System monopoly on interstate services would not lead to AT&T's earning monopoly profits from those services.[33] We found this to be an

---

[22] Section 220(b) authorized us to make such prescriptions only for carriers "subject to [the] Act." 47 U.S.C. 220(a)-(b). Under section 2(b)(2), connecting carriers are "not subject to the Act" for purposes of depreciation represcription. *See* 47 U.S.C. 152(b)(2).

[23] *See* Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, Amended of Part 31, the Uniform System of Accounts of Class A and Class B Telephone Companies, to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates, 2 FCC Rcd 1298 (1987).

[24] The Federal-State Joint Board established in CC Docket No. 86–297 has recommended that we adopt a comprehensive revision of Part 67 and codify the revised manual in a new Part 36 of our rules. *See* Amendment of Part 67 (new Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, Recommended Decision and Order, 2 FCC Rcd 2582 (Fed.-St. Jt. Bd. 1987). The Board recommended this action in order to make the separations process simpler and to make it conform to our recently revised Uniform System of Accounts, which will become effective as new Part 32 of our rules, binding on all dominant carriers, on January 1, 1988. *See* Common Carrier Services; Revsion: Uniform System of Accounts; Classes A, B and C Telephone Companies, 47 CFR, Parts 31, 32 and 33, CC Docket No. 78–196, FCC 86–221 (released May 15, 1986), 51 FR 43,493 (Dec. 2, 1986). We have adopted the Board's recommendation. *See* MTS and WATS Market Structure, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639 (1987).

[25] *See* CFR 65.701.

[26] We prescribed the ICAM in Am. Tel & Tel. Co., CC Docket No. 79–245, 84 FCC 2d 384, *recon. granted in part and denied in part*, 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp. v. FCC, 675 F. 2d 408 (D.C. Cir. 1982), *modified*, 94 FCC 2d 1118 (1983).

[27] Am. Tel. and Tel. Co., Long Lines Dep't, 61 FCC 2d 587 (1976), *recon. denied in part and granted in part*, 64 FCC 2d 971 (1977), *further recon. denied in part and granted in part*, 67 FCC 2d 1441 (1978), *aff'd in pertinent pat sub nom.*, Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221 (1980), *cert. denied*, 451 U.S. 920 (1981); AT&T Equalization Filing, 89 FCC 2d 1000 (1982).

[28] Guidelines for Dominant Carriers' MTS Rates and Rate Stucture Plans, CC Docket No. 84–1235, FCC 85–540, 50 FR 42,945 42,951–52 (Oct. 23, 1985), 59 Rad. Reg. 2d 70, 81–83 (1985), Private Line Rate Structure and Volume Discount Practices, 97 FCC 2d 923, 948–49 (1984).

[29] *See* 47 CFR 65.700, 65.703.

[30] *See* 47 CFR Part 69, § 69.2(a) and (r); Subparts D and E.

[31] Carriers have been permitted to exercise some flexibility in their pricing of individual special access services, "especially where the proposed rates are designed in part to discourage service bypass," provided that the overall special access category is targeted to the prescribed rate of return. 47 CFR 69.113(b); Annual 1985 Access Tariff Filings, Mimeo No. 7401 (released Sept. 30, 1985) at paragraph 62, *aff'd on review*, FCC 86–379 (released Sept. 2, 1986) *appeal pending sub nom.* Western Union Telegraph Co. v. FCC, No. 86–1592 (D.C. Cir.). Some downward flexibility is permitted dominant carriers offering MTS service under an optional calling plan, or nontraditional pricing mechanism, in response to competition, provided that the plan results in a net increase in the carrier's revenues for switched services. Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, *supra* n. 28, 50 FR at 42,951–52, 59 Rad. Reg. 2d at 82–83. In Private Line Rate Structure and Volume Discount Practices, *supra* n. 28, 97 FCC 2d at 949, we declined to adopt a specific cost standard for the reasonableness of volume discounts. We indicated that instead we would concentrate our review primarily on "whether the discount fits into an integrated rate structure of similar service offerings," weighing this along with other factors, such as whether the volume discount contributes to meeting competition and to bringing reasonable rates and efficient services to all users.

[32] If a LEC's earnings for any of the three access categories designated in Part 65 exceed the "maximum allowable rate of return" during any two-year period of review, it must refund, either directly to customers, or by means of subsequent reductions in its revenue requirements, the amount necessary to bring the earnings of the category down to the maximum allowable rate of return, plus interest. 47 CFR 65.700–.703. "Maximum allowable rate of return" refers to the prescribed rate of return—now 12% for the LECs—plus a "margin" of four-tenths of one percent or 40 basis points. 47 CFR 65.700(a); Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, Phase III, FCC 86–354, CC Docket No. 84–800 (released August 25, 1986) at paragraph 52, 51 FR 32, 920 (Sept. 17, 1986). In addition, if a LEC's overall interstate earnings exceed the authorized return by one-quarter of one percent (25 basis points), then the carrier must refund an amount necessary to bring the overall return down to the overall maximum. 47 CFR 65.700(b), 65.703.

[33] We have previously described continuing surveillance as "a process by which many previous

Continued

"effective and highly efficient method of regulation," for the Bell System during a period when the domestic interstate telecommunications market was a monopoly. By the early 1960's, however, we had become concerned about the possibility that AT&T could and would use revenue from its MTS and WATS monopoly services to subsidize its private line services, which at that time were just beginning to confront the threat of competition from private microwave systems, the specialized common carriers, and Western Union. It was only in response to that concern that we began the series of investigations that led us to construct the regulatory edifice that we now rely upon to regulate the prices charged by dominant carriers.[34]

14. We adopted the cost-of-service model as our regulatory paradigm at a point in time when competition appeared to be confined to one segment of the interstate market, a segment representing only a relatively small share of dominant carriers' revenues and costs. AT&T, undivested and in partnership with the independent telephone companies, operated essentially as a monopoly enterprise, providing all but a miniscule share of interstate communications services. The subsequent open availability of technological advances like digital switches, domestic satellite facilities, packet switches, mini and micro computers and fiber optic cable reduced the partnership's ability to sustain that monopoly without regulatory support. Decisions supportive of competition at both the federal and the state level have further eroded its monopoly power.

15. At the federal level, the courts paved the way for competition's growth in the interstate MTS and WATS markets.[35] Commission initiatives like the *Computer Inquiries* and *Competitive Carrier* also strengthened competition's foothold in the interstate market.[36] Significant Impetus for change in the market also came from AT&T's 1984 divestiture of the Bell Operating Companies in compliance with the terms of the Modification of Final Judgment (MFJ), the consent decree that brought to a close the federal government's seven-year-old antitrust suit against the company.[37] With divestiture came equal access to local exchange carriers' local networks for AT&T's interexchange service competitors [38] and access charges, the post-divestiture compensation mechanism that replaced the amalgam of tariffs and contracts through which interexchange carriers paid for access local network facilities they needed to originate or terminate their interstate services.[39] More recently we have concluded that the public interest would be served by our modifying the cost standards we apply when reviewing the lawfulness of dominant carriers' proposals to offer volume discounts for private line services or optional MTS calling plans.[40]

16. The states too have begun to revise their approach to regulating providers of intrastate common carrier services. In some cases through legislation, in others through the initiative of their utility commissions, many states have recently reexamined or reformed how they regulate intrastate communications services.[41] The net

interstate rate adjustments have been brought about without formal proceedings . . . [in which] either the Commission or [AT&T] [would] initiate discussions looking toward appropriate rate changes whenever the level of . . . total interstate earnings has appeared to warrant such action." Am. Tel & Tel. Co., Docket No. 16258, 2 FCC 2d 173, 177, *recon denied*, 2 FCC 2d 173 (1965).

[34] In 1965 we opened an investigation of the rates and services of the Bell System in Docket 16258. Am. Tel. and Tel. Co., *supra* n. 33, 2 FCC 2d 173 (1965). Phase 1–A of that investigation culminated in our prescription of a rate of return for all of AT&T's interstate operations. Am. Tel. and Tel. Co., 9 FCC 2d 30 (1967). Phase 1–B was intended to establish general ratemaking principles. Eventually this phase of Docket 16258 was "folded into" Docket No. 18128, in which we selected FDC "Method 7" as the method of determing costs for ratemaking purposes. Am. Tel. and Tel. Co., 18 FCC 2d 761 (1969); Am. Tel. and Tel. Co., Long Lines Dep't, *supra* n.27, 61 FCC 2d 587. For other consequences of our initial decision to replace continuing surveillance with this more rigorous form of rate regulation, see discussion *supra* at paras. 7–11.

[35] MCI Telecommunications Corp. v FCC, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978) (Execunet I) (Section 214 of the Communications Act of 1934, as amended, required affirmative determination that public interest, convenience and necessity mandated restriction of MCI's service to private line services); MCI Telecommunications Corp. v. FCC, 580 F.2d 590 (D.C. Cir.) *cert. denied*, 439 U.S. 980 (1978) (Execunet II) (AT&T required to provide interconnections for MCI's Execunet service); Order (filed May 11, 1978) (D.C. Cir.) (per curiam), *printed in* Lincoln Tel. and Tel. Co. v. FCC, 659 F.2d 1092 (D.C. Cir. 1981), at 659 F.2d 1109 (D.C. Cir. 1978) (per curiam (Execunet III) (reaffirming holdings of Execunet I and Execunet II upon motions for stay).

[36] These proceedings are discussed in paras. 5–6, *supra*.

[37] United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[38] The MFJ required that upon "bona fide request, every [BOC] end office . . . offer . . . [equal] access by September 1, 1986." 552 F. Supp. at 233. It did recognize an exception for end offices with "switches technologically antecedent to electronic, stored program control switches" and for small end offices if the BOC could demonstrate that the "costs [of conversion] . . . outweigh the potential benefits to users." *Id.* While the conversion of all end offices required to bring them into compliance with the terms of the MFJ is still ongoing, as of October 1, 1986, the BOCs had converted over 67 million access lines (to be distinguished from end offices) to equal access. *See* FCC Public News Notice # 1290, released Dec. 31, 1986. The court will determine shortly guidelines for reasonable conversion schedules for the remaining offices. Another consent decree binds the General Telephone Operating Companies to offer equal access under a schedule calling for complete conversion no later than 1990. *See* United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984). Materials filed with its October 1986 access tariff filings indicated that by the end of 1986, GTE should have converted over 50% of its access lines to equal access. In the third phase of our access charge docket, we imposed an equal access requirement upon the remaining LECs. *See* MTS and WATS Market Structure, Phase III, CC Docket No. 78–72, 100 FCC 2d 860 (1985). For a summary of the percentage of total access lines that each of the major independent telephone companies has already converted or anticipates converting to equal access in 1987, *see* FCC Public News Notice # 1291, released Dec. 31, 1986.

[39] Before divestiture, AT&T compensated the BOCs for access services through the division of revenues process and the independent telephone companies through the settlements process. Tariffs through which its competitors paid for access services included those covering Foreign Exchange, or FX service, local business service and ENFIA service. ENFIA, or Exchange Network Facilities for Interstate Access, service was the result of negotiations between AT&T and its switched service competitors, establishing and interconnection rate for ENFIA higher than FX rates but lower than AT&T had proposed. *See* Exchange Network Facilities, 71 FCC 2d 440 (1979), *extended*, 90 FCC 2d 6 (1982). The MFJ, however, required that the division of revenues process be replaced with a system of nondiscriminatory access tariffs through which the BOCs would receive compensation from all the interexchange carriers using their facilities to originate or terminate interLATA traffic. 552 F. Supp. at 233–34. Subsequently in December 1982, and as a consequence of its independent investigation into the appropriate market structure for the MTS and WATS market, this Commission imposed access charges as the industry-wide mechanism for compensating exchange carriers providing interstate access services. *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, 93 FCC 2d 241, *modified on recon.*, 48 FR 42,987 (Sept. 21, 1983), *modified on further recon. (Reconsideration Order)*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd in pertinent part sub nom.* National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), *appeal pending sub nom.* Am. Tel. and Tel. Co., v. FCC, No. 84–1148 (D.C. Cir.), *modified on further recon.*, 101 FCC 2d 1222 (1985), *aff'd on further recon.*, 102 FCC 2d 849 (1985).

[40] *See* Private Line Rate Structure and Volume Discount Practices, *supra* n.28, 97 FCC 2d 293; Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, *supra* n.28, 50 FR 42,945.

[41] Some multi-LATA states such as Virginia have legislatively provided for removal of rate-of-return constraints on competitive inter-LATA toll service. *Telephone Competition and Deregulation: A Survey of the States*, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce (Oct. 1986) (NTIA State Survey) at 6. In others, such as Kansas, interexchange carriers are permitted to adjust rates (referred to as "banded rates") within a certain range without regulatory approval. *Id.* at 10. In certain states, such as Minnesota, where a deregulatory initiative was signed by the Governor on June 1, 1987, "steamlined" regulation, in the form of reduced

Continued

result of these changes and the federal policy changes described above is that fewer and fewer of dominant carriers' service offerings are subject to the constraints of cost-of-service regulation. There is a substantial body of economic literature suggesting that cost-of-service regulation is particularly ineffective when it is not or cannot be applied to all business endeavors of a dominant carrier.[42] This literature strongly implies that in such an environment, cost-of-service regulation may impose very high costs and impair our ability to achieve our statutory goal of just and reasonable rates for those services we do regulate. In the next section we examine in greater detail the costs associated with cost-of-service regulation.

Some states have adopted a "social contract" approach to deregulation of local exchange service, requiring a measure of price stability from the local telephone company in return for regulatory freedom. In Nebraska, for example, telephone companies can raise local rates as much as 10% during any 12-month period without seeking approval from the Nebraska Public Service Commission. If 2% to 5% of a company's customers petition against the increase, however, regulators will review it. *Nebraska Law Deregulating Phone Rates May Spur Some Changes in Other States*, Wall Street Journal, May 12, 1986, at 7; *Nebraska Court Finds New Telecommunications Law Constitutional; Appeal Expected*, Telecommunications Reports, Mar. 23, 1987, at 7. *See also* Telecommunications Reports, June 15, 1987, at 42; NTIA State Survey at 33–34 (Vermont approach to social contract legislation). Other states have broadened the pricing flexibility local companies are permitted for particular services. Iowa, for example, has deregulated Centrex and private line digital services, while Arkansas and other states permit long-term customer contracts for Centrex service and numerous states have detariffed Centrex. NTIA State Survey at 23, 26.

C. Advantages and Disadvantages of Cost-of-Service Regulation

17. Cost-of-service regulation is intended to prevent a firm with market power from exercising monopoly power. Regulators have been attracted to this mode of controlling the behavior of monopoly service providers because conceptually it seems fair to both the regulated company and its customers. Cost-of-service regulation promises to the regulated firm the opportunity to earn sufficient revenues to cover its costs, including a fair rate of return on equity. It also promises to shield ratepayers from the exorbitant rates that a monopoly, left unregulated, could otherwise impose. Experience with cost-of-service regulation has taught us, however, that, even if done correctly and well, it nevertheless imposes significant costs on regulated firms and on those they serve. The policies and rules we have developed to make this method of regulation work are complicated; their application and enforcement are a resource intensive activity for the regulator, the regulated firm, and other interested parties.

18. More important than the direct administrative costs, cost-of-service regulation appears to impose other economic losses. Under cost-of-service regulation the carrier can increase its dollar earnings only by enlarging its rate base. Thus cost-of-service regulation can foster an incentive to inflate the rate base.[43] Regulators are, however, in a poor position to second-guess carriers when they claim that a particular capital expenditure is necessary to assure continued high quality service. Nor can regulators routinely perform the kind of micromanagement of these firms needed to detect whether the work force is bloated, the equipment overdesigned, or the network overbuilt. The carrier itself has little incentive to undertake such an inquiry. Pure cost-of-service regulation fails to reward the carrier for doing the "same old thing" in a more efficient way because it fails to distinguish increased earnings attributable to increased efficiency from increased earnings attributable to an exercise of market power. Prevention of the latter is the *raison d' etre* of common carrier regulation.

19. In a mixed market, like today's interstate communications market, cost-of-service regulation imposes other costs as well. This method of regulation can create a strong incentive for a dominant carrier to shift costs from those services for which it faces competition to those services for which its market power enables it to recover revenues above the economic costs of providing the service. Rate-of-return regulation may inadvertently legitimize that overrecovery because its methods of identifying costs are at best imperfect.[44] Cost allocation rules may limit a carrier's ability to respond to this incentive, but can do nothing to destroy the incentive. As the share of the carrier's costs and revenues associated with competitive offerings grows, the potentially adverse impact on captive ratepayers from misallocations grows concomitantly. Cost-of-service regulation may also impede the Commission "from acquiring the information it needs to make a reasoned determination about the long-term viability of competition in the long-distance business." [45] We cannot determine whether competitors are entering a regulated service market merely because of some pricing distortions created by our regulatory procedures. A rate-of-return set too high creates an umbrella to shelter competitors less efficient than a dominant carrier; a rate-of-return set too low will exclude its competitors unless they are more efficient.

IV. Legal Issues

20. Before we begin to weigh and to compare the costs and benefits of alternative forms of regulation for dominant carriers, we must first determine whether we are under any statutory obligation to continue using cost-of-service regulation for such carriers. Our preliminary review of the Communication Act, its legislative history and relevant case law has revealed no such legal compulsion. For this reason we tentatively conclude that we are under no legal obligation to rely upon cost-of-service regulation to assure just and reasonable rates for customers of these carriers and that we could lawfully replace cost-of-service regulation with another regulatory model consistent with the Act's substantive and procedural requirements, as long as we found,

---

notice periods, is applied. *Cf. Minnesota Interagency Bill Awaits Governor's Signature, Includes Provision for AT&T*, Telecommunications Reports, June 1, 1987, at 8 (describing subsequently approved bill which enumerates 23 categories of "emerging competitive" services, including toll, private line and Centrex, for which carriers can raise rates after 30 days' notice and decrease them after 10 days' notice). Several states have used existing interexchange rates as a ceiling below which rates can be changed pursuant to streamlined procedures, but above which changes must be justified pursuant to full rate-of-return requirements. NTIA State Survey at 10–11. *See generally States Adopt Three Primary Approaches to Easing AT&T's Regulation*, State Telephone Regulation Report, June 18, 1987, at 6–7; *How States Have Relaxed Regulation of AT&T Intrastate Service, id.* at 7–10.

[42] *See* 2 A.E. Kahn, *The Economics of Regulation* ch. 6 (1971)

[43] This is called the Averch-Johnson effect, named after the two economists that first described the incentives rate-of-return regulation can create to inflate the rate base. *See* H. Averch and L. Johnson, *Behavior of the Firm under Regulatory Constraints*, 52 Amer. Econ. Rev. 1052 (1962).

[44] *See generally* In Re Hugoton-Anadarko Area Rate Case v. FPC, 466 F. 2d 974, 985 (9th Cir. 1972); H. Averch and L. Johnson, *supra* n. 43, 1064–65.

[45] J. Haring & E. Kwerel, Working Paper, *Competition Policy in the Post-Equal Access Market*, 2 FCC Rcd 1488, 1489 (1987).

based upon an adequately developed administrative record, that adoption of the alternative would be in the public interest.

21. The Communications Act of 1934 unquestionably imposes upon us the affirmative obligation to "execute and enforce (its) provisions." [46] In particular it imposes upon us a duty to see that rates for interstate common carrier services are just and reasonable. To enable us to meet this responsibility, the Act has given us not only specific regulatory powers,[47] but also the broad powers of section 4(i).[48] While Title II of the Act vests this Commission with certain explicit powers that are essential if we are to perform cost-of-service regulation effectively, the Act does not mandate its use; nor does the legislative history of the Act indicate that Congress intended the Commission to use this particular form of regulation to assure just and reasonable rates.[49]

22. Courts have consistently found in the Act's statutory scheme a congressional intent to vest in this Commission broad discretion in selecting the tools upon which it will rely to regulate the telecommunications industry.[50] This broad discretion has explicitly been found to extend to the Commission's "selecti[on of] methods for the exercise of its powers to make and oversee rates."[51] We may make any reasonable selection from available alternatives.[52] As the courts have held for other federal agencies,[53] acceptable alternatives may include regulatory schemes that do not adhere rigidly to a cost-based determination of rates, much less one based on an individual service provider's own costs. The touchstone for determining whether rates are just and reasonable is whether those rates fall within a zone of reasonableness.[54] That zone is "bounded at [the lower] end by investor interest against confiscation and at [the upper] end by the consumer interest against exorbitant rates."[55] Thus a reasonable alternative to cost-of-service regulation must "result in a reasonable balance between consumer and investor interests".[56] Our discretion, while broad, is not, however, unbounded. Any method for regulating rates for the common carrier services of dominant carriers should include mechanisms either capable of driving the carrier's rates into the zone of reasonableness of able to detect and to correct for the failure of market forces to achieve this result.[57]

23. It has been over twenty years since we asked that fundamental question that caused us to reexamine how we regulate the rates of AT&T and the local exchange carriers: Is there a better way to discharge our obligations under the Communications Act? We pose that question again based upon our tentative conclusion that neither the Communications Act nor its legislative history erects any bar to our replacing cost-of-service regulation with a method of regulation through which we can better meet our obligation to protect customers of dominant carriers against unreasonable rates. We have presented the preliminary legal analysis that forms the basis for that tentative conclusion, as well as our tentative conclusions about the characteristics that an alternative to cost-of-service regulation must possess to be legally acceptable. We invite interested parties to comment on that analysis.

V. Regulation by Price Caps

A. The Price Cap Model

24. Based on our tentative conclusion that we are under no legal compulsion to continue using cost-of-service regulation for dominant carriers if a more effective or a comparably effective, but less costly, alternative exists, our goal in this proceeding is to determine whether we can achieve such regulatory reform. The model offering the greatest promise is one under which ceilings would be imposed on a carrier's service rates.[58] Those ceilings would be periodically adjusted to reflect easily observable changes in costs generally lying beyond the carrier's control. In particular, this approach would include a rate adjustment factor that would lower caps to reflect expected increases in industry-wide or nationwide productivity. Within these limits, a carrier would be permitted to adjust the rates for capped services with little or no prior regulatory intervention.

B. Experience with Price Cap Regulation

25. Recent regulatory reform in Great Britain has been based on the price cap model. Before 1984, British Telecom (BT) was a government-owned monopoly providing both domestic and international telecommunications services to British customers. The Telecommunications Act 1984

---

[46] 47 U.S.C. 151.

[47] *See* n. 5, *supra*.

[48] 47 U.S.C. 154(i); *see* n.5, *supra*.

[49] In 1910 Congress enacted the Mann-Elkins Act which placed interstate telephone and telegraph services under the supervision of the Interstate Commerce Commission. *See* Commerce Court (Mann-Elkins) Act, Pub. L. No. 218, ch. 309, section 7, 36 Stat. 544 (1910) (amending the Interetate Commerce Act of 1887, ch. 104, section 1, 24 Stat. 379 (1887)) (provisions relating to telegraph, telephone, and cable companies repealed in 1934). The ICC never did attempt to impose rate-of-return regulation upon carriers providing interstate communications services. *See* Loeb, *The Communications Act Policy Toward Competition: A Failure to Communicate*, 1978 Duke L.J. 1, 17 (hereafter referred to as "Loeb"). *See generally* G. Brock, *The Telecommunications Industry: The Dynamics of Market Structure* 159–61 (1981). In 1934 President Roosevelt urged Congress to consolidate in a single independent agency the federal regulatory authority over telecommunications services at that time scattered among the ICC, the Federal Radio Commission and the Postmaster General. *See* Message to Congress, Feb. 26, 1934, *reprinted in* H.R. Rep. No. 1850, 73d Cong., 2d Sess. 1–2 (1934). The legislative history of the Communications Act of 1934 would suggest that this consolidation, rather than any great desire to change the way the telecommunications industry was regulated, was the primary impetus for the legislation's passage. *See* H.R. Rep. No. 1850, 73d Cong., 2d Sess. 3 (1934); Loeb, *supra*, at 26 n.128 and accompanying text.

[50] *See, e.g.*, Western Union Int'l v. FCC, 804 F.2d 1280, 1292 (D.C. Cir. 1986) "[t]he FCC's judgment about the best regulatory tools to employ in a particular situation is . . . entitled to considerable deference from the generalist judiciary."); Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198, 212 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983); Am Tel. and Tel Co. v. Co. v. FCC, 572 F.2d 17, 26 (2d Cir.), *cert. denied, 439 U.S. 875 (1978); Note, Recent Federal Actions Affecting Long Distance Telecommunications: A Survey of Issues Concerning the Microwave Specialized Common Carrier Industry*, 43 Geo. Wash. L. Rev. 878, 896 n.89 and cases cited therein (1975).

[51] Aeronautical Radio, Inc. v. FCC *supra* n. 27, 642 F.2d at 1228.

[52] MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 413 (D.C. Cir. 1982).

[53] *See* FERC v. Pennzoil Producing Co., 439 U.S. 508, 517 (1979); Permian Basin Area Rate Cases, 390 U.S. 747, 769, 797–98, 800–805 (1968); Wisconsin v. FPC, 373 U.S. 294, 309 (1963); FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585–86 (1942).

[54] FERC v. Pennzoil Producing Co., 439 U.S. at 519.

[55] Jersey Cent. Power and Light Co. v. FERC, 768 F.2d. 1500, 1503 (D.C. Cir. 1985), *aff'd on rehearing*, 810 F. 2d 1168 (D.C. Cir. 1987) (en banc) (*quoting* Washington Gas Light Co. v. Baker, 188 F.2d 11, 15 (D.C. Cir. 1950) *cert. denied*, 340 U.S. 982 (1951)).

[56] *Id.* at 1504.

[57] Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1486, 1509 (D.C. Cir.), *cert. denied sub nom*, Williams Pipe Line Co. v. Farmers Union Cent. Exch., Inc. 469 U.S. 1034 (1984). In this case, the court was reviewing the decision of the Federal Energy Regulatory Commission to adopt a methodology for setting ceilings on profits of oil pipeline operators that permitted a range of allowable prices that would have been excessively high "unless competition in the oil pipeline market dr[ove] the actual prices back down [to reasonable levels]." *Id. at* 1509. Because it found that "nothing in [FERC's] regulatory scheme itself act[ed] as a monitor to see if this [would] occur[] or to check rates if it [did] not," the court held the methodology fatally flawed and inconsistent with the agency's statutory mandate to assure just and reasonable rates. *Id.*

[58] Recent papers by Haring and Kwerel and by Baumol and Willig discuss two variations on the price cap approach to regulating rates. *See* J. Haring & E. Kweral, *Supra* n. 45. W.J. Baumol & R.D. Willig, Paper, "Toward Rational Deregulation in Telecommunications", attached to Letter to William J. Tricarico, Secretary, FCC, from S.B. Levenson, AT&T Communications Inc. re: Decreased Regulation of Certain Basic Telecommunications Services, CC Docket No. 86–421 (Apr. 16, 1987). These variations differ from the price cap approach we propose here to the extent that they would rely on marketplace forces, rather than price caps, to regulate directly the rates of competitive common carrier services.

simultaneously abolished BT's exclusive franchise over telecommunications services and mandated its privatization through the sale to the public of 51 percent of its stock. The Act authorized the licensing of BT and (until 1990) only one competitor, Mercury, to provide basic voice telephony.[59] It also established a new regulatory agency, the Office of Telecommunications (OFTEL), headed by a Director General of Telecommunications (DGT) and created to issue the authorized licenses, to enforce their terms, and, if necessary, to modify them.

26. Prior to the enactment of the 1984 legislation, the question of whether and how to regulate the privatized BT's profits received extensive debate. Government officials, economists and consultants examined and proposed several alternatives for exercising control over BT's market power. These alternatives included variations on the traditional rate-of-return model, a profit ceiling scheme and the novel "output-related profits levy" approach.[60] The *Littlechild Report*, which was commissioned by the British Department of Industry, analyzed each of these alternatives in terms of its ability: (1) To protect against exercise of monopoly power; (2) to promote efficiency and innovation; (3) to minimize the burden of regulation; (4) to promote competition; and (5) to maximize the anticipated proceeds from the initial sale of BT stock and the prospects for successful operation of the privatized BT. The *Littlechild Report* found each of these regulatory approaches to be substantially ineffective with respect to one or more of these criteria. The report then presented the price cap approach, or "local tariff reduction scheme," [61] which it found to be far better able than any of the other regulatory schemes under consideration to meet the five stated objectives.

27. The British price cap approach required the identification of those services over which BT exercised monopoly power.[62] The *Littlechild Report* identified "rentals, local calls and other services of particular concern (e.g., call boxes)" as meeting this requirement. Under the price cap approach presented in the *Littlechild Report*, these services as a group would be made subject to the constraint that the weighted [63] average of their prices should not increase by a factor of more than the rate of inflation, as measured by the Retail Price Index, or RPI, less some fixed percentage that was to be negotiated by BT and the regulators.[64] Tying the average rate for these services to the RPI assured that the average cost of service to consumers would not increase in real terms; the reduction differential would result in actual cost savings to customers and would give the carrier an incentive to increase its productivity. Rates for services not included in the basket would not be subject to explicit price constraints. The *Littlechild Report* proposed that the formula, as well as the basket of services to which it would apply, be subject to review by Her Majesty's Monopoly and Mergers Commission at the end of a five year period. At that point, either the formula or the basket of services to which it applied could be revised or even eliminated, depending on the extent and strength of competition. The *Report* also called for license provisions prohibiting unreasonable discriminations or preferences among classes of customers as well as tariffing requirements similar to those found in sections 203(a) and 203(c) of the Communications Act.[65]

28. The Telecommunications Act 1984 ultimately enacted by Parliament adopted the price cap proposal model presented in the *Littlechild Report*. The set of services to which it applied, however, encompasses not only the rentals of business and residential exchange lines mentioned explicitly in the *Littlechild Report*, but also direct dialed inland services, which include both local and domestic toll direct dial calling. Rates for connection charges, international calls, operator services, pay phones and private line services are not subject to the cap. The price cap rule finally adopted is easily stated: The average annual price increase for rental of business and residential exchange lines and for direct dialed inland telephone calls (except those made from public pay phones) must be limited to 3 percentage points below the rate of inflation, as measured by the Retail Price Index, or RPI–3.[66] This constraint does not apply separately to each of the services within this basket of services, but rather to the group. Thus the rule gives BT the flexibility to raise rates for an individual service within the basket of services subject to this pricing constraint as long as the average price of all services in the basket does not exceed RPI–3. It also permits BT to restructure rates for services within the basket, as long as the resulting rates also comply with the price constraint.[67] BT's license also contains a provision prohibiting undue preferences or discrimination against particular persons or groups of persons; another provision requires that BT publish its rates for services covered by the pricing constraint on 28 days' notice and, for each of those services, charge only the published rate.

29. At the present time, the British approach focuses on price levels and imposes no additional constraint on BT's profits. The reasoning behind the decision to impose no explicit constraint on the profits that BT could realize was that, because the price cap already protects those services for whch

[59] *See* I.M. Stelzer, *Regulating Telecommunications in Britain: A New Alternative to the U.S. Approach*, Telematics, Vol. 3, No. 9 at 7 (Sept. 1986).

[60] For descriptions of these alternatives, *see* S.C. Littlechild, *Regulation of British Telecommunications Profitability: A Report to the Secretary of State for Trade and Industry (Littlechild Report)*, submitted Feb. 1983.

[61] *Id.* at 37.

[62] *Id.*

[63] The weighting factors proposed and subsequently adopted were the "revenues that BT reasonably believes to have been received from each relevant class of [service]." *Review of British Telecom's Tariff Changes, November 1986 (OFTEL Report)*, "Report" section, at para. 12.

[64] *Littlechild Report, supra* n.60 at 38.

[65] 47 U.S.C. 203(a), 203(c).

[66] *OFTEL Report, supra* n.63, at para. 12. The average price increase authorized under this formula in a given year is computed using historical data. If the RPI fell below three percent, so that RPI–3 would be less than zero, BT would have to lower rates for services within the basket. BT would have one year in which to adjust prices downward as long as no increases in individual service rates occur in this period. In addition, if BT did not take full advantage of the price increases authorized for a given year, it could also carry the unused "credit" forward a period of two years during which it might use the credit to justify additional rate increases.

[67] While the regulatory constraints imposed by the terms of its license clearly leave BT with substantial discretion with respect to both rate structure and rate levels for individual services, BT has committed itself independent of the licensing process to refrain from raising rates for an individual service within the basket by more than 2 percentage points above the RPI, *i.e.*, RPI + 2. When competition from Mercury caused BT to threaten to abandon its voluntary RPI + 2 constraint, the DGT concluded that even in the absence of specific authority, he had a duty to see that rate rebalancing "is not carried beyond the point that is justified on economic grounds." I.M. Stelzer, *supra* n.59, at 9–10 & n.7 (quoting *Report of the Director General of Telecommunications* for the period Jan. 1 to Dec. 31, 1985 to the Secretary of State for Trade and Industry presented to Parliament in pursuance of Section 55 of the Telecommunications Act 1984, London: Her Majesty's Stationery Office, June 25, 1986, p. 10). In September 1986, BT announced major changes to the prices for services subject to the pricing constraints. It proposed to change not only the price levels but also the units of service to which they applied. The DGT subsequently reviewed the proposal to determine whether the rates as restructured still satisfied both the RPI–3 constraint for the designated services overall and the RPI + 2 constraint for each of those services individually. *See OFTEL Report, supra* n.63, "Report" Section, at paras. 13–17, 98–112. Since he found the restructured rates satisfied both constraints, he did not indicate how he would propose to fulfill his responsibility to see that rate rebalancing did not lead to unreasonable results.

competition is thought to be inadequate, profit ceilings would offer no additional benefit.[68] The use of profit ceilings would, however, impose the additional burdens associated with allocating joint costs and calculating rates of return.[69] There was also concern that, set too low, the ceilings could restore all the disincentives to efficiency that traditional rate-of-return regulation is thought to introduce.[70] As the DGT has observed, however, "the distinction between price control regulation and rate of return regulation is not and cannot be clear-cut." [71] Noting that any assessment of how effectively a price control approach is working must take into account the reasonableness of the return the carrier is actually earning and the extent to which those earnings are attributable to gains in efficiency,[72] the DGT recently completed an examination of BT's earnings following regulatory reform. Finding that BT was not earning an excessive rate of return, the DGT concluded that the current price constraints were meeting regulatory objectives and that there was therefore no basis for changing the price control formula.[73]

30. In the United States there has been testing of variation on the price cap model. In its Docket No. 85–17, the New York Public Service Commission separated New York Telephone Company's (NYT's) "discretionary" services and new revenue sources from the remainder of its services.[74] It imposed a moratorium on general rate cases until late 1988 that had the effect of capping rates for services in the last category.[75] The carrier was permitted to pass through to customers only pre-specified cost increases, including the effects of wage contract negotiations, certain tax changes, separations changes and depreciation rate changes, subject to certain set-offs. The amount of the overall adjustment to rates to reflect changes in these factors, as well as the share of this amount that would be recovered through increased rates for both capped and non-capped services, would be determined by Public Service Commission order.[76] The rate moratorium did not extend to discretionary services or new services. Discretionary services include: custom calling services; remote call forwarding; optional calling plans; TOUCH-TONE Calling; INTELLIPATH Service; Centrex lines and optional features designated as non-stabilized.[77] The PSC found that NYT has a "virtual monopoly on most if not all of the services it listed as 'discretionary,' and w[ould] retain this market dominance during the moratorium." [78] Thus, while the British price cap approach sought to include those services over which BT enjoyed monopoly power in the basket of protected services, the New York approach did not. Under the New York plan, the Public Service Commission did state, however, that it would permit rate increases for discretionary services only if they involve innovative marketing/pricing concepts or cost-based rate restructurings.[79]

31. Recently the Public Service Commission extended the rate case moratorium until 1991. The terms of the order extending the moratorium permit NYT to file rate adjustments in August 1988 and August 1989, after hearing, to reflect increases to its intrastate revenue requirement, not to exceed $100 million, attributable to changes in employee compensation contracts, New York City ad valorem taxes and separations changes. There would, however, be no adjustment for inflation. The proposed August 1988 adjustments must also reflect a further offset of a "200 basis point reduction in the yield component of the equity return allowance [from 14% to 12%]." [80] The moratorium extension order authorized NYT to retain one-half of any earnings it makes during this period that exceed its authorized return of 14% on the equity portion of its intrastate rate base.[81]

32. In explaining its decision to prolong the rate moratorium, the Public Service Commission listed the benefit it provided. First, ratepayers would enjoy stable rates that would most likely be lower than those following a general rate case. Second, by limiting the costs that NYT could flow through to ratepayers to certain known and unavoidable costs, this approach tied NYT's finnacial success to the efficiency of its operations.[82] Third, the moratorium freed both the company and the Public Service Commission's staff from the burden of the constant cycle of rate cases, permitting the former to devote its energies to improving service and efficiency and the latter to pursue "more creative aspects of regulation." [83] These benefits, which the British plan would also appear to offer, are clearly consistent with our federal mandate. We seek comments on whether either the British, the New York or other regualtory approaches adopted by various states or advocated by other policymakers [84] could be adapted to federal use in such a way that it would produce a more efficient and effective method of regulating rates for interstate services provided by dominant carriers.

C. Advantages and Disadvantages of the Price Cap Model

33. The price cap model promises many benefits to consumers. Because it would permit the carrier to retain at least some of the profits arising from increased efficiency or creativity, this method of regulating would encourage greater efficiency and innovation than exists now, especially in less competitive markets. This approach would substantially decrease incentives to shift costs from more to less competitive service offerings. The rules governing the periodic revision of the caps could reduce, if not eliminate, any perverse incentives to inflate rate bases. Carriers would no longer be able to exploit factors within their control to increase their earnings at ratepayers' expense. Price caps might also offer ratepayers greater protection against sudden steep rate increases than cost-of-service regulation can provide. This model could also prove to be simpler to administer than our current cost-of-

[68] *Littlechild Report, supra* n.60, at 38.

[69] *Id.*

[70] *Id.*

[71] *OFTEL Report, supra* n.63, "Report" section, at para. 25.

[72] *Id.*, "Report" section, at paras. 22–31.

[73] *Id.*, "Report" section, at para. 65.

[74] New York Tel. Co., Case 28691, Opinion No. 85–17 (N.Y.P.S.C. Oct. 11, 1985); *on reh.*, Opinion No. 85–17(A), 74 PUR 4th 590 (N.Y.P.S.C. 1986); Opinion No. 85–17(B), 77 PUR 4th 119 (N.Y.P.S.C. 1986) (Opinion and Order granting second-stage adjustments to rate caps and specifying how they should be reflected in revised tariffs); Opinion No. 85–17(C) (N.Y.P.S.C. Jan. 5, 1987); Opinion 85–17(D) (N.Y.P.S.C. May 11, 1987) (Opinion and Order extending rate case moratorium).

[75] *See* New York Tel. Co., Case No. 28961, Opinion No. 85–17(A), *supra* n.74, 74 PUR 4th at 595. Thus rates for basic local services will not rise during the moratorium.

[76] *See, e.g.*, New York Tel. Co. Opinion 85–17(B), *supra* n.74, 74 PUR 4th 119.

[77] New York Telephone Co., Case No. 28961, Opinion No. 85–17 (D), *supra* n.74, at 29.

[78] *Id.* at 42.

[79] *Id.*

[80] Appendix to New York Tel. Co., Opinion 85–17(D), *supra* n.74, at 2.

[81] *Id.* at 3.

[82] Here too the New York and the British approaches deviate. The British price cap formula called for adjustments based solely on factors beyond the carrier's control, albeit loosely tied to its costs of operation. The criteria used by New York in selecting the adjustment factors for its price cap approach were that the factors be either externally imposed or readily verifiable and be of the sort allowable in a general rate proceeding. New York explicitly excluded costs attributable to general inflation, however. New York Tel. Co., Opinion 85–17(A), *supra* n.74, 74 PUR 4th at 594.

[83] New York Tel. Co., Opinion 85–17(D), *supra* n.74, at 34.

[84] See discussion *supra* at para. 16 and n.41; *NTIA Regulatory Alternatives Report*, National Telecommunications and Information Administration, U.S. Department of Commerce (July 1987).

service approach. The price cap model could also reduce the resources competitors feel compelled to commit to participation in the administrative process. This would permit them to bring to competition in the marketplace resources they now have diverted to competition in judicial, regulatory, and political arenas.

34. In its purest form, the price cap model does have some potential weaknesses. Its primary focus is on rate levels, not profits. It protects ratepayers through controlling the level of rates, not the level of carrier profits. As noted earlier,[85] the Communications Act requires that rates for telecommunications services not be unjust or unreasonable or unreasonably discriminatory.[86] The provisions of the Communications Act are also to be read in light of the statement of purpose found in Section 1 of the Act.[87] Even with fixed or declining rates a carrier conceivably could earn profits so excessive that they fell beyond the "zone of reasonableness." Under the model described above, this could occur, for example, if the carrier's costs of production fell substantially more sharply than industry-wide or nationwide productivity factors used to adjust its price ceilings.[88] At the other extreme, the price cap model described above may need modification to comply with the constitutional prohibition against confiscatory rates.[89] We also seek comment on whether the price cap model might adversely affect service quality or technological innovation resulting in a feature-rich network, especially for small business and residential users. We tentatively conclude, however, that these possible flaws could be addressed without fatally undermining the advantages that a price cap approach appears to possess.[90]

35. We tentatively find that the advantages of the price cap model appear to outweigh its disadvantages. We seek comment on the validity of this tentative finding and welcome commenting parties' assessment of: (1) The likelihood that enhanced carrier efficiency or innovation will result from the possibility of the carrier's retaining, in whole or in part, incremental revenues resulting from these factors; and (2) the likelihood that projected increases in carrier innovation and/or efficiency that may result from the possibility of higher earnings would lead to lower prices for the tariffed services from which those earnings would be derived.

36. Based on our tentative finding, we turn our attention in the next section to developing a set of rules and procedures based on the price cap model that would incorporate its advantages and mitigate its disadvantages. In particular we seek to define a set of rules to discharge our respective constitutions[91] and statutory obligations.

37. In subsequent paragraphs we discuss the questions that need to be addressed before the price cap model can be transformed into a legal, workable and potentially more efficient method of regulation than the one under which we now operate. We present several, but certainly not all, possible answers to these questions and explore some of the apparent strengths and weaknesses of the options we discuss. We seek comment on which combinations, if any, of these possible answers would lead to a methodology that would be better able to protect ratepayers than cost-of-service regulation. We are also prepared to examine other regulatory approaches that could be shown to meet these two objectives. We anticipate that we will need to compare our present cost-of-service approach with such alternatives to determine which would best serve the public interest.[92] To the extent that commenters can quantify the relative costs and benefits of alternative forms of regulation for the Commission, the regulated carrier, and the public, such data would aid our deliberations.

D. Finding an Acceptable Alternative

38. To establish a method of regulating rates based upon the price cap model requires a set of rules and procedures that would answer the following three major questions (as well as a myriad of related minor questions): 1. How do we set price limits and measure when a carrier's service rates comply with those limits; 2. how do we identify those factors changes in which would warrant adjusting price limits; 3. how (and when) would we adjust price limits to reflect changes in those factors. This method of regulating rates should retain the principal advantages of the price cap model: ratepayer protection, promotion of service efficiency and technological innovation; reduction, if not elimination, of incentives to cross-subsidize, and administrative simplicity. We seek to develop in this proceeding a price cap approach that strikes an optimal balance among these potentially conflicting goals.

39. We now discuss alternative ways we might answer the three questions set forth above. We identify potential advantages and disadvantages associated with each. We invite comments on those advantages and disadvantages we describe as well as on others we may have overlooked. We also invite comments discussing other ways of answering the three questions, and request that parties presenting such alternatives include an assessment of their relative advantages and disadvantages, defined in terms of the goals identified above.

1. General Regulatory Requirements

40. There are several ways that we might answer the three questions posed above and still achieve a reasonable alternative to cost-of-service regulation. There are, however, some features that we would anticipate that all of these alternatives would share. We tentatively conclude that any reasonable alternative would continue to require dominant carriers to file tariffs for their common carrier services. We find as a policy matter that, particularly as we initiate such significant regulatory reform as contemplated here, these filings would provide us with information essential to our ability to assess the impact of that reform on ratepayers and fulfill our statutory responsibility to assure that rates are just, reasonable and not discriminatory. As discussed further below, we would anticipate applying the streamlined review process and standards developed in our *Competitive Carrier Docket* to tariff filings of dominant carriers proposing to set rates below the cap levels established for those services.[93] Revisions that would result

[85] *See* para. 4, n.5 *supra*.

[86] *See* 47 U.S.C. 201–202.

[87] 2A Sutherland Stat. Const. Sections 45.09, 47.01–47.02, 47.04 (4th ed.); *see* 47 U.S.C. 151.

[88] *See* paras. 62 and 71 and n.126, *infra*. We would propose that any price cap plan we might adopt would include procedures, both routine and extraordinary, to correct for unreasonably high levels of earnings.

[89] *See* para. 43, n.99 *infra*.

[90] *See* discussion in para. 22 and n.57, *supra*.

[91] *See* discussion in n.99 *infra*.

[92] *See* para. 32, *supra*.

[93] Under the streamlining rules established in our *Competitive Carrier Docket*, n. 9 *supra*, the tariffs filed by nondominant carriers are presumed to be lawful. Further, the tariffs of non-dominant carriers may take effect on only 14 days notice, and they need not be accompanied by the economic support data generally required by § 61.38 of our rules. The streamlining rules we established for purposes of *Competitive Carrier* go beyond the tariff filing and review process. They also provide non-dominant carriers greater flexibility under Section 214 of the Communications Act to install or lease additional circuits without prior Commission approval, and provide for automatic grant of their applications to discontinue service after 30 days notice. *See First Report, supra* n.10.

in rates above the cap would, however, continue to receive full scrutiny. Thus, the dominant carrier's own practice, *i.e.*, choosing to file a rate below the cap established by the Commission for that service or above that level, would be the trigger for application of either streamlined or full rate regulation.[94] We would also propose to continue to prohibit tariff restrictions that would limit resale or shared use. The ban on such practices offers significant protection against the sort of unreasonable discriminations and classifications prohibited by section 202(a) of the Act.

41. Under the streamlined tariff procedures we are here contemplating, dominant carriers' filings for capped services which propose rates below the applicable cap would be subject to reduced tariff filing requirements, and a presumption of lawfulness would attach to those filings. Consistent with *Competitive Carrier*, the effect of this presumption for purposes of these tariff filings would be to require a substantial showing from the party seeking suspension of a tariff proposing a below cap rate that such suspension is warranted.[95] This presumption, which operates for purposes of the commission's initial consideration of a tariff revision, does not, however, amount to an affirmative finding that the rates, once permitted to go into effect, are lawful. Indeed, as with all carrier-initiated filings, once effective, these "streamlined" rates would remain subject to investigation by the Commission on its own initiative, upon petition under section 204 of the Act, or pursuant to a section 208 complaint by any person challenging their lawfulness at any time, once they become effective.[96] Furthermore, if such hearings into their lawfulness were to be instituted under either section 204 or 208, no presumption of lawfulness would attach, and the burden of proof in a Section 204 proceeding would remain on the carrier to show that the charge is just and reasonable. We propose here no changes to the way we conduct tariff investigations or the section 208 complaint process.

42. We tentatively conclude that, as in *Competitive Carrier*, the streamlining we propose represents a reasonable exercise of the Commission's broad discretion to decide when and whether to suspend a tariff filing.[97] The price caps coupled with the additional requirements described above would provide reasonable assurance that tariffs satisfying these constraints would not be unjust, unreasonable or unreasonably discriminatory. Furthermore, while this streamlining approach would eliminate those tariff burdens and filing requirements which are not necessary to protect the public interest in just and reasonable rates, *i.e.*, where the filed rates are below cap, it would nonetheless ensure that customers have a meaningful opportunity to challenge a particular filed rate and establish that it is unjust, discriminatory or otherwise unreasonable.[98] While we tentatively conclude that the standards established in *Competitive Carrier* for the streamlining of tariff filings will achieve this balance, we request comments on the extent to which adjustments, if any, will need to be made to those standards and procedures or to those of our complaint process to accommodate the particular regulatory approach here being proposed. In particular we seek comment on the need to adjust standards of review for a filing that would propose to modify a rate structure substantially or that would adversely affect a particular group of users.

43. One of the fundamental premises of a price cap approach is that during the periods in which a given price cap is in effect, consumers have a legitimate expectation that they will not be paying rates in excess of those caps. A proposal to raise rates above the capped levels, even if justifiable on constitutional grounds,[99] would threaten that reasonable expectation and thus would seem to warrant thorough regulatory scrutiny. We invite comment on what the procedures, tariff filing requirements and standard for review should be in such circumstances. We ask in particular whether we should have a policy of suspending and investigating any proposal to revise a tariff that would violate the preset pricing constraints for that service, and if so, what sort of showing should we require of the carrier to warrant a conclusion that the proposed revisions should become effective. We seek comment on whether the substantial cause standard applied in *RCA Americom Communications, Inc.*,[100] would be an

---

[94] We discuss in paragraphs 48–51 *infra*, whether under a price cap approach to regulating rates, it would still be necessary to place a floor on rate decreases eligible for streamlined review.

[95] *First report supra* n.10 at 37. *See also* 47 CFR 1.773(a)(1)(ii) which provides that a petitioner seeking suspension of a tariff filed by a non-dominant carrier must demonstrate that: (a) there is a high probability the tariff would be found unlawful after investigation; (b) the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing; (c) irreparable injury will result in the tariff filing is not suspended; and (d) the suspension would not otherwise be contrary to the public interest.

[96] Thus, the presumption of lawfulness, which is an incident of the streamlined regulation we are proposing here, operates in effect as a rebuttable presumption against suspension. Our proposal here, therefore, would establish esentially the same kind of regulatory approach as was affirmed by the Court of Appeals in Advanced Micro Devices v. CAB, 742 F. 2d 1520 (D.C. Cir. 1984). In that case, the court upheld a decision by the CAB to establish a "no-suspension zone" for international cargo rate filings. Under CAB rules, cargo rates falling within such a zone would not be suspended, except in extraordinary circumstances. CAB rules also placed the burden on opponents of the rate changes to show reasonable grounds for investigating, or extraordinary circumstances for suspending a new rate within the zone. The court found these CAB rules to be reasonable and not contrary to the CAB's statutory obligation to ensure just, reasonable and non-discriminatory cargo rates.

[97] *See First Report supra* n.10 at 38.

[98] *See* Advanced Micro Devices v. CAB, where the court rejected arguments that the CAB's no-suspension zone policy, coupled with its elimination of the requirement for economic data to justify rate filings within the established zone, precluded shippers from a meaningful opportunity to challenge the reasonableness of those rates. While recognizing that opposing shippers would likely have limited access to cost data, the court found no reason to believe that the CAB would not properly respond to reasonable showings by the shippers that an investigation was warranted. 742 F. 2d at 1534.

[99] Our preliminary examination of the relevant law leads us to the tentative conclusion that if a carrier could demonstrate that rules or practices establishing rate ceilings for some or all of its services were confiscatory in their effect, the carrier would be entitled to adjust at least some of those rates above the levels defined by those rules or practices. *See* Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); Jersey Cent. Power and Light Co. v. FERC, *supra* n.55, 810 F. 2d at 1178; *but cf.* Connolly v. Pension Benefit Guaranty Corp., 89 L. Ed 2d 166, 179–80 (1986) (identification of three factors with "particular significance" in taking cases: (1) "the economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment backed expectations"; and (3) "the character of the governmental action") (citing Penn Central Transportation Co. v. New York, 438 U.S. 104, 178 (1978)).

[100] 86 FCC 2d 1197, 1201–02 (1981), *remanded sub nom. RCA American Communications, Inc. v. FCC*, Case Nos. 81–1558, et. al. (judgment entered July 21, 1982), *clarified on remand*, 94 FCC 2d 1338 (1983). In that proceeding we were investigating the reasonableness of a proposed revision to RCA Americom's tariff for fixed term transponder service. A preliminary issue we had to resolve was the appropriate standard for deciding the reasonableness of revisions to material provisions of the tariff midway through the fixed term of service. We found that because service subscribers had a legitimate expectation of stability in the material terms and conditions of service, the reasonableness of a proposal to change any of those terms "must hinge to a great extent on the carrier's explanation of the factors necessitating the desired changes at [the] particular time." *Id.* at 1201 (footnote omitted). We concluded that if a carrier could make a showing that substantial cause existed for departure from the original tariff terms, its decision to alter tariff terms could be considered reasonable. *Id.* at 1201–02.

appropriate standard for judging the reasonableness of such tariff revisions. We would propose to retain our current policy governing geographically averaged toll rates.[101] We would not permit geographical deaveraging of service rates prior to the completion of a comprehensive inquiry by this Commission into the relationship among geographic deaveraging, universal service and competitive pressures on dominant carriers.[102] We seek comment on the legal and policy justifications for these modifications to the price cap model.

2. Setting Price Limits

44. In this section of the *Notice*, we discuss different ways of defining what we mean by capping rates. We also discuss how we might set caps for existing and new services. Finally we discuss whether a price cap plan would need additional safeguards to protect against a dominant carrier underpricing some of its services. We seek comment on all the issues raised in the following paragraphs.

(A). The meaning of price caps. 45. Under a price cap approach, there is a presumption that as long as a carrier's adjusting rate levels for a capped service does not result in rates exceeding the preset cap, the new rates are not unlawful. For this reason, how we interpret the concept of price cap could have significant consequences both for ratepayers and carriers. Different ways of interpreting what is meant by a price cap could offer ratepayers different degrees of protection against rate increases and give carriers different degrees of protection against rate increases and give carriers different degrees of flexibility to change rate levels or even rate structures for capped services. We now present some different kinds of price caps and discuss the advantages and disadvantages associated with them.

46. At one extreme, the cap requirement could be interpreted to impose a ceiling on the average rates of capped services overall. This interpretation of the cap concept, which is the one the British plan adopts,[103] would give the carriers broad discretion to adjust its rate levels and structures for such services. All rate adjustments to capped services that were revenue neutral would be eligible for streamlined tariff review. In particular, tariff provisions that altered the rate structure for a capped service but were revenue neutral would be presumed lawful for tariff review purposes and eligible for streamlined treatment. At the other extreme, the cap requirement could mean a ceiling on the rate associated with each rate element of a service. Under this approach, if a tariff filing for a service proposed to leave the rate structure for that service unchanged and also either to lower or to leave unchanged the charge for each of its rate elements, it would be eligible for streamlined regulation. How proposals to change rate structures would be treated would still need to be resolved.[104]

47. In between the two extremes are a myriad of possibilities for defining the concept of price caps. For example, we might impose individual rate caps for certain services while grouping other services together and subjecting them only to a limit on how much their rates could on average increase, an approach similar to the British "RPI–3" constraint.[105] For some groups of services, we might supplement such a group rate constraint with one that limited the amount by which any individual service's rates could rise, a price constraint similar to the British "RPI+2" limitation.[106] Clearly the issue here is which interpretation of price cap strikes the best balance between our primary objective of protecting ratepayers against unreasonable charges for services and our giving carriers both the flexibility to introduce new, innovative services quickly and to provide the most efficient mix of services their networks permit and the incentive to do so. The optimal balance may, moreover, vary among services or groups of services. For example, because residential and small business customers have fewer alternatives than do large business customers, price caps for services upon which the former group depends should emphasize rate protection over carrier flexibility. For services upon which large users depend and which are subject to competition, a price cap allowing the carrier more flexibility to respond quickly to the specific needs of those customers may be a better choice. Commenters should identify the definition of price cap they would recommend be applied to the specific services or groups of services and discuss the factors that cause them to propose this formulation instead of others.

(B). Setting price floors. 48. Traditionally we have been concerned with protecting ratepayers from rates that were too high or unreasonably discriminatory. With the growth of competition, however, we have recognized that we must also consider whether rates are too low.[107] Under any regulatory reform we would adopt, both our section 208 complaint process and the antitrust law would provide forums for airing claims that rates for a particular service were predatorily priced. These are after-the-fact remedies for anticompetitive conduct, however. The price cap model has the potential to reduce, if not eliminate, the carrier's incentive to engage in predation. For predatory pricing to be profitable the predator must be able to raise its prices once it has driven its competitors from the market. Only in this way will it be able to recoup the losses it incurred during the period of below-cost pricing. Effective price ceilings, however, would reduce, if not eliminate, a carrier's ability to raise its rates to reap the benefits of predation.

49. Price cap regulation could also limit a carrier's ability to engage in predation. Under such regulation, a carrier should be unable to offset revenue shortfalls from one service with excess earnings from another service. How effective the protection offered by safeguards intrinsic to a price cap approach would be would depend, however, upon the way we defined price caps. A price cap defined in terms of a ceiling on the average rate of a group of services might, in theory, permit a carrier to price one service at predatory levels and to recoup the shortfall from other services for which it has market power. Price caps, even set on a rate element by rate element basis, could create an opportunity for predation if they were set too high. We seek a regulatory approach based on the price cap model that could avoid these flaws.

50. We have tentatively concluded that an acceptable price cap approach would retain our bar against resale restrictions.[108] Such a bar offers

[101] *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, *Reconsideration Order, supra* n.39, 97 FCC 2d at 740; MTS and WATS Market Structure, CC Docket No. 78–72, Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 179, 188–95 (1980).

[102] *Reconsideration Order, supra* n.39, 97 FCC 2d at 740.

[103] *See* description of the British plan *supra*, at paras. 28–29.

[104] We discuss the issues raised under these circumstances in para. 54, *infra*.

[105] *See* para. 28 *supra*.

[106] *See* n.67, *supra*.

[107] *See* Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84–1235, Memorandum Opinion and Order, *supra* n.28, 50 FR at 42,946.

[108] *See* para. 40, *supra*.

additional protection against predatory rates. Another safeguard that would complement a price cap approach to regulating rates would be imposition of a minimum duration requirement on any proposal that would reduce rates. In our *OCP Guidelines* proceeding, some commenting parties suggested that a combination of price caps and a duration requirement might offer an effective check on predatory pricing.[109] A third alternative would be to establish price floors for certain services. The economic literature presents several potential standards we might use in setting such floors. These include long run incremental cost, marginal cost and average variable costs.[110] Our MTS optional calling plan guidelines rely on a fourth standard, the net revenue test, to assure that rates are not too low. Any of these standards is likely to be costly and time-consuming to apply. It might also be possible to define a floor in terms of a fixed percentage of the price cap, so that a carrier could vary rates for a service under streamlined regulation as long as the rates were not greater than the cap nor below some fixed fraction of the cap. To the extent that price caps already provide some protection against predation by reducing both a carrier's ability and its incentive to engage in predation, this more mechanistic approach to setting floors might be an adequate auxiliary safeguard.

51. We seek comment on the degree to which predation remains a threat and how we could best prevent predation under a price cap approach to regulating rates. Those concluding that additional safeguards are necessary to achieve this result should identify the least intrusive requirements that they believe could meet this goal. We recognize that the additional safeguards commenters may propose are likely to depend upon how price caps would be defined and applied. For this reason, we ask parties commenting on the need for additional safeguards against predation to identify any assumptions they have made about how caps would be defined or applied. Those supporting the use of a duration requirement should identify those services or groups of services to which they would apply it, as well as indicating the time constraint they would impose on a carrier's ability to raise those rates without being subject to comprehensive regulatory review.[111] We also invite comment on the need for floors for some or all services, as well as which method of setting those floors would best balance our interests in preventing predation, in bringing to the public services at the lowest reasonable rates, and in reducing the time and cost associated with achieving the first two objectives.

(C). Introducing regulation by price caps. 52. (1) *Services subject to price caps.* Preliminary to introducing a comprehensive regulatory regime based on price caps, we must determine to which services a price cap would apply. We recognize that it might be possible to rely on market forces to reduce the set of services to which we would apply price cap regulation. This is a possibility that we will explore briefly in this Notice, with the expectation that it will receive closer scrutiny in a subsequent proceeding.[112] It is our tentative conclusion, however, that if a price cap approach to regulating rates for dominant carriers' interstate services is introduced, all services offered by such carriers should initially by subject to a price cap constraint, however that is defined.[113] In particular, we would propose that a cap constraint be applied to all services with effective tariffs on the date that any price cap approach to regulation would be introduced. While this might be a more conservative approach to regulatory reform than necessary to fulfill our statutory obligations, we tentatively find that this approach would offer ratepayers the most complete protection against a dominant carrier's overpricing its services. Its administrative simplicity would also facilitate prompt introduction of a regulatory reform that we have tentatively found to be in the public interest, thus bringing to the public as quickly as possible the benefits of this reform.

53. We would also need to determine whether we should cap rates for services introduced after regulatory reform became effective. We tentatively conclude that these services too should be capped. Capping new services would extend the protection against unreasonably high rates to subscribers of those services. A decision to cap services would, however, require that there be some predetermined procedures and mechanisms for setting caps, which could prove to be a substantially more difficult task than setting caps for existing services.[114] We seek comment on our tentative conclusion that new services should be capped and on the procedures to be used to determine such caps. We also seek comment on whether we could, consistent with our obligations under the Communications Act, apply streamlined regulation to such services if we decided not to impose a price cap constraint on them.

54. Finally, we might need to decide how to treat a dominant carrier's proposal to restructure the rates of a previously capped service. Depending upon how the price cap constraint governing the original service had been defined, it could become necessary not only to determine the price cap constraint that should govern the restructured service, but also whether the rates proposed by the carrier met their constraint. Whether we had, for example, decided to impose price limits on each rate element of that service, or instead had defined the concept of price limits to give the carrier more flexibility to adjust rates without triggering rigorous scrutiny would determine how difficult these tasks would be, as well as how we would attempt to execute them. Aside from the practical problems posed by a decision to cap the restructured service, permitting the restructered

---

[109] *See* Comments of MCI Telecommunications Corporation filed in Guidelines for Dominant carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84-1235, at 15; Comments of RCI Corporation filed in the same proceeding at 8-9.

[110] In our *Private Line Rate Structure* decision, *supra* n.28, we reviewed the relevant antitrust case law seeking to discover the antitrust standard for determining predation. We found that virtually every court and commentator agreed that prices exceeding both average and incremental cost were at least presumptively lawful. 97 FCC 2d at 945-46, n.61 (citing P. Areeda & D. Turner, *Antitrust Law*, para. 711.1c at 118 (1982 Supp.)). Recognizing that our concerns under our public interest standard were somewhat different than those of the antitrust courts, however, we declined to adopt any specific standard for determining the reasonableness of volume discounts for private line services. *See id.* at 949. Instead we decided to review filings proposing volume discounts on a case-by-case basis, judging them in light of our concern that the discounts fit into an integrated rate structure of similar service offerings and contribute to meeting competition and to reasonable rates and efficient services for all users. *Id.*

[111] *See* para. 43, *supra*, for a discussion of what "comprehensive regulatory review" might entail under a price cap approach to regulating rates.

[112] Reliance on market forces to reduce the set of services subject to direct regulation through price ceilings was an intrinsic part of the price cap plans presented in both the Haring and Kwerel paper and the Baumol and Willig paper on the same subject. *See* Haring &. Kwerel, *supra* at n.45, and W. Baumol & R.D. Willig, *supra* at n.58.

[113] For purposes of this *Notice*, we have used the term "service" as a synonym for each schedule of rates and carrier-prescribed rules appearing in tariff filings with this Commission. We would consider two services to be distinct if their corresponding tariffs contain different sets of terms and conditions under which the dominant carrier offers either a class or subclass of interstate facilities or services available to the public. Thus while Direct Distance Dialing and Reach-Out-America are both included in AT&T's Tariff F.C.C. No. 1, its MTS tariff, we would consider each to be a separate service because each is governed by a distinct schedule of rates and carrier-prescribed rules.

[114] *See* para. 57 *infra*.

service to replace the original service could raise policy questions such as whether the public interest would be enhanced or harmed by replacing the old service with the new service. Some rate restructuring, even if made subject to price caps, could conceivably still endanger universal service, constitute unreasonable rate discrimination among different classes of customers or expose some classes of ratepayers to exorbitant charges for the services they would receive.[115]

55. As we gain experience with this mode of regulation, it might become possible to narrow the set of services to which the price cap constraint applied without endangering the public interest. For example, we might be able to designate a set of "core" services to which we would continue to apply the price cap constraint. These services might be chosen in such a way that every service over which the carrier has market power would either be in the core itself or would have a chosen substitute within that core.[116] Thus, services not designated "core", while remaining subject to streamlined tariff review, would no longer be, or need to be, subject to the price cap constraint. We have tentatively concluded that if a price cap approach to regulating rates is introduced, a price cap constraint, however that is defined, should initially apply to all services. We seek comment on that tentative conclusion. We also seek comment on whether it would be possible to define such a set of capped services consistent with our statutory obligation, as well as on the standards we might apply to identify them. We would anticipate, therefore, that the record we develop on this issue in this proceeding would enable us to revisit this question at a later date, at which time we might be better prepared to formulate such a proposal for reduced regulation. Such a proposal would clearly be in the public interest to the extent that it could simultaneously increase both carrier's incentives to seek greater efficiencies in their operations and their flexibility to respond promptly to consumer demand without creating a significant risk that the resulting rates would be unreasonably high.

56. (2) *Setting caps initially.* A second question we would need to answer before we could introduce any price cap approach to regulating carriers' rates is how to set the initial caps. The simplest option would be to start from the *status quo.* An adjustment to a service's rates would meet the ceiling requirement if it did not exceed the cap defined by rates in effect on the day price cap regulation became effective. While the fact that these rates were effective would not imply that they were just and reasonable, it would imply that they had been already scrutinized closely by competitors, subscribers and Commission staff and had been found not patently unlawful. For this reason they would appear to be a reasonable point of departure for the new regulatory approach.[117] To the extent interested parties had raised questions about the justness or reasonableness of those rates that were the subject of either an ongoing investigation under section 204 of the Act or our section 208 complaint process at the time price caps were introduced, any prescribed changes to rate levels could be reflected by appropriate dollar for dollar adjustments to the existing price caps.[118] Replacing our current form of regulation with a price cap approach might also require that we determine how a carrier meets refund obligations that may have arisen under our current form of regulation. For example, a carrier may have refund obligations arising from operation of our Part 65 rules for periods preceding the introduction of the price cap approach [119] or from an accounting order that antedated our use of price cap regulation. These refund obligations may become certain only after the price cap approach had become effective. Perhaps the most straightforward way to assure that the customers to whom a refund was owed would receive it would be to require the carrier to give these customers either a direct refund or a credit on their current bill equal to the amount owed. Another approach would be to modify the associated cap, either temporarily or permanently. We seek comment on the relative advantages and disadvantages of both these approaches.

57. Another option would be to seek only to develop a general standard for setting initial price caps in this proceeding. Baumol has suggested that "stand-alone costs" might be used for this purpose.[120] The development of such a standard might be prudent regardless of how we might decide to set initial caps. If we must subsequently determine price caps for new or restructured services,[121] an established standard or methodology for setting them could reduce the delay in the introduction of the services caused by the need to make these calculations. For this reason, we seek comments discussing the advantages and disadvantages of adopting the Baumol proposal as such a standard. In particular we seek comment on whether the use of a stand-alone cost standard would lead to unreasonably high price caps. Parties may also suggest other possible candidates for use in defining price caps for specific services. Parties proposing such alternatives should indicate the kind of information that we would need to apply the standard they suggest as well as the precedent, if any, for reliance on the standard to define the caps they propose. Because this option would require an additional proceeding to establish price caps, it would appear to be more time-consuming than using current rates to

[115] For example, a proposal to replace the current MTS rate schedule with a two-part tariff structure like the Pro-America tariff could have such an undesirable result.

[116] The core concept is discussed by Haring and Kwerel. *See* J. Haring & E. Kwerel, *supra* at n.45. *See also,* Statement of Commissioner Mimi Weyforth Dawson re: Decreased Regulation of Certain Basic Telecommunications Services, CC Docket No. 86-421, 1 FCC Rcd 645, 657-59 (1987).

[117] Such an approach would be similar to the one now routinely followed when the LECs must amend access tariff rates to reflect changes in the prescribed levels of subscriber line charges or attributable to amended separations procedures. *See* FCC Public Notice, "Commission Specifies Procedures and Support Information for Tariff Filings to Implement July 1 Increase in Subscriber Line Charge and Corresponding Reductions in Long Distance Rates", Mimeo No. 3037 (released Apr. 30, 1987). In these cases the determination of whether the revised rates may become effective turns on the Commission's review of changes to the rates, not on a review of the underlying rates themselves.

[118] We are presently investigating certain special access rates which have been characterized by some as examples of "strategic pricing." *See* Annual 1985 Access Tariff Filings, Mimeo No. 7401 (released Sept. 30, 1985) at para. 62, *aff'd on review,* FCC 86-379 (released Sept. 2, 1986), *appeal pending sub nom.* Western Union Telegraph Co. v. FCC, No. 86-1592 (D.C. Cir.).

[119] *See* 47 CFR 65.700-65.703.

[120] Stand-alone costs represent the theoretical maximum rate that a firm could charge for a product without substantial diversion of business to a new competitivde entrant in a market. W.J. Baumol, Paper, "Modified Regulation of Telecommunications and the Public Interest Standard" Presented at the Offices of the FCC, at 26 (dated Aug. 25, 1986; presented Dec. 5, 1986) (available in FCC Library). Such costs are relevant to "contestable markets" or markets where economies of scale may make perfect competition impossible, but in which the threat of competitive entry exerts effective competitive pressure. *Id.* at 13-14. They are "stand-alone" costs because they represent what it could cost to provide a given product, if it were the only product produced and had to bear all fixed costs otherwise shared by additional products. *Id.* at 26-28, notes at bottom of page. Even if we were to adopt a price cap approach in which we used existing rates to set the initial price caps, we could still face the need to define price caps for new or restructured services. If we had already established standards or an approved methodology for their calculation, this could hasten the introduction of the service needing to be capped. For this reason the development of such a standard may be in the public interest regardless of the way we might select to set initial caps.

[121] *See* discussion at paras. 53-54, *supra.*

define the initial price caps. We also note that this option could increase the need to establish price floors. The generic approach would, however, set standards that we could apply to calculate a price cap for any service or group of services. We invite interested parties to propose other methods by which we might set price caps initially. We invite commenting parties to present their own analysis comparing the relative advantages and disadvantages of the two options we have presented and any other method they would propose for setting initial price caps. We ask commenting parties to identify the assumptions they have made about how these issues would or should be resolved.

3. Selecting Adjustment Factors

58. The price cap model anticipates periodic revisions to the price ceilings on services. The model would tie the need for such revisions to readily quantifiable changes to specific factors affecting the carrier's costs of providing service, but generally beyond its direct control. The object of the last qualification is to remove from the carrier any significant ability to affect the level of the adjustments to the price caps. We tentatively conclude that this should be a characteristic that we would generally wish any adjustment factor we might adopt to possess.[122] For this reason, as a first step toward identifying such factors, we seek to separate the cost factors over which a carrier may exert direct control from those which are exogenous. In the former category we would include those resource expenditures that are controllable by each carrier (for example, construction, maintenance, advertising, or charitable contributions). In the latter category we would include changes in the general level of prices, changes in national tax policies and rates, changes in jurisdictional separations, and rate changes imposed by regulatory fiat (for example, subscriber line charges). We tentatively conclude that adjustment factors should be drawn from those cost factors falling into the latter category. In the paragraphs that follow, we present several additional tentative conclusions and concerns about how we should select adjustment factors and when and how we should use them to revise price ceilings and specifically seek comment on the topics we discuss there. By doing this, however, we have not intended to foreclose comment on other facets of these proposals. For this reason we repeat our invitation to all interested persons to comment fully upon all the issues related to the topics discussed in this *Notice*.

59. Applying the price cap model to ATT's interstate operations, Haring and Kwerel had proposed indexing price caps to reflect changes to the purchasing price of money, projected trends in industry productivity and changes in access charges.[123] In the following paragraphs, we discuss additional factors, changes to which might warrant adjusting price ceilings to assure that rates remain within the "zone of reasonableness." We tentatively conclude that any price cap plan we might adopt should provide for periodic adjustment of price caps to reflect the factors identified by Haring and Kwerel as well as some other factors that directly affect dominant carriers' cost of providing their interstate services. The carriers would also have little direct control over these additonal factors. Such additional factors would include changes in tax laws, in the Separations Manual and, for AT&T in access charge levels. The use of these factors would continue to tie the lawfulness of rates to costs, at least on an industry-wide basis, because these factors are themselves clearly tied either directly to changes in the carrier's costs of operation (*e.g.*, access charges, separations, tax code changes) or to changes in industry-wide costs of operation (*e.g.*, inflation, growth in productivity). We seek comment on the suitability of these factors as bases for adjusting the rates of some or all capped services. We also invite commenting parties to identify other factors reflecting or affecting a carrier's costs of providing services that could or should be added to the list presented above.

(A) *Generalized price level adjustments.* 60. A decision to use the purchasing power of money as an adjustment factor would require that we select some measure of or surrogate for this concept, or more important, changes in it. Ideally the surrogate would have several properties. Most important, changes to it over a recent fixed period would provide a reasonable measure of changes to the purchasing power of money over the same period. Its determination should be straightforward and not subject to reasonable challenge. Two possible candidates for the surrogate are the consumer price index, or CPI, and the producer price index, or PPI.[124] We note that while the CPI is perhaps the better known measure of inflation, the PPI is perhaps a more accurate measure of changes in the carrier's cost of producing its services. We seek comment on our tentative conclusion that any price cap plan should require periodic adjustments to price ceilings (or floors) to reflect changes in the purchasing power of money. We also seek comment on the relative advantages and disadvantages of the indices we mention above as well as any other indices a commenting party would propose to measure changes to the purchasing power of money. We also invite comment on whether we could or should use the same inflation index for AT&T and the LECs.

61. Having selected an index, the next task would be to determine the change in that index over some fixed period that would form the basis for our adjusting price caps. We could simply take the difference between its value at the beginning and the end of that fixed period; another option would be to take the difference between the value of the index at the beginning of the period and the average of the index over that period. While not as simple as the first approach, the method using averages mitigates the effect of one-time aberrations. We seek comment on the advantages and disadvantages of either approach, as well as of other ways to measure the change in the index that would be used to compute an adjustment to price caps. Interested parties should also discuss what would be a suitable period over which to examine changes to the index and whether we should consider forecasts of changes to the index.

(B). Measurements of changes in productivity. 62. All other things being equal, increases in productivity, whether resulting from technological change or from other factors that increase efficiency, should result in lower prices for telecommunications services than would otherwise be the case. For this reason, we would also propose to include an adjustment factor designed to reflect the rate at which productivity is increasing either within the exchange, interexchange or entire telecommunications industry or within a comparable industry. The purpose of such an adjustment would be to pass on to consumers the benefits of anticipated increases in productivity and the resulting reductions in costs. We note that the price cap approach to regulating rates of British Telecom applied the RPI-3 formula, an annual price cap

[122] *But see* n. 126, *infra*.

[123] J. Haring & E. Kwerel, *supra* n. 45, 2 FCC Rcd at 1493.

[124] For a discussion of how these indices are defined and computed, *see* J.L. Lande & P.L. Wynns *Primer and Sourcebook on Telephone Price Indexes and Rate Levels*, Industry Analysis Division, Common Carrier Bureau, FCC (1987).

adjustment derived by deducting an assumed productivity measurement from a macroeconomic price measurement analogous to our Consumer Price Index. While data relating to British Telecom's past productivity appears to have set the bounds within which the productivity figure would fall,[125] the selection of 3 percent for the assumed productivity factor was the result of negotiations between the British government and British Telecom. We seek comment on whether this approach to selecting a productivity factor could be adapted for our use in revising price caps for domestic and international services.[126] We also seek to identify other indices that we might consider using as a measure of productivity as well as possible sources of information generally available to the public from which we might calculate such a factor. In particular, we invite comment on whether there should be a different productivity factor for AT&T and the LECs, and, if so, how they could and should be developed. As with the generalized price adjustment factor, we seek an index that is straightforward to calculate and not susceptible to reasonable challenge. We invite comment addressing how changes in productivity should be measured with respect to regulated services and, for operations that have some fixed costs, how changes in productivity may be separated accurately from exogenous changes in demand. We request comment on how we may properly remove, or make allowance for, the effects of inconsistent accounting data or endogenous changes in the measurements of demand that result from the application of the flexibility in pricing that would be inherent in any capping approach.[127]

(C) Other factors. 63. For the remaining factors we have discussed above,[128] a dominant carrier should be able to quantify the impact on its operations of specific changes. We request commenting parties suggesting that price ceilings be adjusted to reflect other factors indicate the method by which they would propose we measure changes to those factors. In particular we solicit comment on whether the list of adjustment factors should be enlarged to include international accounting rates for AT&T and those LECs providing international services to which such rates apply.

4. Adjusting Price Caps

(A) Methodology for calculating cap adjustments. 64. We tentatively conclude that a comprehensive price cap plan should also specify guidelines for adjusting price caps based on changes in previously identified factors like those we discussed above. While our ability to specify such a procedure would be a function of the factors ultimately selected, we can identify certain questions that would have to be answered regardless of the factors finally chosen. In this section we pose those questions and discuss the advantages and disadvantages associated with some of the different ways we might answer them. We also discuss specific issues that would arise as we sought to develop a formula for adjusting price limits to reflect changes in the factors described in the preceding section.

65. A formula or methodology for adjusting price caps to reflect a change in a specific factor requires two generic steps. First we must identify those services for which a change in the factor would warrant a change in the associated price caps. Then we must determine how much these price ceilings should be raised or lowered to reflect an incremental change in that factor. We tentatively conclude that any adjustment formula should, to the extent possible, match specific adjustment factors with those services the costs of which are most directly affected by those factors. Changes to that factor could lead to adjustments of only the price ceilings associated with those services. Under this approach, a change in the purchasing power of money could be reflected in adjustment to all price caps, while a change in switched access charges could result in an adjustment only to price caps associated with interexchange switched service offerings.

66. We now focus on the second step of the process, development of a set of rules for transmuting changes in a specific adjustment factor into a revised price cap for a related service. The initial issue arising here is the extent to which we should require a carrier to revise price ceilings to reflect a change in the adjustment factors. We tentatively conclude that for AT&T, in particular, changes in the rates for an access service it used to provide a given service should result in a dollar for dollar flow through of the increase or decrease in that service's associated price cap. We also tentatively conclude that for any dominant carrier subject to price cap regulation, a change in the index of productivity should be reflected by a corresponding percentage change in the caps for all its services.

67. For other adjustment factors it might be reasonable to leave the carrier with some discretion concerning the extent to which its price caps would be revised to reflect changes in those factors. For example it might be reasonable to leave to the carrier's discretion whether its price caps would be revised to reflect either changes in the purchasing power of money as long as inflation continued or cost increases for interstate services attributable to changes in separations or tax liability. We also seek comment on whether it would be reasonable to key the obligation to revise caps to reflect changes in separations or tax liability on those changes exceeding some threshold limit. Moreover, we might not require adjustments to price caps when changes to separations rules or tax codes did not lower the costs of interstate operations by more than a preset dollar amount. We solicit comments on the proposals we present in this paragraph as well as on our proposal that in certain circumstances it might be advisable to leave the carrier with some discretion concerning the changes in adjustment factors that would trigger a revision of its price caps. Commenting parties should identify the adjustment factors for which they believe such flexibility could be given as well as the limits they would impose on that discretion. They should discuss why the flexibility they support would be consistent with our obligation to assure that rates are just and reasonable. We also ask for

[125] *See* Littlechild Report, *supra* n.60, at 35.

[126] One possible adaptation might be to use a ten year moving average of the firm's (or the economy's) historical productivity. This rolling average would permit the carrier in a given year to retain any productivity gain, while in subsequent years ratepayers would subsequently share in those gains. This might be one way to assure that subscribers to a given service would share in the benefits created by any efficiency gains made in the provision of that service. (It might also lead to their sharing in the effects of any decline in productivity associated with the service to which they subscribed). It would be necessary to define the formula by which we would propose to measure productivity gains for the firm (or the economy). Because it would be based upon historical data rather than projections, however, the actual calculation would be quite straightforward and, assuming the arithmetic was correct, unlikely to be subject to debate. On the other hand the use of the firm's own record of productivity could lead to the sort of gaming that we would seek to avoid through a price cap approach. We are also uncertain about the extent to which use of the firm's own productivity record would dampen its incentive to maximize efficiency.

[127] Inconsistencies may arise, for example, from the use of different accounting principles at different points in time by the same firm, the inconsistent application in practice of the same principles over time by the same firm or by different firms, or from the use of historical costs for telecommunications plant of different vintages by the same firm or by different firms.

[128] *See* para. 58, *supra*.

commenters' views on whether a carrier should be able to carry forward unused allowable adjustments for use in later years, as the British plan permits.[129] For each adjustment triggering a change to price caps, we would also need to determine the extent to which we would take into account the stimulation or repression of demand likely to arise from the change in rates allowed as a consequence of the change to the price cap. Again there may be some adjustment factors, for example, increases in subscriber line charges, for which we would be more concerned that we accurately estimate those effects. We invite comment on the extent to which we should take stimulation and repression into account in determining price cap adjustments associated with a change to each of the adjustment factors we discussed in paragraphs 58 and 62 *supra*, as well as any additional factors that a commenting party has proposed.

68. Changes to some of the adjustment factors we have identified would probably be expressed in percentages. This index or some fraction of this index could then be applied directly to existing price caps to define new price caps. For example, if the measure of inflation we were relying upon had increased by 2% over the specified fixed period used to measure changes in the purchasing power of money, this could easily translate into a 2% (or less) [130] increase to price caps to reflect inflation.

69. For other adjustment factors, computing the appropriate price cap revision is likely to be more complicated. Changes to rates for a given access service cause changes in the costs of providing those interexchange services using it. Before the associated price caps for those services could be revised, it would be necessary to apportion those cost changes among the affected services and possibly even among the rate elements of individual services. At one extreme, this could be achieved through cost allocation rules leaving little discretion to the carrier as to how it should make the apportionment. At the other extreme, this could be left to the carrier's discretion. That extreme, however, would at least in theory permit the carrier to revise price caps so that the cap associated with the service for which it possessed the greatest market power received a disproportionate adjustment upward. The result could be unreasonably high rates for customers of that service. Depending upon how we defined the price caps associated with different services or groups of services, it seems likely that a prescribed cost allocation approach may not be necessary to protect ratepayers against unreasonable rates. Even now the carriers possess flexibility in the way they reflect changes in access costs and to separations rules in their tariff filings.

70. We seek comments discussing ways to achieve an allocation of costs that strike a fair balance between ratepayer protection against unreasonable rates and carrier flexibility. We also seek comment upon how caps should be adjusted when changes occur in jurisdictional separations, tax rates or policy, and, in the case of interexchange carriers, when changes occur in access charges. In this regard, we are particularly interested in ascertaining how such adjustments could be made without our becoming mired in the cost accounting and rate of return assessments associated with traditional rate-of-return regulation.

(B) Procedural issues. 71. We note that the price cap model anticipates periodic adjustments to existing price caps to reflect changes to designated factors. Either the passage of a specific period of time, for example, one or two years, or the occurrence of a specific event, for example specified changes in economic conditions, changes in productivity, or the filing of new access charges, might be a reasonable trigger for such review of existing caps. It might also be reasonable to require annual price cap adjustments to reflect changes to specific adjustment factors, like access charges for AT&T or other adjustment factors for some or all carriers subject to price cap regulation. We also forsee a need periodically to conduct a more general reexamination of the price cap levels set for each carrier subject to this form of regulation to assure that adjustments to those caps made based upon changes to the specified factors were continuing to protect adequately the interests of both that carrier's ratepayers and its shareholders. We seek comment on how frequently price caps should be reevaluated or adjusted to reflect changes to each of the adjustment factors we described in paragraphs 58 and 62, *supra*, as well as to any other adjustment factors that a commenting party has suggested we add to our list. We also seek comment on whether the general reexamination should be scheduled with prescribed frequency (*e.g.*, every five years) or should occur when the Commission or a carrier preceives a need for such review.

5. Impact of Price Caps Regulation on Current Commission Procedures

72. We at present have many regulations and procedures designed to help us perform cost-of-service regulation.[131] If we were to adopt a price cap approach to regulating the rates of AT&T or the LECs, we would need to review these regulations and procedures to determine what their continuing role should be in the new regulatory environment. It is possible that some might have no role. For example, the rules and procedures directly related to our rate of return represcription and enforcement would seem to fulfill no useful function under a price cap approach to regulating rates. For other rules there would be a continuing need regardless of how we regulated rates. In this category would fall our Uniform System of Accounts (USOA) because the carriers would still be obligated to separate the costs of their regulated operations between the federal and state jurisdictions. The rules for accomplishing this are framed in terms of the USOA.

73. Into a less certain area fall the rules and procedures governing represcription of depreciation rates, the rules governing circuit additions and even the cost allocation rules of regulated and unregulated activities of carriers. In theory, with a price cap approach there should be no need to control the carrier's rate base or expenses, nor should there be a need to worry about cross subsidies between regulated and unregulated service offerings or among regulated service offerings. The price cap model in its purest form would eliminate the incentive for rate base inflation or cross subsidization. In that we intend to continue monitoring for excess earnings, however, we have departed form the pure model. While we believe that this modification to the price cap model is necessary for legal and policy reasons, we also recognize that it has the unfortunate side effect of restoring some of the incentive to misallocate between regulated and unregulated service offerings and reducing the incentive to maximize efficiency. It also may create

[129] *See* n.66, *supra*.

[130] *See* discussion *supra* at paras. 60–61. We note that annual revisions to access charges, whether cost-based or subject to price cap regulation, might already reflect changes in the purchasing power of money. For example, to the extent that AT&T's price caps would already be adjusted to reflect changes in access charge rate level, the effect of inflation on this share of its operating costs would already be reflected by an adjustment to its price caps. In this case it might be more appropriate to limit any adjustment to its price caps to reflect changes in the inflation rate not already reflected in the access charge adjustment.

[131] *See* discussion *supra* at paras. 7–12, describing these rules and procedures at greater length.

a need for the retention of some regulatory tools that would be superfluous under a pure price cap method. Even if there were no need for some of these rules in the long term, it might be prudent to retain them until experience with the new approach to regulating rates offered us reasonable assurance that there would be no need to return to cost-of-service regulation. We also solicit comment on the impact a price cap approach to regulating rates for basic services would have upon the rules and policies governing the provision of CPE and enhanced services by AT&T and the BOCs.[132]

74. We seek comment on the extent to which we should continue to apply existing rules in Parts 63 and 65; as well as the Interim Cost Allocation Manual, the cost allocation requirements of CC Docket No. 86–111 and the depreciation rate represcription procedures to AT&T if we were to decide to regulate this carrier under a price cap approach. Commenting parties should indicate whether they support the long term retention, the short term retention or the elimination of each specific category of rules or procedures listed above and should provide the basis for their position. We also seek comment on the extent to which we should continue to apply existing rules in Parts 63, 65, and 69, as well as the cost allocation requirements of CC Docket No. 86–111 and the depreciation represcription procedures to the LECs now subject to them if we were to decide to regulate these carriers under a price cap approach. Again commenting parties should indicate whether they support the long term retention, the short term retention or the elimination of each specific category of rules or procedures listed above and should provide the basis for their position.

VI. Application of the Price Cap Approach

75. We tentatively conclude that a price cap approach to regulating rates promises many benefits to consumers which outweigh the disadvantages it may possess. As discussed above,[133] we now seek to determine whether a price cap approach can be implemented that would result in a more effective means of regulating rates than our current form of regulation. If our analysis of the benefits offered by this model is correct for all markets, its prompt applications to both AT&T and the LECs would clearly be in the public interest.[134] Implementation of this form of regulation for the LECs, however, raises administrative issues that appear to be more complex than those for AT&T. First, there is the issue of implementing a price cap method of regulation while current pooling arrangements continue among the LECs. Presently our access charge scheme call for two different pools, the mandatory one associated with non-traffic sensitive (NTS) costs and the voluntary one associated with traffic sensitive costs. In addition to the two pools themselves, there are also two depooling dates associated with the NTS pool.[135] The existence of the two pools and the two different depooling dates may complicate efforts to implement price caps for the LECs.

76. Second, there is the difficulty of implementing a price cap method of regulation for a large number of widely differing companies. There are now approximately 1400 LEC.[136] Some are very large, both in terms of annual revenues and in terms of number of access lines they provide; others are very small.[137] Some are private corporations, others are cooperatives obtaining at least some of their capital from the federal government. A few are government owned and operated. Some of these carriers file individual tariffs based on their costs of providing interstate services. Others, while participating in the NECA tariff filing and pooling arrangements permitted under Part 69, are compensated for the access services they provide based on their individual costs of service. Still others participate in the NECA tariff filings but are compensated by NECA under the average schedules designed for carriers that do not compute their interstate costs. With such rich diversity in the capital structure and legal nature of the LECs as well as in the manner in which they determine the rates they charge for their interstate services and receive compensation for those services, a price cap approach to regulating their interstate basic service rates that accounted for or reflected that diversity would likely take longer to develop and would be more difficult to implement than would a price cap approach developed for only a single interexchange carrier.[138]

77. Thus we tentatively conclude that we would implement a price cap approach to regulating the rates for AT&T's interstate and international basic services before we did so for the LECs. We seek comment on this and on any other implementation issues and problems. We also invite comment on the timing of the implementation of such regulatory reform for both the LECs and AT&T.

VII. Regulatory Flexibility Act Initial Analysis

78. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the rule change proposed in this proceeding is exempt from application of the statute because it will not have a significant impact on a substantial number of small entities. A small business concern is defined in section 3 of the Small Business Act as a concern which is not dominant in its field of operations. 15 U.S.C. 32; 13 CFR 121.3(c). The rules proposed in this proceeding would apply to dominant carriers only and hence would not have a significant impact on small entities.[139] This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Analysis

79. The rulemaking proposed herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements as contemplated under that statute. It will not increase the collection of information burden imposed on the public.

IX. Ex Parte Requirements

80. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period

---

[132] *See* n.8 *supra*; Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., CC Docket No. 85–26, *Order*, 102 FCC 2d 655 (1985), *modified on recon.*, FCC 86–341 (released Aug. 7, 1986); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies, CC Docket No. 86–79, *Report and Order*, 2 FCC Rcd 143 (1987).

[133] *See* Section V.D., *supra*.

[134] Should the comments indicate a need to tailor the price cap model to the characteristics of the LECs, we stand ready to adopt the form of alternative regulation supported by the record that is consistent with our desire to capture for consumers and carriers the benefits of more effective regulation.

[135] MTS and WATS Market Structure, CC Docket No. 78–72, *Report and Order*, 2 FCC Rcd 2953 (1987).

[136] *See* Phone Facts 1987 at 16, United States Telephone Ass's (1987).

[137] *See e.g.*, *id.* at 17–22.

[138] We also note that a staggered implementation schedule would enable us to use our own resources more efficiently.

[139] Although the Regulatory Flexibility Act is not applicable, we are always anxious to obtain comments on the possible impact of any proposed rule on small entities, including small telephone companies.

is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases a final order; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

81. In general an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner to staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

82. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order.

X. Ordering Clauses

83. Pursuant to our authority under sections 4(i), 4(j), 201–205, and 403 of the Communication Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 201–205 and 403, *it is ordered* that this rulemaking proceeding is instituted. Comments on the proposed rulemaking shall be due on October 19, 1987 with reply comments due on November 19, 1987.

84. In accordance with the provisions of § 1.419(b) of the Commission's Rules, 47 CFR 1.419(b), *it is ordered* that an original and five copies of all comments, replies, pleadings, briefs and other documents filed in the proceeding shall be furnished to the the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters at 1919 M Street, NW., Washington, DC.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–20584 Filed 9–8–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Periods on the Proposed Endangered Status for the Shasta Crayfish and for the Tipton Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of extension of comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment periods will be extended for two separate proposed rules to determine endangered status for the Shasta crayfish, which occurs only in Shasta County, California, and the Tipton kangaroo rat, which is restricted to the Tulare Lake Basin of south-central California. The extension of the comment periods will allow comments on both of these separate proposals to be submitted from all interested parties.

DATES: The comment periods for both proposals, which originally closed on September 8, 1987, are extended to November 8, 1987.

ADDRESSES: Written comments and materials on each of the separate proposals should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hour at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Shasta crayfish (*Pacifastacus fortis*) is a decapod crustacean of the family Astacidae. The species is presently found only in Shasta County, California, in the Pit River drainage and two tributary systems, the Fall River and Hat Creek Subdrainages. A proposal of endangered status was published in the **Federal Register** (52 FR 26036) on July 10, 1987. The comment period on the proposal originally closed on September 8, 1987. There was not a timely request for a public comment hearing. The comment period is now extended an additional 60 days, to November 8, 1987. Written comments may now be submitted until November 8, 1987, to the Service office in the Addresses section.

The Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), a small mammal, was distributed historically in the Tulare Lake Basin of the San Joaquin Valley, encompassing portions of Fresno, Kings, Tulare, and Kern counties. Conversion of native wildlands for agriculture production has seriously reduced its habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 26040) on July 10, 1987. There was not a timely request for a public comment hearing. The comment period on the proposal originally closed on September 8, 1987. The comment period is now extended an additional 60 days, to November 8, 1987. Written comments may now be submitted until November 8, 1987, to the Service office in the Addresses sections.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–

159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 2, 1987.

David F. Riley,

Acting Regional Director.

[FR Doc. 87-20723 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

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

Animal and Plant Health Inspection Service

[Docket No. 87-110]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing of a Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning its authorization given to SyntroVet, Inc., to conduct limited field trials of a veterinary biological product, for a recombinant derived live pseudorabies virus vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies virus vaccine will not cause any significant impact on the environment. based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATE: The field trials will commence October 9, 1987.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its authorization to conduct limited field trials of a recombinant derived live pseudorabies virus vaccine under the Virus-Serum-Toxin Act, (VSTA) (21 U.S.C. 151 *et seq.*) produced by SyntroVet, Inc.

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing of the live virus vaccine under the VSTA. In the course of reviewing the testing protocol for the recombinant derived live pseudorabies virus vaccine, APHIS assessed the impact to the environment of authorizing the manufacturer to conduct field testing of the product in three States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to facilitate three gene deletions and one gene insertion in the pseudorabies virus genome. One deletion destroyed the viral thymidine kinase (tk) gene which is required for the virus to replicate in the host's nervous system and hence cause disease. A second deletion destroyed a gene coding for a viral glycoprotein (gpX) which then prevents antibodies from being elicited to this glycoprotein, thus allowing vaccinated animals to be distinguished from those infected with a wild-type virus. The third deletion removed portions of the internal and terminal repeat regions, producing an attenuating effect. A gene for lactase was inserted as a marker, to further facilitate differentiation of this vaccine virus from the wild virus or other pseudorabies vaccine viruses.

2. The recombinant derived live pseudorabies vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from the pseudorabies virus, but was not able to elicit antibodies to gX which allows the differentiation between infected pigs and vaccinates. The addition of the lactase gene confered no increase in virulence.

3. Transmission of the vaccine virus could not be demonstrated in that vaccine virus was not detected on tonsil swabs taken from either vaccinated pigs or from sentinel animals.

4. The tk gene deletion is a stable characteristic of the vaccine virus with a probability of reversion being essentially zero.

5. The wild-type pseudorabies virus is found widely distributed in nature and it does not contain an oncogene or cancer-causing substance. The lactase gene, inserted as a marker, does not contain any oncogenes. There is no likelihood that this vaccine virus is oncogenic.

6. The wild-type pseudorabies virus is not considered pathogenic to man. Since the recombinant vaccine differs from wild-type pseudorabies by three gene deletions and one insertion, it is also considered nonpathogenic in man.

Based on the foregoing, APHIS has determined that the field testing of the recombinant derived live pseudorabies virus vaccine would have no significant environmental impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381-50384 and 44 FR 51272-51274).

Done in Washington, DC, this 3rd day of September, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-20686 Filed 9-8-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Economic Analysis
Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate
Form Number: Agency BE-13 and BE-14; OMB-0608-0035
Type of Request: Revision of a currently approved collection
Burden: 1,275 respondents; 1,275 reporting hours
Needs and Uses: This survey secures data on U.S. companies at the time they are established or acquired by foreign persons, and information on the foreign parent. The information consists of data on assets and income, amount of investment, acres of land owned, and numbers of employees. The information is required for the preparation of the interantional investment accounts and balance of payments of the United States.
Affected Public: Farms, businesses or for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Dest Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: September 2, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-20658 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-CW-M

National Technical Information Service

Intent To Grant Co-Exclusive Patent License; SmithKline Beckman et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to SmithKline Beckman of Philadelphia, Pa., MicroGeneSys Inc. of West Haven, CT, American Cyanamid Company of Wayne, NJ and Amgen of Thousand Oaks, CA, a co-exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6-843,727, "Pertussis Toxin Gene: Cloning and Expression of Protective Antigen." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-20682 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 10, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of polyester yarn, containing cotton, in Category 600pt., produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988 in excess of the designated level of restraint.

Background

On July 23, 1987, a notice was published in the **Federal Register** (52 FR 27698) which established an import restraint limit for polyester yarn, containing cotton, in Category 600pt., produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on June 12, 1987 and extends through September 9, 1987. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its imports during the twelve-month period immediately following the ninety-day period.

No solution has been reached in consultations on a mutually satisfactory limit for this category. The United States Government has decided, therefore, to control imports of polyester yarn, containing cotton, in Category 600pt. during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988 at the designated level.

The United States remains committed to finding a solution concerning this

category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limit established for the ninety-day period has been exceeded, such excess amounts, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

September 4, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 10, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of polyester yarn, containing cotton, in Category 600pt.[1], produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on September 10, 1987 and extends through September 9, 1988, in excess of 2,867,981 pounds.

[1] In Category 600pt., only TSUSA number 310.6034.

Textile products in Category 600pt. which are in excess of the ninety-day level previously established shall be subject to this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-20851 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, October 22, 1987, 1:30 p.m.-5:30 p.m. Friday, October 23, 1987, 9:00 a.m.-2:30 p.m.

Place: Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-74, Washington, DC 20585, Telephone: (202) 586-2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, October 22, 1987

A. Opening Remarks
B. Major Topics:
1. Crude Oil Production Volumes
2. Coal Strike Monitoring System (Public Comments)

Friday, October 23, 1987

3. Simultaneous Estimation of Nuclear Power Plant Operating Costs and Performance
4. Multipurpose Sampling
5. Imputation for Missing Consumption Data in the Nonresidential Buildings Energy Consumption Survey
6. Session on PCs: How to Define An Optimal Set of Software and Plan PC Versus Mainframe Applications
7. The *Annual Energy Outlook* Spreadsheet Model (Public Comments)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202-586-2222. Requests must be received at least five days prior to the meeting. Reasonable provisions will be made to include such presentations on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E-190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Issued at Washington, DC on September 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-20647 Filed 9-8-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Committee on Petroleum Storage and Transportation; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Wednesday, September 30, 1987 from 10:00 a.m. to 12 noon.

Place: Marathon Oil Company, Conference Rm. 1012, 5555 San Felipe Road, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: For the Committee to discuss and plan the scope of the study on petroleum storage and transportation.

Tentative Agenda

- Discuss the Study's scope and plan in response to the February 20, 1987 request from the Secretary of Energy.
- Discuss and approve the organizational structure and functions of a coordinating subcommittee and task groups.
- Discuss the timetable for completion of the study.
- Discuss any other matters pertinent to the overall assignment.

Public Participation: The meeting is open to the public. The Chairman of the Committee on Petroleum Storage and Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 2, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-20646 Filed 9-8-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER87-463-000]

Boston Edison Co.; Notice of Filing

September 2, 1987.

Take notice that on August 12, 1987, Boston Edison Company (Edison) of Boston, Massachusetts (Edison) tendered for filing its response to a deficiency letter which was issued by the Commission on July 13, 1987, in response to Edison's May 26, 1987 filing regarding additional support charges related to Cambridge Electric Light Company's (Cambridge) use of Edison's Substation 509.

These charges are filed pursuant to Boston Edison Company FPC Rate No. 101 as approved by the Commission on March 11, 1975 in Docket No. E-9254.

Edison requests waiver of the Commission's notice requirements to permit the Support charges to become effective June 1, 1987.

Copies of the filing have been served upon Cambridge and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1987. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20668 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-500-000 et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

September 1, 1987.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP87-500-000]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-500-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization permitting and approving abandonment of approximately 9.81 miles of pipeline in Pinal County, Arizona. El Paso further seeks a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing the construction and operation of a 2⅜" O.D. tie-in and approximately 3.07 miles of new 8⅝" O.D. pipeline also in Pinal County, Arizona. El Paso states that the proposed abandonment and construction activities are designed to allow: (1) increased mining activities projected by Magma Copper Company (Magma); and (2) the continuation of natural gas service by El Paso to the cities of Mammoth and San Manuel, Arizona, and Magma's San Manuel Power Plant and Smelter facilities, all as more fully set forth in the application on file with the Commission and open for public inspection.

El Paso states that as a direct result of Magma's increased mining activities, certain segments of El Paso's existing 2⅝" O.D. and 6⅝" O.D. pipeline, which serve Magma's power plant and smelter facilities and the city of Mammoth, are facing encroachment and potential exposure from Magma's routing of its equipment across said facilities. In addition, El Paso states that the projected expansion of Magma's mining area will increase the traffic and related exposure of said pipelines and also will place a segment of the 8⅝" O.D. San Manuel pipeline presently serving the city of San Manuel and Magma's smelter directly in an area to be mined.

As a result of the said potential encroachment and exposure problem, El Paso specifically proposes to abandon in place: (1) Approximately 1.56 miles of 2⅜" O.D. and 1.60 miles of 6⅝" O.D. pipeline, which comprise segments of those pipelines presently serving Magma's power plant and smelter facilities and the city of Mammoth; and (2) approximately 6.65 miles of 8⅝" O.D. pipeline, which comprises a segment of the pipeline presently serving the city of San Manuel and Magma's smelter facilities. In order to continue the natural gas service to Magma and the cities of Mammoth and San Manuel, El Paso specifically proposes to construct and operate: (1) Approximately ten (10) feet of 2⅜" O.D. tie-in pipeline interconnecting the existing 6⅝" O.D. San Manuel to Hayden Line with the existing 2⅜" O.D. Mammoth Line to permit the sale of natural gas to the city of Mammoth; and (2) approximately 3.07 miles of 8⅝" O.D. pipeline extending from a point on El Paso's existing 30" O.D. Waha-Ehrenburg pipeline to a point on the 8⅝" O.D. San Manuel Crossover Line.

El Paso states that under the existing operating parameters there will be no reduction in operating pressures or throughputs to Magma or the cities of Mammoth or San Manuel as a result of the proposed abandonment and construction activities. Further, El Paso states that there would be no change in the maximum deliveries under the present Gas Sales Agreement dated February 1, 1983, as amended, between El Paso and Magma, nor any change in the contract demand or maximum deliveries to the cities of San Manuel and Mammoth as a result of the proposed abandonment and construction activities under the currently effective Service Agreement dated August 15, 1970, between El Paso and Southwest. Therefore, El Paso states that there will be no interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers.

Comment date: September 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Interstate Power Company

[Docket No. CP86-679-008]

Take notice that on August 27, 1987, Interstate Power Company (Petitioner), 1000 Main Street, Dubuque, Iowa 52001,

filed in Docket No. CP86-679-008 a petition to amend the order issued October 7, 1986, pursuant to section 7 of the Natural Gas Act so as to authorize the transportation of natural gas on a firm basis for Hawkeye Chemical Company (Hawkeye) for an extended term ending October 7, 1989, and for USI Chemicals Company (USI) for an extended term ending April 30, 1989, all as more fully set forth in the petition, which is on file with the Commission and open to public inspection.

Petitioner indicates it was authorized in Docket No. CP86-679-000, as amended in Docket No. CP86-679-002 to transport up to a maximum of 22,000 MMBtu equivalent per day for Hawkeye for a term ending on October 7, 1987. Petitioner now seeks to extend the transportation service authorized in Docket No. CP986-679-000, as amended until October 7, 1989.

Petitioner indicates it was authorized in Docket. No. CP86-678-002 to transport up to a maximum of 18,000 MMBtu equivalent per day for USI for a term ending on March 12, 1988. Petitioner now proposes to extend the transportation service authorized in Docket No. CP986-679-002 until April 30, 1989.

No other changes are proposed.

Comment date: September 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Distrigas of Massachusetts Corporation and Distrigas Corporation

[Docket No. CP87-509-000]

Take notice that on August 25, 1987, Distrigas of Massachusetts Corporation and Distrigas Corporation (Applicants), 950 Winter Street, Waltham, Massachusetts 02254-9073, jointly filed in Docket No. CP87-509-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new boil-off service and a new Rate Schedule BO-2 and the abandonment of Rates Schedule BO-1 and the current boil-off service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the stipulation and agreement between the Applicants and Boston Gas Company (Boston Gas) the BO-1 service agreement, dated October 29, 1979, terminated March 31, 1987, and such service as well as the Rate Schedule BO-1 should be abandoned on the same date on which Rate Schedule BO-2 is certificated.

It is further stated that the rate for boil-off deliveries taken by Boston Gas in April, May, June, July, and August 1987 shall be the commodity rate under Rate Schedule F-1 of the Algonquin Gas Transmission Company in effect at the time deliveries were made, subject to refund as required by final Commission order.

The Applicants state that the rate for BO-2 service for Boston Gas should be the lesser of the commodity rate under Rate Schedule F-1 of Algonquin Gas Transmission Company or any successor rate schedule for equivalent service provided by Algonquin or the actual cost of LNG at the time of delivery of boil-off gas, such actual cost of LNG to be determined in accordance with the FIFO method of inventory accounting.

The Applicants further state that the revenues received from sales under Rate Schedule BO-2 shall be credited in a manner as provided in paragraph six of Fourth Revised Sheet No. 19 of DOMAC's FERC Gas Tariff.

Comment date: September 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP77-604-018]

Transwestern Pipeline Company

[Docket No. CP77-658-003]

Take notice that on August 18, 1987, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978 and Transwestern Pipeline Company (Transwestern), 1400 Smith, Suite 4837, Houston, Texas 77002, jointly filed at Docket Nos. CP77-604-018, and CP77-658-003, respectively, pursuant to section 7(c) of the Natural Gas Act and Rules 212 and 2001, *et seq.*, of the Commission's Rules of Practice and Procedure, a petition to amend the order heretofore issued February 13, 1978, as amended, to authorize the expansion of the specified area of interest under the authorized exchange of natural gas from such area, all as more fully set forth in the joint motion to amend, which is an file with the Commission and open to public inspection.

The instant joint motion states that by Commission order issued February 13, 1978, as amended, at Docket Nos. CP77-604 and CP77-658 (2 FERC ¶ 61,125), El Paso and Transwestern received permanent certificate authorization for: (1) The transportation and delivery of natural gas, on an exchange basis, pursuant to a Gas Exchange Agreement dated February 8, 1977, ("Exchange Agreement"); (2) the operation of certain existing facilities necessary to facilitate the exchange of gas; and (3) the exchange of gas from future wells attached to either party's system in certain specified areas of interest in the states of Texas, New Mexico and Oklahoma.

The instant joint motion further states that El Paso and Transwestern wish to include certain Texas wells under the Exchange Agreement, so El Paso's natural gas can continue to be gathered without requiring a large expenditure to repair El Paso's deteriorating gathering lines in that area. Petitioners state that certain producing wells located in Pecos County, Texas, which is located outside the area of interest specified in the Exchange Agreement, are presently tied to both the El Paso and Transwestern gathering systems. Transwestern has been advised that El Paso's gathering lines are in a deteriorating condition and will require excessive maintenance in the future. Therefore, El Paso states it believes its gathering system can no longer be utilized continuously without major repairs. These major repairs if made, are estimated by petitioners to cost approximately $250,000.00. Petitioners state that this situation is the direct result of failures caused by: (1) General and pitting-type corrosion due to water, carbon dioxide and some hydrogen sulfide collecting in low areas of the gathering lines; and (2) severe cyclic loading swings on the gathering lines. El Paso believes it is more economical to utilize Transwestern's existing gathering system facilities to gather volumes of natural gas from these wells. This change would allow continued gathering of El Paso's natural gas, without incurrence by El Paso of a large expenditure for repairs to its deteriorating gathering lines, it is stated.

To accomplish this change, El Paso and Transwestern have executed in Amendatory Agreement dated June 26, 1987, petitioners assert. It is stated that the Amendatory Agreement provides for the expansion of the specified area of interest in the Exchange Agreement to include any wells in Pecos County, Texas. Specifically, petitioners note that the wells, which are presently connected to El Paso's deteriorating gathering lines and are located outside the presently authorized area of interest, are identified in the Amendatory Agreement as the Butz Gas Unit No. 1, Sibley State Gas Unit 2 No. 1 and the Sibley State Unit 1 No. 1, all located in Pecos County, Texas.

Petitioners assert that grant of the amended authorization sought herein will permit continued receipt of El Paso's volumes of natural gas in the expanded areas of interest, without necessity of incurring a large expenditure to refurbish El Paso's existing gathering pipeline facilities. It is

stated that avoidance of this expenditure will benefit El Paso's customers through the elimination of a rate base increase and the holding down of El Paso's cost-of-service. El Paso and Transwestern therefore, believe that the present and future public convenience and necessity will be served by grant of the requested amended authorization, it is stated.

El Paso and Transwestern will file, pursuant to Part 154 of the Commission's Regulations, the Amendatory Agreement dated June 26, 1987, necessary to effectuate the proposed amended arrangements, upon receipt of the amended authorizations requested herein.

Comment date: September 22, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP87-502-000]

Take notice that on August 19, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84110, filed in Docket No. CP87-502-000 an application, pursuant to Section 7(b) of the Natural Gas Act, and Section 157.18 of the Federal Energy Regulatory Commission's Regulations thereunder, for an order granting permission and approval to abandon certain leasehold properties, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests that the Commission issue an order granting permission and approval for Northwest to abandon by transfer to Mobil Oil Corporation (Mobil), effective April 1, 1987, 100 percent of its working interest in certain oil and gas leases and options for oil and gas leases located in the San Juan Basin area of Colorado. The proposed transfer of working interest would be effectuated in accordance with a Settlement Agreement between Northwest and Mobil dated July 17, 1987, it is stated. Under the terms of the Settlement Agreement and subject to Commission and Department of the Interior approval, Northwest indicates it has agreed to assign and reconvey to Mobil 100 percent of Northwest's current interest in the PLA-13 leasehold properties originally conveyed by General Petroleum Company (predecessor of Mobil) to Pacific Nortwest Pipeline (predecessor of Northwest) and to make a one-time payment to Mobil of $1.3 million. It is asserted that this payment would be made after Department of the Interior approval of the assignment of the subject leases. Northwest states that, as of April 1, 1987, its net investment in the PLA-13 properties was $1,057,150. It is further stated that this reconveyance is to be made effective April 1, 1987, with no reimbursement of Northwest's undepreciated investment in the PLA-13 properties.

Northwest states that the Agreement provides that, upon approval of the proposed reconveyance of PLA-13 properties, the revenues, operating expenses, any additional capital costs, and the interest applicable thereto would be calculated for the assigned properties based upon an effective transfer date of April 1, 1987. This effective date of transfer of the subject properties is an integral part of the settlement, it is stated. Northwest requests that the Commission approve the abandonment by transfer of its PLA-13 leasehold interests to Mobil to be effective as of April 1, 1987.

It is further stated that the PLA-13 Agreements cover approximately 6,326 gross acres in La Plata County, Colorado. Northwest indicates that at the present time, there are approximately 28 gas wells associated with the PLA-13 leases in which Northwest has an ownership interest. For the twelve-month period ending May 31, 1987, Northwest states that its PLA-13 production from these wells was approximately 437 MMcf.

Northwest avers that the subject leasehold production properties are not included in Northwest's rate base and the production therefrom has been deemed to be sold to the transmission division of the Company at the wellhead. It is indicated that each of the PLA-13 wells in which Northwest has an interest either has received final Commission approval for a maximum lawful price under sections 103 or 108 of the NGPA or presently is subject to a ceiling price under section 104 of the NGPA.

It is stated that Northwest and Mobil have entered into a Gas Purchase Contract (GPR) dated April 1, 1987 to provide for the continued purchase by Northwest of volumes of gas to be produced from PLA-13 interests proposed to be transferred to Mobil. It is further stated that the price to be paid by Northwest for gas purchased under the GPK would be the lowest of the applicable NGPA maximum lawful price or the current alternate fuel price. For pre-1973 production, Northwest state that the applicable NGPA ceiling price is to be the Section 104 replacement contract rate unless such production qualifies for a higher NGPA price. It is indicated that the alternative fuel price is defined as 65 percent of the quarterly average of the high and low weekly quotes for Bunker C fuel oil in Seattle, Washington and Portland, Oregon, reduced by any third-party costs incurred by Northwest. Northwest states that the GPK also contains a market-out provision for further price adjustments if deemed necessary to enable Northwest to continue purchasing gas thereunder.

Northwest asserts that the assignment described above is consistent with the public convenience and necessity. The Settlement Agreement represents a fair and reasonable compromise by the parties of disputed issues which would conclude long and costly litigation, it is stated. Northwest maintains that the implementation of the Settlement Agreement eliminates any future exposure which Northwest would otherwise have with respect to potential gas price increases resulting from escalating PLA-13 overriding royalties. It is stated that the PLA-13 leasehold production which is currently committed to Northwest and its customers, including potential future development on the subject leases, would remain committed to Northwest and its customers under the GPK between Mobil and Northwest. Northwest indicates that the price to be paid for the gas purchased under the GPK does not exceed the value which Northwest otherwise would have placed on the gas as pipeline production in its PGA filings. Thus, the transfer of the assigned interest to Mobil would not increase the cost of gas produced from the assigned interest in the PLA-13 properties to Northwest's customers, it is stated.

Comment date: September 22, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP87-504-000]

Take notice that on August 20, 1987, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP87-504-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 10,000 MMBtu of natural gas per day on an interruptible basis for Transcontinental Gas Pipe Line Corporation (Transco). Texas Gas would receive natural gas purchased by Transco in the Lake Arthur Field at an existing meter station on Texas Gas' system in Jefferson Davis Parish,

Louisiana, and redeliver to Transco at existing points of interconnection between Transco and Texas Gas in Evangeline and Acadia Parishes, Louisiana, known respectively, as Mamou and Transco-South Richie, it is explained. Texas gas further explains that the rate charged Transco would be the filed rate applicable to such service under Rate Schedule T, as well as the applicable FERC ACA unit charge. Texas Gas states that such rates are currently 2.80 cents/MMBtu for deliveries to Mamou and 2.46 cents/MMBtu for deliveries to Transco-South Richie. The currently effective FERC ACA charge is 0.2 cents/MMBtu, it is explained.

Texas Gas proposes to render the transportation service for five years from the date of initial delivery. Texas Gas explains that the transportation service is currently being rendered for Transco under an Order 60 "grandfathered" agreement that will expire on October 9, 1987. The requested authorization is necessary in order for the transportation service to continue beyond that date, it is explained.

Comment date: September 22, 1987, in accordance with Standard Paragraph F 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, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 and 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20667 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-7-000]

Florida Gas Transmission Co.; Notice of Compliance Filing

September 2, 1987.

Take notice that on August 26, 1987, Florida Gas Transmission Company filed tariff sheets in compliance with Ordering Paragraphs (a) and (c) of the Commission's order issued July 16, 1987 in Docket No. SA87-44-000 granting adjustments in the provisions of 18 CFR 281.204(b)(2) for priority 2 entitlements index and extension of the annual filing requirements of 18 CFR 281.204(b)(2).

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1987. 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 not previously granted intervention in this proceeding and 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20669 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-94-000]

Transcontinental Gas Pipe Line Corp., Notice of Tariff Filing

September 2, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on Aug. 27, 1987, tendered for filing revised tariff sheets under its Rate Schedule FT and Rate Schedules X-265 through X-278 proposed to become effective April 1, 1987 and July 1, 1987.

Transco states that the purpose of this filing is to revise its firm transportation rates effective April 1, 1987 under Rate Schedule FT and Rate Schedules X-265 through X-278 on the basis of the cost and throughput determinants contained in its filings of October 6, 1986 in Docket No. RP87-7-000 as adjusted by Transco's April 1, 1987 filing in Docket No. RP87-7-007. Furthermore, the firm transportation rates proposed to become effective July 1, 1987 reflect the April 1, 1987 rates as adjusted for the change in the corporate federal income tax rate from 46% to 34%.

Transco further states that copies of the filing have been mailed to each of its customers, State Commissions and other interested parties.

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, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before Sept. 9, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-20670 Filed 9-8-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50673; FRL-3258-2]

Issuance of Experimental Use Permits; Dow Chemical et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

464-EUP-76. Renewal. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 5,050 pounds of the insecticide chloropyrifos on alfalfa, cotton, and grain sorghum to evaluate the use of various insects. A total of 1,920 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, and Texas. the experimental use permit was previously effective from May 29, 1986 to May 29, 1987; the permit is now effective from June 26, 1987 to June 26, 1988. A permanent tolerance for residues of the active ingredient in or on alfalfa, cotton, and grain sorghum has been established (40 CFR 180.342) (Dennis Edwards, PM 12, Rm. 202, CM#2, (703-557-2386))

464-EUP-95. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 75 pounds of the herbicide triclopyr on rice to evaluate the control of broadleaf weeds. A total of 100 acres are involved; the program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from July 15, 1987 to July 15, 1988. This permit is issued with the limitation that all treated rice will be destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

464-EUP-96. Issuance. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 46.5 pounds of the insecticide chloropyrifos on pastures to evaluate the control of grasshoppers. A total of 1,000 acres are involved; the program is authorized only in the State of South Dakota. The experimental use permit is effective from July 1, 1987 to July 1, 1988. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703-557-2386))

45639-EUP-36. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 113.75 pounds of the herbicides diuron and thidiazuron on cotton to evaluate the control of various weeds. A total of 725 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. The experimental use permit is effective from July 22, 1987 to November 30, 1987. Permanent tolerances for residues of the active ingredients in or on cottonseed have been established (40 CFR 180.106 and 180.403). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830)).

34704-EUP-3. Amendment. Platte Chemical Company, P.O. Box 667, Greeley, CO 80632. In the **Federal Register** of August 6, 1986 (51 FR 28273), EPA issued on EUP pertaining to the issuance of 34704-EUP-3 to Platte Chemical Company. At the request of the company, the permit has been amended to add the State of Arizona, additional acreage and pounds of the active ingredient. The experimental use permit allows the use of 985.8 pounds of the insecticide malathion on pastures and rangeland to evaluate the control of grasshoppers. A total of 2,700 acres are involved (this includes 1,020 acres remaining under the previous program); the program is now authorized in the States of Arizona, Colorado, Idaho, New Mexico, North Dakota, and South Dakota. The experimental use permit is still effective until September 30, 1987. A permanent tolerance for residues of the active ingredient in or on grass and grass hay has been established (40 CFR 180.111). (William Miller, PM 16, Rm. 211, CM#2, (703-557-2600))

264-EUP-73. Issuance. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 9,805 pounds of the insecticide thiodicarb on broccoli, cabbage, cauliflower, and head lettuce to evaluate the control of lepidopterous larvae, flea beetles, and lygus. A total of 2,775 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Florida, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from July 22, 1987 to July 22, 1988. Temporary tolerances for residue of the active ingredient in or on broccoli, cabbage, cauliflower, and head lettuce have been established. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703-557-2386))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: August 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-20545 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3438/T550; FRL-3258-3]

Thiodicarb; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide thiodicarb and its metabolite methomyl in or on certain agricultural commodities. These temporary tolerances were requested by Union Carbide Agricultural Products Co., Inc.

DATE: These temporary tolerances expire July 22, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2386).

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, has requested in pesticide petition PP 6G3438 the establishment of temporary tolerances for residues of the insecticide thiodicarb (dimethyl-N,N'-[thiobis[[(methylimino) carbonyl] oxy]]bis[ethanimidothioate] and its metabolite methomyl, (S-methyl-N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities broccoli, cabbage, and cauliflower at 7.0 parts per million (ppm); and head lettuce at 25.0 ppm.

These temporary tolerances will permit the marketing of the above-named raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-73, which is being issued under the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide Agricultural Products Co., Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 22, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the 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. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–20544 Filed 9–8–87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100047; FRL-3257-3]

PEI Associates, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). PEI Associates, Inc. (PEI) has been awarded a contract to perform work for the EPA Office of Research and Development, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. Contractor access to FIFRA and FFDCA CBI is authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable PEI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: PEI will be given access to this information no sooner than September 14, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68–03–4037, PEI will provide technical support to the Office of Research and Development, which will conduct quality assurance audits on information on worker exposure studies, permeation resistance studies, and Confidential Statements of Formula for liquid formulations of pesticides listed below. This contract involves no subcontractors.

Ortho Phosphamidon Spray
Formulations with dicrotophos as active ingredient
Monocrotophos
EPN (Technical)
Formulations with EPN as active ingredient
Formulations with ethyl parathion as active ingredient
Dialifor
Cygon 2-E
Diazinon 4EC
Thiodan 3EC
Thiodan 50WP
Dimethoate 267EC
Methyl Parathion 4E
Parathion 8E
Diazinon 14G
Monitor 4
Monitor Technical
Guthion 2L
Guthion 2S
Guthion 50% WP
Guthion Technical
DEF 6
DEF Technical
Oftanol 5% GR
Oftanol 2
Di-Syston 8
Di-Syston 15% GR
Di-Syston Technical
MetaSystox-R Spray Concentrate
MetaSystox-R 50% Concentrate
Demeton/Systox
Aminocarb/Matacil
Lasso
Lasso Microtech
Lasso Atrazine
Lasso II
Ethyl Parathion
Methyl Parathion
Bidrin Technical
Azodrin Technical
Phosdrin Technical
Chlorfenvinphos/Birlane 24
Methyltrithion
Formulations with DNBP as active ingredient

The Office of Research and Development and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions udner FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with PEI prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency of affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, PEI is reuqired to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this cotnractor until the above requirements have been fully

satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the Office of research and Development. All information supplied to PEI by EPA for use in connection with this contract will be returned to EPA when PEI has completed its work.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-20419 Filed 9-8-87;8:45am]

BILLING CODE 6560-50-M

[OPP-100048; FRL-3257-1]

SRA Technologies; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). SRA Technologies has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRA Technologies consistent with the requirements of 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action will enable SRA Technologies to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATE: SRA Technologies will be given access to this information no sooner than September 14, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-7379 (Delivery Order No. 036), SRA Technologies will analyze residue chemistry data that has been submitted to the Agency in support of pesticide tolerance petitions. This project is to develop a statistically sound basis for tolerance setting and to statistically examine other potential uses of residue data. This contract involves no subcontractor.

OPP has determined that access by SRA Technologies to information on the following pesticide chemicals is necessary for the performance of this contract:

acephate
acifluorifen
alachlor
aldicarb
aluminum phosphide
aluminum tris(O-ethylphosphonate) (fosetyl-A1)
amiben
atrazine
benomyl
bromoxynil
captafol
captan
carbaryl
carbofuran
carbosulfan (no established tolerances)
chlordane
chlorodimeform 2-(-4-chloro-6-(ethylamino)S-trizin-2-yl)amino)-2-methylpropionitrile (cyanazine)
chlorothalonil
chlorpyrifos
chlorsulfuron
cyano (3-phenoxyphenyl)methyl 4-chloro-alpha-methylethyl benzeneacetate (fenvalerate)
cypermethrin
cyromazine
DDT
demeton
daminozide
dicamba
O,O-diethyl(methylsulfinyl)phenyl phosphorothioate (fensulfothion)
dinoseb
diquat
ethalfluralin
ethephon
ethylene dibromide
hexakis(2-methyl-2-phenylpropyl) distannoxane
imazalil
iprodione
metalaxyl
methamidophos
methomyl
methoprene
metolachlor
oxyfluorfen
paraquat
picloram
propargite
ronilan 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim)
simazine
terbacil
thiabendazole
thiophanate methyl
trichlorpyr
trifluralin
triforine
triphenyltin hydroxide

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with SRA Technologies prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRA Technologies is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SRA Technologies by EPA for use in connection with this contract will be returned to EPA when SRA Technologies has completed its work.

Dated: August 21, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-20420 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00244; FRL-3258-7]

FIFRA Scientific Advisory Panel Subpanel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review a set of scientific issues being considered by the Agency in connection with the National Pesticide Survey, which is the first nationwide survey of pesticide contamination in domestic and community drinking water wells in the United States.

DATES: The meeting will be held Tuesday and Wednesday, September 29 and 30, 1987, from 8:30 a.m. to 5 p.m. on

Tuesday and ending about 1:30 p.m. on Wednesday.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA (703-557-7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is: 1. Review of a set of scientific issues in connection with the Agency's National Pesticide Survey. This survey is the first nationwide survey of pesticide contamination in domestic and community drinking water wells in the United States. In March 1987, EPA began a pilot study to field test the major components of the survey and to provide an opportunity for any necessary revisions or modifications before the full survey begins. The National Pesticide Survey has been designed to yield results that are statistically representative of over 13 million domestic wells and some 51,000 community water systems. EPA expects to sample approximately 1500 drinking water wells in the course of the survey, which will run from the Fall of 1987 through 1989. The National Pesticide Survey has two principal objectives: (1) To determine the frequency and concentration in the drinking water wells of the nation; and (2) to improve our understanding of how pesticide contamination is associated with patterns of agricultural pesticide usage and the vulnerability of ground water to pollution.

Copies of documents relating to item 1 may be obtained by contacting: By mail: Information Services Branch (TS-757C), Program Management Support Division, Office of Pesticide Programs, 401 M Street, SW., Washington, DC.

Office location and telephone number: Rm. 236, Crystal Mall Building No. 2, Arlington, VA, (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summery no later than September 22, 1987, in order to ensure appropriate consideration by the Panel.

Dated: September 2, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances

[FR Doc. 87-20654 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3259-7]

Science Advisory Board; Environmental Engineering Committee, Mining Waste Risk Screen Subcommittee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Mining Waste Risk Screening Subcommittee of the Science Advisory Board's Environmental Engineering Committee will hold a two-day meeting on September 21-22, 1987 at the U.S. Environmental Protection Agency, in the Administrator's Conference Room, Room 1103 of the West Tower. The meeting will begin at 9:00 a.m. on Monday, September 21, and adjourn no later than 5:00 p.m. on Tuesday, September 22.

The purpose of this meeting is to enable the Subcommittee to independently review the Office of Solid Waste's technical support document entitled: "Draft Risk Screening Analysis of Mining Wastes," dated July 23, 1987. Copies of the document may be obtained from Cliff Rothenstein on 202-382-2791 or write to the U.S. Environmental Protection Agency, Office of Solid Waste, Room 2817, Washington, DC 20460 c/o Cliff Rothenstein.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Mrs. Kathleen Conway, Deputy Director, Science Advisory Board, at 202/382-2552 or Joanna Foellmer at 202/382/4126 by September 16, 1987.

Dated: September 4, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-20757 Filed 9-8-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket 83-523]

FCC Form 330 for the Instructional Television Fixed Service; Availability

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of availability of new form.

SUMMARY: This action gives notice of the availability of FCC Form 330, which replaces FCC Form 330-P. The new form is to be used by applicants and licensees in the Instructional Television Fixed Service for new stations, modifications of existing stations, receive/response/relay stations and license assignments. Form 330 effects revisions to conform to rules and policies adopted in *Second Report and Order*, MM Docket 83-523, FCC 85-294; *Memorandum Opinion and Order*, MM Docket 83-523, FCC 86-66 (51 FR 9796; 3/21/86).

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Stuart B. Bedell, Mass Media Bureau, FCC, telephone 632-9356.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-20433 Filed 9-8-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Determination of National Defense Stockpile Goal for Germanium

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of determination of national defense stockpile goal for germanium.

SUMMARY: Pursuant to section 3 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*) and E.O. 12155, I have determined that, effective July 24, 1987, the National Defense Stockpile goal for germanium is increased from 30,000 kilograms to 146,000 kilograms.

DATED: June 23, 1987.

FOR FURTHER INFORMATION CONTACT: Paul K. Krueger, Assistant Associate

Director, Office of Mobilization Preparedness, Federal Emergency Management Agency (202) 646–3544.

SUPPLEMENTARY INFORMATION: The Committees on Armed Services of the Senate and House of Representatives were notified in writing of this proposed action under date of June 23, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–20612 Filed 9–8–87; 8:45 am]

BILLING CODE 6718-01-M

National Defense Stockpile Policy Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of national defense stockpile policy determination.

SUMMARY: Notice is hereby given that I have determined, pursuant to authority delegated to me under section 1–101 of E.O. 12155 of September 10, 1979, that, in addition to statutory or other policy guidance issued for this purpose, any future analyses conducted or coordinated by the Federal Emergency Management Agency of requirements for materials for the National Defense Stockpile in support of determinations under section 3 of the Strategic and Critical Materials Stock Piling Act (50. U.S.C. 98b) are to be conducted in accordance with the following principles:

1. Analyses will be directed and performed by the individuals and organizations with subject-area experience and expertise.
2. Input will be obtained from the industries involved in materials mining and processing.
3. Analyses will consider a reasonable range of assumptions, with the results of major options provided to decision makers.
4. Study participants' inputs will be fairly presented and major dissenting views, if any, are to be clearly reported.
5. Economic models will be verified and supplemented, where practical, by the best available direct measures of material requirements.
6. Assumptions and planning factors will be consistent with those used by Federal departments and agencies for similar purposes.

DATED: July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Paul K. Krueger, Assistant Associate Director, Office of Mobilization Preparedness, Federal Emergency Management Agency (202) 646–3544.

SUPPLEMENTARY INFORMATION: Compliance with these principles is to be certified to in any recommendations presented to or by the Federal Emergency Management Agency for determinations to be made under section 3 of the Stock Piling Act.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–20613 Filed 9–8–87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 050387 AND 050587

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
TI Group plc, Houdaille Industries, Inc., Houdaille Industries, Inc..	D87–1430D	05/04/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–20633 Filed 9–8–87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Supplement To Investigate the Scientific Basis and Issues Arising From Monitoring a Community of Workers Exposed to Toxic Substances; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC) announces the availability of funds for a supplement to its cooperative agreement (460–CCU100929) with the Center for Technology, Policy and Industrial Development/ Massachusetts Institute of Technology (CTPID/MIT) to support an investigation of the scientific basis as well as the legal and ethical issues arising form the monitoring of communities and workers exposed to toxic substances. The Catalog of Federal Domestic Assistance number is 13.262.

Program Objectives

The objectives of this supplement to the existing cooperative agreement are from scientific, legal, and ethical perspectives:

1. to determine methods of monitoring populations exposed to environmental and occupational hazards;
2. to determine methods of assessing risk based on such data or other existing data;
3. to determine effective means for involving the affected worker and communities in the monitoring decision, risk evaluation and decisions to communicate predicted risks.

Authority

This program is authorized under sectin 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(A)(1)).

Eligibility Requirements

Assistance will be provided only to the Center for Technology, Policy and Industrial Development at the Massachusetts Institute of Technology.

Justification

The depth of academic disciplines and technical training possessed by the CTPID/MIT staff, teamed with their

accrued experience in (1) conducting risk assessments, (2) incorporating biological monitoring data in assessment of risk, and (3) evaluating the scientific, legal, and ethical considerations involved in both biological monitoring and risk assessment, make CTPID/MIT the only group of scientists, lawyers, and ethicists who can develop and conduct this program. This group has acquired unparalleled insight by completing an extensive number of risk assessment projects, the majority of which have incorporated biological monitoring data and have addressed considerable related issues of social and legal concern.

Availability of Funds

It is expected that $200,000 in funds will be available during Fiscal Year 1987 to support this supplement. It is anticipated that the cooperative agreement will be funded for an additional budget period of 2 years. Continuation awards for those 2 years to cover this supplemental project and the efforts described in the initial cooperative agreement will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. the funding estimate is subject to change.

Reviews

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on this program may be obtained from: Henry Cassell, Grants Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone (404) 262-6575.

Technical information may be obtained from: Theodore J. Meinhardt, Assistant to the Director, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 533-8302.

Dated: September 2, 1987.

Diane D. Porter,

Assistant Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87-20597 Filed 9-8-87; 8:45 am]

BILLING CODE 4160-19-M

Public Health Service

Smokeless Tobacco Products; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of August 10, 1987 (52 FR 31088) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities delegated to the Assistant Secretary for Health under sections 2, 4, and 8(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252), as amended hereafter, concerning Public Education, Ingredient Reporting, and Reports, excluding the authorities to issue regulations and to submit reports to the Congress.

The delegation to the Director, Centers for Disease Control, became effective on August 31, 1987.

Dated: August 31, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-20657 Filed 9-8-87; 8:45 am]

BILLING CODE 4160-18-M

Centers for Disease Control

Minority AIDS Prevention Initiatives in Fiscal Year 1988 Draft Program; Meeting

ACTION: Notice of Meeting. Funds will be available to the Centers for Disease Control (CDC) for minority AIDS prevention initiatives in Fiscal Year 1988 to supplement cooperative agreements with State and local health departments. CDC will convene a meeting to discuss the Fiscal Year 1988 draft program announcement for minority AIDS initiatives to be supported within the AIDS Surveillance and Prevention Projects.

Time and date: 9:00 am—2:00 pm—September 14, 1987.

Place: Center for Prevention Services Conference Room, CDC, Freeway Office Park, 1600 Tullie Circle, NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Contact person for more information: Mr. John Lehnherr, Resource Analysis, Office of the Director, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone: commercial—(404) 329-1823; FTS 236-1823.

Dated: September 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-20872 Filed 9-8-87; 10:08 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

All Billings Area Irrigation Projects: Interest and/or Penalty Notices

AGENCY: Blackfeet, Crow, Fort Belknap, Fort Peck, and Wind River Agencies, Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: Interest and/or penalty fees will be assessed on all (Indian, Non-Indian, and individual corporations) delinquent operation and maintenance charges as prescribed in the Code of Federal Regulations, Chapter 4, Part 102. The exception to this rule are the government agencies, such as Federal, State and Tribal Governments.

This notice will be published, and posted at the local U.S. Post Offices, Irrigation Camps, local Newspapers, area Water Users Associations and the Bureau of Indian Affairs agencies.

Comments: All comments are to be written and mailed to the local Bureau of Indian Affairs irrigation project. Comments must be received by the end of the business day on October 9, 1987.

EFFECTIVE DATE: The interest and/or penalty fees will become effective January 1, 1987, and remain in effect until such notice is given in the **Federal Register.**

SUPPLEMENTARY INFORMATION: This notice issued pursuant to Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior.

Richard Whitesell,

Billings Area Director.

[FR Doc. 87-20692 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-07-4212-11; N-43395]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

Notice document 87-16621 appearing on page 27591 in the issue of Wednesday, July 22, 1987, is hereby amended to extend the comment period

to September 21, 1987, to allow for receipt of additional comments on this proposed action.

Interested parties may submit coments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, NV 89126.

Dated: September 2, 1987.

Charles Frost,

Acting District Manager.

[FR Doc. 87-20628 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2857, Block 42, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 31, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-20620 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 29, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 24, 1987.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ALABAMA

Calhoun County

Jacksonville, *Woods, Alexander, House,* 517 N. Pelham Rd.

Talladega County

Sylacauga, *Watters, William, House,* Co. Hwy. 8

COLORADO

Jefferson County

Denver, *Tower of Memories,* 8500 W. Twenty-ninth Ave.

DISTRICT OF COLUMBIA

Washington

Mount Pleasant Historic District, Roughly bounded by Sixteenth & Harvard Sts., Rock Creek Church Rd., & Adams Mill Rd.

MISSOURI

Howard County

Fayette, *Wright, Dr. Uriel S., Office,* 120 Church St.

RHODE ISLAND

Bristol County

Barrington, *Nayatt Point Lighthouse (Lighthouses of Rhode Island TR),* Nayatt Point

Bristol, *Bristol Ferry Lighthouse (Lighthouses of Rhode island TR),* Ferry Rd.

Newport County

Newport, *Ida Lewis Rock Lighthouse (Lighthouses of Rhode Island TR),* On Lime Rock in Newport Harbor off Wellington Ave.

Jamestown, *Conanicut Island Lighthouse (Lighthouses of Rhode island TR),* 64 N. Bay View Ave.

Jamestown, *Dutch Island Lighthouse (Lighthouses of Rhode Island TR),* S end of Dutch Island

Washington County

North Kingstown, *Poplar point Lighthouse (Lighthouses of Rhode Island TR),* Poplar Ave.

SOUTH DAKOTA

Fall River County

Hot Springs, *Jensen, Governor Leslie, House,* 309 S. Fifth St.

Kingsbury County

Oldham, *Oldham Methodist Church,* Main St. & Epton Ave.

Minnehaha County

Sioux Falls, *Glidden, Josephine Martin, Memorial Chapel,* 2121 E. Twelfth St.

Walworth County

Selby, *Selby Opera House,* 3409 Main St.

Yankton County

Yankton, *Banton, Dr. B. M., House,* 517 Locust St.

TEXAS

Collin County

McKinney, *Beverly—Harris House (McKinney MPS),* 604 Parker

McKinney, *Bingham, John H., House (McKinney MPS),* 800 S. Chestnut

McKinney, *Board—Everett House (McKinney MPS),* 507 N. Bradley

McKinney, *Brown, John R., House (McKinney MPS),* 509 N. Church

McKinney, *Burrus—Finch House (McKinney MPS),* 405 N. Waddill

McKinney, *Clardy, U.P., House (McKinney MPS),* 315 Oak

McKinney, *Cline—Bass House (McKinney MPS),* 804 Tucker

McKinney, *Coggins, J.R., House (McKinney MPS),* 805 Howell

McKinney, *Collin County Mill and Elevator Company (McKinney MPS),* 407 E. Louisiana

McKinney, *Crouch, John P., House (McKinney MPS),* 302 S. Tennessee

McKinney, *Crouch—Perkins House (McKinney MPS),* 205 N. Church

McKinney, *Davis, H.L., House (McKinney MPS),* 705 N. College

McKinney, *Davis—Hill House (McKinney MPS),* 710 N. Church

McKinney, *Dowell, J. S., House (McKinney MPS)* 608 Parker

McKinney, *Dulaney, Joe E., House (McKinney MPS),* 311 S. Chestnut

McKinney, *Dulaney, Joseph Field, House (McKinney MPS),* 315 S. Chestnut

McKinney, *Faires, F. C., House (McKinney MPS),* 505 S. Chestnut

McKinney, *Faires-Bell House (McKinney MPS),* S side Chestnut Sq.

McKinney, *Ferguson, John H., House (McKinney MPS),* 607 N. Church

McKinney, *Foote—Crouch House (McKinney MPS)*, 401 N. Benge
McKinney, *Fox, S. H., House (McKinney MPS)*, 808 Tucker
McKinney, *Gough—Hughston House (McKinney MPS)*, 1206 W. Louisiana
McKinney, *Herad-Craig House (McKinney MPS)*, 205 W. Hunt
McKinney, *Hill, Ben, House (McKinney MPS)*, 509 Tucker
McKinney, *Hill, John B., House (McKinney MPS)*, 605 N. College
McKinney, *Hill, Moran, House (McKinney MPS)*, 203 N. Waddill
McKinney, *Hill, W. R., House (McKinney MPS)*, 601 N. College
McKinney, *Hill-Webb Grain Elevator (McKinney MPS)*, 400 E. Louisiana
McKinney, *House at 1303 W. Louisiana (McKinney MPS)*, 1303 W. Louisiana
McKinney, *House at 201 N. Graves (McKinney MPS)*, 201 N. Graves
McKinney, *House at 301 E. Lamar (McKinney MPS)*, 301 E. Lamar
McKinney, *House at 610 Tucker (McKinney MPS)*, 610 Tucker
McKinney, *House at 704 Parker (McKinney MPS)*, 704 Parker
McKinney, *Houses at 406 and 408 Heard (McKinney MPS)*, 406 & 408 Heard
McKinney, *Johnson, John, House (McKinney MPS)*, 302 Anthony
McKinney, *Johnson, Thomas, House (McKinney MPS)*, 312 S. Tennessee
McKinney, *King, Mrs. J. C., House (McKinney MPS)*, 405 E. Louisiana
McKinney, *Kirkpatrick, E. W., House (McKinney MPS)*, 903 Parker
McKinney, *McKinney Cotton Compress Plant (McKinney MPS)*, 300 blk. Throckmorton
McKinney, *McKinney Cotton Mill Historic District (McKinney MPS)*, Roughly bounded by Elm, RR tracks, Burrus, Fowler, & Amscott
McKinney, *McKinney Hospital, Old (McKinney MPS)*, 700—800 S. College
McKinney, *McKinney Residential Historic District (McKinney MPS)*, Roughly bounded by W. Lamar, N. Benge, W. Louisiana, & N. Oak
McKinney, *Neathery, Sam, House (McKinney MPS)*, 215 N. Waddill
McKinney, *Nenney, J. P., House (McKinney MPS)*, 601 N. Church
McKinney, *Newsome, R. F., House (McKinney MPS)*, 609 Tucker
McKinney, *Newsome—King House (McKinney MPS)*, 401 W. Louisiana
McKinney, *Rhea, John C., House (McKinney MPS)*, 801 N. College
McKinney, *Scott, A. M., House (McKinney MPS)*, 1109 W. Louisiana
McKinney, *Scott, L. A., House (McKinney MPS)*, 513 W. Louisiana
McKinney, *Smith, W. D., House (McKinney MPS)*, 703 N. College
McKinney, *Taylor, J. H., House (McKinney MPS)*, 211 N. Waddill
McKinney, *Thompson House (McKinney MPS)*, 1207 W. Louisiana
McKinney, *Waddill, R.L., House (McKinney MPS)*, 302 W. Lamar
McKinney, *Wiley, Thomas W., House (McKinney MPS)*, 105 S. Church
McKinney, *Wilson, A. G., House (McKinney MPS)*, 417 N. Waddill

VIRGINIA

Greene County

Amicus vicinity, *Locust Grove*, VA 641

WISCONSIN

Milwaukee County

Milwaukee, *Christ Evangelical Lutheran Church*, 2235 W. Greenfield Ave.
Milwaukee, *St. Peter's Evangelical Lutheran Church*, 1204, 1213, 1214, & 1215 S. Eighth St.
Milwaukee, *St. Vincent's Infant Asylum*, 809 W. Greenfield Ave.
Milwaukee, *St. Martini Evangelical Lutheran Church*, 1557 W. Orchard St.

Monroe County

Sparta, *Sparta Masonic Temple*, 200 W. Main St.

[FR Doc. 87-20614 Filed 9-8-87; 8:45 am]

BILLING CODE, 4310-70-M

INTERSTATE COMMERCE COMMISSION

Docket No. AB-31 (Sub-No. 26X)

Grand Trunk Western Railroad Co.; Exemption; Discontinuance in Green and Montgomery Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue [1] its 14.6-mile line of railroad consisting of overhead trackage rights obtained from Consolidated Rail Corporation between milepost 0.00 near Xenia, OH and milepost 14.6 near Dayton, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed a petition for waiver of environmental reporting requirements since the discontinuance of its trackage rights will have no physical impact on the environment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 9, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by September 21, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 29, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert I. Schellig, Jr., Grand Trunk Western Railroad Company, 131 West Lafayette Boulevard, Detroit, MI 48226.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-20626 Filed 9-8-87; 8:45 am]

BILLING CODE 7035-01-M

[1] While applicant has characterized the above action as an abandonment, since service pursuant to trackage rights is being terminated, the involved action is actually a discontinuance.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts

Theater Advisory Panel (Playwrights Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Playwrights Section) to the National Council on the Arts will be held on September 22, 1987, from 9:00 a.m.-5:30 p.m. in room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-20621 Filed 9-8-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from August 17, 1987 through August 28, 1987. The last bi-weekly notice was published on August 26, 1987 (52 FR 32188).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 9, 1987, 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. 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 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 witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure

to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and 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 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 (*Project Director*): 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of 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 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: July 16, 1987

Description of amendments request: The proposed amendments would remove the fire protection requirements from the Technical Specifications (TS) and relocate the fire protection program to the Final Safety Analysis Report (FSAR). These changes would also revise the existing license condition relating to the Fire Protection Program (License Condition 2.C.(4) to NPF-2 and License Condition 2.C.(6) to NPF-8) to allow the licensee to make changes to the approved program in accordance with 10 CFR 50.59. Commission Generic Letter (GL) 86-10, dated April 24, 1986, requested licensees to take the action described above. In addition to these changes, changes in format to agree with the FSAR format, deletion of special reporting requirements and other associated administrative changes would achieve consistency with current Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided a detailed description and analysis based on a review of the requirements of 10 CFR 50.92, as it relates to the proposed changes to the fire protection TS and the license conditions. Based on their analysis, the licensee has determined that the proposed changes do not involve a significant hazards consideration. The staff agrees with the licensee's determination.

In addition, the staff has determined that the requested amendment: (1) would not involve a significant increase in the probability or consequences of an accident previously evaluated because no changes are being made to the Fire Protection Program, except for minor administrative changes and the generic relocation to the FSAR of the Fire Protection Program, (2) would not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical plant changes are made by this amendment, and (3) would not involve a significant reduction in the margin of safety because any future change to the existing Fire Protection Program will still be subject to a controlled review process in accordance with 10 CFR 50.59 and Section 6 of the Technical Specifications.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Attorney for licensee: Ernest L. Blake, Esquire, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: May 25, 1987, as supplemented by letter dated August 7, 1987.

Description of amendment request: The proposed amendment consists of 212 specific proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-41), which are identified in the licensees' amendment request. The changes are being proposed to make the Technical Specifictions for PVNGS, Unit 1 consistent with the previously reviewed and approved Specifications for PVNGS, Units 2 and 3 (Appendices A to Facility Operating License Nos. NPF-51 and NPF-65, respectively), since the three units are of the same design.

The proposed changes can be categorized as those which (1) respond to changes in the regulations or regulatory guidance, (2) are more restrictive than the current Technical Specifications, or (3) are administrative changes since they are either editorial, provide clarification, remove redundancy or correct errors.

(1) The proposed changes which respond to changes in the regulations or regulatory guidance are as follows:

(a) Item 103 deals with Specification 3/4.4.7 regarding specific activity limits for the primary coolant. The proposed change would bring the Action Statement for specific activity in the primary coolant into conformance with Generic Letter 85-19. Item 209 deals with Specification 6.8.1.5 regarding annual

reports for the facility. This proposed change would add to the annual reporting requirements the results of primary coolant specific activity analysis in which the primary coolant exceeds the limits of Specification 3/4.4.7. Included with the above changes are the associated administrative changes due to the revised bases section, revised table of contents and renumbered pages; these are Items 6, 7, 8, 16, 17, 18, 19, 21, 22, 104, 105, 106, 108, 110, 112, 113, 114 and 119.

(b) Item 206 deals with Specification 6.7.1.c regarding the Safety Limit Violation Report. The proposed change would revise the time for submitting such a report from within 14 days to within 30 days, which is in conformance with the requirements specified in 10 CFR 50.73(a).

(2) The proposed changes which are more restrictive than the current Technical Specifications are as follows.

(a) Item 35 deals with the bases section for boration systems (Specification 3/4.1.2). The proposed change would add to the list of components required to perform boron injection by including the volume control tank and an associated valve.

(b) Item 96 deals with Specification 4.4.3.2 regarding the surveillance requirements for the auxiliary spray system. The proposed change would include surveillance requirements for two additional valves associated with the system.

(c) Item 126 deals with Specification 4.5.2.e regarding 18-month surveillances for emergency core cooling subsystems. The proposed change would add components to the surveillances by including piping outside containment which is in contact with sump water during loss-of-coolant accident conditions.

(d) Items 159 and 160 deal with Specification 4.8.1.3 regarding surveillance requirements for the cathodic protection system. The proposed changes would modify the surveillance intervals from 92 to 61 days and from 18 to 12 months.

(e) Item 207 deals with Specification 6.8.1.g regarding limitations on making modifications to the core protection calculator software. The proposed change would include additional limitations on making modifications to the software. Item 80 is an associated administrative change to the bases section for the core protection calculator to make it consistent with the proposed change to Specification 6.8.1.g.

(3) The remaining items of proposed changes are either editorial, provide clarification, remove redundancy or correct errors. Examples of these types of changes are as follows:

(a) Item 203 deals with Specification 6.5.3.5.l regarding the audit of the Pre-planned Alternate Sampling Program (PASP) and its implementing procedures. The proposed change would delete this redundant Specification since the controls for PASP and its procedures are addressed in Specification 6.8.1. Item 211 deals with Specification 6.16 regarding (i) NRC approval of PASP by Region V prior to implementation and (ii) reporting changes to PASP in the Semiannual Radioactive Effluent Release Report. The proposed change would delete this Specification since (i) NRC approval for PASP was granted on January 14, 1986 and (ii) Specification 6.9.1.8, which defines the content for the Semiannual Radioactive Effluent Release Report, doesn't require that changes to PASP be reported therein.

(b) Item 92 deals with the footnotes for Specifications 3.4.1.4.1 regarding operability of the shutdown cooling loops. The proposed editorial change would move one footnote ahead of the other two since it appears first in the text.

(c) Item 115 deals with Specification 3.4.10 regarding reactor coolant system vent paths. The proposed change would clarify the locations for verifying the operability of the reactor coolant system vent paths by specifically stating that the locations are the reactor vessel head and the pressurizer steam space.

(d) Item 155 deals with a misspelled word on page 3/4 7-22. The proposed change would correctly spell the word "susceptible."

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (51 FR 7751). Examples of amendments that are not likely to involve a significant hazards consideration are as follows: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature; (ii) A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement; and (vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The staff considers Items 103, 206 and 209 of the proposed amendment to be similar to example (vii) since they are being proposed to make the specifications conform with 10 CFR 50.73(a) and Generic Letter 85-19.

The staff considers Items 35, 96, 126, 159, 160 and 207 of the proposed amendment to be similar to example (ii) since they involve more restrictive limitations and requirements not presented included in the technical specifications.

The staff considers the remainder of the 212 items to be similar to example (i) since they involve changes which are editorial, provide clarification, remove redundancy or correct errors.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards determination.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 1, 1987, as supplemented June 22, 1987 and July 7, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP), Units 1 and 2 to incorporate test frequency changes for the Rosemount Analog Trip Unit Systems. A change in frequency from monthly to semiannually is proposed for the functional and calibration tests for these instruments in TS Tables 4.3.1-1, 4.3.2-1, 4.3.3-1, 4.3.6.1-1 and 4.3.7.1-1.

During the period from 1981 to 1984, the direct pressure and differential pressure switches that provide the input intelligence to safety system logic for the Reactor Protection System (RPS), Nuclear Steam Supply Shutoff System (NSSSS) and Emergency Core Cooling System (ECCS) were replaced with Rosemount transmitters and the Rosemount Analog Trip System. These changes were based on the General Electric Company (GE) Licensing Topical Report NEDO-21617-A, "Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Inputs," issued in late 1978 as an approved method for improving safety

system instrumentation. A monthly testing requirement was established by NEDO-21617-A and, subsequently, incorporated into the BSEP TS.

In the May 1, 1987 submittal, the licensee states that observations made by both maintenance and operating personnel during the past five years of operation of the Rosemount Analog Trip System have indicated that the system has a very low failure rate and requires little, if any, calibration. A study of drift and failure rates of these instruments indicates that a test interval of six months could be used while maintaining an exceptional availability of 0.9999. The licensee concludes that the demonstration of Rosemount Analog Trip System stability over the past five years supports an increase in test interval. Of 6177 calibrations, 96 percent of the sampled surveillance test results fell within the manufacturer's trip point repeatability specifications. In fact, approximately 2400 showed absolutely no drift in setpoint values. The trip units, over their operating history, have exhibited a slight drift in and around their setpoint; however, they have stayed well within the manufacturer's specifications. The licensee states further that increasing the present monthly surveillance interval to a six-month test interval would provide the following:

1. Exceptional system availability of 0.9999 with simultaneous testing,
2. A reduction in number of half scrams taken for testing (reduced from 288/year to 48/year),
3. A reduction in number of half group isolations taken for testing (reduced from 912/year to 152/year),
4. Reduction of out of service time for safety systems (isolation reduced from 192/year to 32/year),
5. Decreased stroking of valves in the drywell,
6. Less potential for personnel error during testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed surveillance frequency change will not decrease the Rosemount Analog Trip Unit System availability below the .999 specified in the GE Topical Report NEDO-21617-A. The study of the drift and failure rates of the Rosemount Analog Trip System in use at BSEP indicates that the trip points are highly repeatable and this equipment has a much lower actual failure rate than assumed in NEDO-21617-A, which provided the basis for monthly surveillance. The study shows that a test interval of six months could be used while maintaining an exceptional availability of 0.9999. Increasing the surveillance interval would reduce the number of half scrams and half group isolations required for testing, reduce out-of-service time for safety systems, decrease potential drywell leakage and potential valve failures by stroking valves inside the drywell less often, and reduce the potential for personnel error. A net reduction in risk (gain in safety) would be realized with the increased interval. In addition, the consequences of an accident will remain unchanged since no equipment or function of any piece of equipment will be changed.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No equipment or function of any piece of equipment will be changed; therefore, no possibility of a new or different kind of accident is created.

3. The proposed amendment does not involve a significant reduction in the margin of safety. In fact, it involves a net increase in the margin of safety by providing a reduction in half scrams, half group isolations, out-of-service time for safety systems, drywell leakage and potential valve failures, and personnel error. Moreover, availability is improved, thus the margin of safety is improved.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: July 30, 1987

Description of amendment request: This amendment would revise the Technical Specifications to change the diesel generator inspection interval from every 18 months to every refueling outage. It would also correct a reference to an NRC staff Safety Evaluation Report of July 8, 1986, in Attachment 2 to Facility Operating License NPF-58 for the Perry facility concerning 10 CFR 50.59 changes to the maintenance and surveillance program for Transamerica Delaval, Inc. (TDI) diesels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of significant hazards considerations in its July 30, 1987, request for a license amendment.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Transamerica Delaval Inc. (TDI) Owners Group Design Review and Quality Revalidation (DR/QR) Report requires inspections that are more thorough than the inspections normally being performed in accordance with manufacturers recommendations. CEI's commitment to the DRQR Report is designed to increase reliability of the Division I and II diesel generators.

Thus, there is no increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change clarifies existing commitments presently being adhered to. Perry Nuclear Power Plant Unit 1 Facility Operating License NPF-58 currently contains a condition that CEI shall implement the TDI requirements as incorporated within the license. By implementing the recommendations of Revision 2 of Appendix II of the TDI DRQR Report, CEI will be implementing a program that has undergone extensive industry and regulatory review. (Re: Safety Evaluation Report Re: The Operability/Reliability of the Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc. - Perry Nuclear Power Plant (Unit 1 and 2) - W. R. Butler to Murray R. Edelman dated July 8, 1986).

Thus, no new or different kind of accident scenario is introduced.

The proposed change does not involve a significant reduction in the margin of safety because the change makes the Technical Specifications consistent with the approved program which ensures generators for nuclear standby service is (sic) within the range normally assumed for diesel engines designed and manufactured in accordance with General Design Criterion (GDC) 17 and 10 CFR Part 50, Appendix B.

Thus, there is not a significant reduction in the margin of safety.

Accordingly, based on the licensee's findings with which the Commission's staff concurs, the Commission's staff has made a proposed determination that the application involves no significant hazards consideration.

The change to Attachment 2 of Facility Operating License NPF-58 for the Perry facility merely provides a corrected reference to the Commission's most recent safety evaluation related to maintenance and surveillance of the TDI diesels. This change is administrative in nature and therefore matches Example (i) of the Commission's guidance for determining amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). Example (i) is a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Thus, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20007.

NRC Project Director: Martin J. Virgilio.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket No. STN 50-456 Braidwood Station, Unit No. 1, Will County, Illinois

Date of application for amendments: June 17, 1987

Description of amendments request: These amendments would revise Technical Specification Section 3.4.6.1 to relax certain action statements that apply when some of the reactor coolant system (RCS) leakage detection systems are inoperable. It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station, Unit 2, when it receives its operating license.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin or safety.

This proposed amendment would allow unit operation to continue for up to 30 days with any one of the three reactor coolant pressure boundary leakage detection systems inoperable. Sufficient leakage detection capability will still exist under the provision of the proposed action statements to allow operators to detect and monitor any RCS pressure boundary and take action to prevent further degradation of the RCS pressure boundary. As a result, the probability of previously evaluated accidents will not be significantly increased by a revision to the action statement for inoperable leakage detection systems.

The consequences of previously evaluated accidents are not affected by the availability of the RCS leakage detection systems because the RCS leakage detection systems do not function to mitigate the consequences of previously evaluated accidents. Their purpose is only to monitor and detect leakage from the RCS pressure boundary.

This proposed amendment only affects the availability of redundant RCS leakage detection systems. It does not allow any new modes of operation beyond those normally performed at operating PWR's. Additionally, this amendment does not allow any modifications to the plant. For these reasons, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The leakage detection systems are designed to detect a one gpm leak in one hour. According to a Westinghouse leak-before-break study performed for Byron/Braidwood, the calculated leak rate through the postulated flaw results in a factor of at least 10 relative to the sensitivity of the leakage detection systems. This margin is not affected by the proposed amendment.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, LaSalle County, Illinois

Date of application for amendment: June 16, 1987

Description of amendment request: The proposed one-time-only amendment to Operating License No. NPF-11 would allow performance of the snubber surveillance for LaSalle Unit 1 (LSCS-1), to correspond to the scheduled second refueling.

This change is desired due to the extended interval between completion of snubber functional test surveillance for Technical Specification 3/4.7.9 and the scheduled second refueling outage. Without the proposed amendment, the surveillance schedule requirements of Technical Specification 3/4.7.9 would dictate that the next snubber surveillance for LSCS-1 be done during the course of the second fuel cycle.

Commonwealth Edison is proposing to make a one time amendment to Unit 1

Technical Specification 3/4.7.9. The amendment would allow the second required surveillance to be done at the second refueling outage, rather than during the course of the second fuel cycle.

The licensee's technical justification for the proposed technical specification amendment is based on the following:

- the safety-related snubber population of LSCS-1 was fully operable at the start of the second fuel cycle;
- there is a greatly reduced failure potential for snubbers when the unit is in cold shutdown conditions;
- in a majority of cases, the mechanical snubber will be able to perform its primary function (limit piping motion and stress during dynamic events) while in a degraded/failed condition;
- all safety-related mechanical snubbers in LSCS-1 are to be visually inspected during the second fuel cycle; and
- a snubber reduction program is being implemented at LSCS-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluation; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated because there still exists a high level of snubber protection for safety related piping systems against postulated dynamic loads and load combinations given in Section 3.9 of the Updated FSAR (UFSAR). All safety related snubbers in LSCS-1 were fully operable at the start of the second LSCS-1 fuel cycle, providing protection to plant piping against postulated events as defined in Section 3.9 of the UFSAR. The snubber population will undergo regularly scheduled visual inspections during the second fuel cycle, to provide a high level of assurance that the units are in good mechanical condition, and have not been damaged by unanticipated service conditions not postulated in the UFSAR, such as a system water hammer due to an improper system lineup.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment merely extends the time interval between snubber surveillances, and does not change the testing requirements or acceptance limits for insuring snubber operability over plant life. Snubbers which fail the upcoming test at second refuel will still be evaluated as before for their impact on the structural integrity of associated system piping, using the design loads and acceptable limits specified in Chapter 3.0 of the UFSAR.

(3) Involve a significant reduction in the margin of safety as defined in the bases of Technical Specification 3/4.7.9. The complete test of the LSCS-1 snubber population at first refueling restored the population to the same level of operability as it had prior to the first cycle. The Technical Specification does not place a time on the first cycle for when snubber testing must occur, but merely requires it to be done at first refueling. In addition, the plant remained in cold shutdown for approximately four months following the first refuel snubber surveillance. This was a period of greatly reduced potential for snubbers to fail, since the pipe vibratory and transient loads and plant environmental conditions which are known to degrade snubbers are absent, and because plant systems are generally shutdown and out of service for maintenance. Therefore, the additional four months of snubber service being added to the current surveillance period during reactor operation is offset by an equal time period of no snubber degradation at the beginning of the surveillance period. Finally, the mechanical snubbers used exclusively on LSCS-1 display a tendency to fail by becoming harder to stroke or by becoming rigid when degradation of the units occur in service. The snubbers still serve to prevent excessive pipe accelerations and displacement in this condition. Therefore, the structural integrity of plant piping can be expected to be maintained during design basis dynamic events, as specified in the bases of Techncial Specification 3/4.7.9.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Beale, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 20, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications relating to the limiting conditions for operation of the Auxiliary Feedwater Pumps to be consistent with the Standard Technical Specifications. Currently the IP-2 Technical Specifications require that three feedwater pumps be operable when the RCS is above 350° F. If this requirement can not be met within 72 hours, then the Technical Specification requires the reactor to be placed in a hot shutdown condition within the next 12 hours and subsequently cooled below 350° F using normal operating procedures. The proposed changes will add limiting conditions for operation for up to three auxiliary feedwater pumps that may be in an inoperable condition.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are not likely to involve a significant hazards consideration. The proposed change is enveloped by example (ii) which relates to changes that constitute an additional limitation, restriction or control not presently included in the Technical Specifications. The staff proposes to determine that the amendment does not involve a signification hazards consideration since it adds restrictions not currently in the Technical Specifications.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 22, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications concerning Steam Generator tube inservice inspection. The amendment would allow sleeving as a repair technique provided an NRC-approved methodology is applied. Sleeving is a repair technique in which a smaller, shorter tube is placed inside the existing steam generator tube. It is sealed to the original tube at both ends of the sleeve effectively forming a new barrier. This process allows the tube to remain in service in contrast to plugging which removes the tube from service.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different king of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The licensee provided the following analysis: "... operation of Indian Point Unit No. 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, since the integrity of the steam generator tubes after sleeving will be equivalent to that of the original tubes. Thus, since the structural integrity of the tubes will not be affected by this change, there is no increase in the probability of any accident previously evaluated. In addition, the steam generator will remain capable of performing its required heat transfer function. The act of placing a sleeve in the steam generator tube results in a more efficient steam generator relative to plugging the affected tubes. Thus, the consequences of any accident previously evaluated is unaffected because the heat transfer capability of the steam generators will not be significantly altered.

(2) Create the possibility of a new or different kind of accident from any accident evaluated, as both the structural integrity and the heat transfer capability of Indian Point 2 steam generators will not be significantly affected by the use of an approved sleeving process. In addition, the steam generator tube sleeves do not interact with any IP2 steam generators.

(3) Involve a significant reduction in a margin of safety. The heat transfer capabilities of IP2 steam generators will be improved by utilizing the sleeving process rather than the currently required plugging. The sleeving process will allow a repaired steam generator tube to remain in service, rather than completely blocking the tubes flow with plugs. Since the structural integrity of the steam generators tubes will be unaltered, the net effect of utilizing a steam generator tube sleeving process, rather than the currently required plugging procedure, will be an increase in the margin of safety. This increase is due to the relatively improved heat transfer characteristics of the steam generator."

Based on the above, and based on the provisions of the proposed amendment requiring use of NRC approved sleeving repair techniques, the staff proposes to determine that the change would not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Duke Power Company, et.al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 27, 1987

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 2.2.1, Table 2.2-1 and TS 3/4.3.1, Tables 3.3-1, 3.3-2 and 4.3-1 to reflect a modification to the Unit 1 turbine trip circuitry. This modification has already been installed on Unit 2 as indicated by the current TSs. Although amendments will be issued for both Units, changes are proposed for Unit 1 only. Unit 2 is included only because the TSs are combined in one document for both units.

The licensee's planned modification intends to move the four pressure switches and associated control packs from the main control valves to the main stop valves. Thus, a main Turbine Power-Load Unbalance signal will still result in the closure of control and intercept valves but an unnecessary reactor trip will not be generated because the main stop valves will not produce the trip signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the anticipatory reactor trip on turbine trip will continue to be functional. The proposed modification would not significantly affect the design or operation of Unit 1 but would eliminate unnecessary reactor trips and challenges to the reactor protection system. Also, the licensee's proposed modification would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not significantly affect the design or operation of Unit 1. The reactor trip on turbine trip signal will still be generated when it is needed. Finally, the proposed modification would not (3) involve a significant reduction in a margin of safety because of the reasons stated above in items (1) and (2).

Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Darl S. Hood, Acting Director

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 31, 1987

Description of amendment request: The proposed amendments would correct Technical Specification (TS) 3/4.7.4, Nuclear Service Water System (NSWS), by changing the action sections to reflect that some portions of the NSWS are shared between the two McGuire units, but that the system is not shared in its entirety. The shared and unshared portions of the NSWS would be identified by adding a new Figure 3/4 7-1. TS Bases 3/4.7.4 would be supplemented with additional text and a new Table B 3/4 7-1 listing Unit 1 and 2 shared NSWS valves.

Separate action statements (a. and b.) would be specified to clarify the actions and allowed outage times for the situations in which an inoperable component affects a single unit or both

units. However, the allowed outage time for an inoperable loop for either situation would remain unchanged. The revised Action Statements would state:

a. With the unit specific portion of only one nuclear service water loop per unit Operable, restore both unit specific loops to Operable status within the next 72 hours or place the affected unit at least in Hot Standby within the next 6 hours and in Cold Shutdown within the following 30 hours.

b. With only one of the shared portions as defined by Figure 3/4 7-1 of the Unit 1 and Unit 2 nuclear service water loops Operable, restore the shared portion of the loops to Operable status within 72 hours or place both units in at least Hot Standby within the next 6 hours and in Cold Shutdown within the following 30 hours.

Additionally, Surveillance requirement 4.7.4, which requires that at least two nuclear service water loops be demonstrated operable, would be clarified to indicate that the reference to two loops means two loops per unit.

Basis for proposed no significant hazards consideration determination: Existing TS 3/4.7.4 is based upon two independent NSWS loops per unit. However, the NSWS is described in the McGuire FSAR (Sections 1.2.2 and 9.2.2) to be a system with some shared components. Specifically, the design consists of common suction piping (train A of both units share suction as do train B of both units), discharge piping, and cross-connect piping. The unshared portion of the systems consists of four loops (two per unit) to ensure redundancy and the availability of cooling to both units, even if a single failure were to render two loops inoperable (i.e., such a failure could involve train A of both units or train B of both units, but not both trains of the same unit). In the event of a safety injection or blackout signal on either unit, train A of both units would align to take suction from Lake Norman and train B of both units would align to the ultimate heat sink; all train A to train B cross-connects would close on both units as would non-safety to safety related cross-connects. The NSWS is, thus, designed to tolerate the combination of a single failure following a LOCA, a seismic event causing loss of Lake Norman, and loss of station power plus offsite power. The staff reviewed and approved the NSWS design as stated in SER Section 9.2.2 which is not changed by the proposed amendments. The proposed amendments would correct the inconsistency between the TS and design.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that the proposed change would be of a corrective nature and would not result in a change in system design or design criteria, operability requirements or plant operation as previously approved by the staff. Therefore, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC) Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Darl S. Hood, Acting

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 17, 1987

Description of amendment request: The amendment would change a surveillance requirement dealing with a special test exception on shutdown margin. The time period within which a scram test must be performed prior to reducing the shutdown margin below specified limits would be increased from 24 hours to 7 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The plant is essentially operated in the same manner as before and no change in plant configuration has occurred. Therefore, there is no increase in the probability of accidents previously evaluated.

The proposed Technical Specification change modifies the Surveillance [Requirement] prior to entry into the Special Test Exception for Shutdown Margin. The safety evaluation has been performed to demonstrate that the proposed change in [the] Surveillance [Requirement] provides essentially the same assurance that the requirement to provide the reactivity equivalent to at least the highest estimated CEA worth is available for trip insertion from Operable CEAs described in the Technical Specifications is fulfilled. Therefore, it is determined that the consequences of an accident previously evaluated has not significantly increased.

In connection with the second standard, the licensee provided the following analysis.

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously analyzed.

The plant is operated essentially in the same manner as before and no change in plant configuration is involved. Therefore, there will be no possibility of a new or different accident [from any accident previously analyzed].

With regard to the third standard, the licensee stated:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The Technical Specification for the minimum required Shutdown Margin during the Special Test Exception has not been modified. The proposed change only addresses the Surveillance Requirement of trip testing of CEAs 24 hours prior to entering the Special Test Exception. The safety evaluation has determined that the change in [the] Surveillance Requirement will have no significant change in the probability that sufficient CEA worth is available in the event of a transient. Therefore, the proposed change will not cause a significant reduction in any margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this

review, the staff believes that the licensee has met the three standards.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: August 17, 1987

Description of amendment request: The amendment would upgrade the technical specifications (TS) dealing with the structural integrity of ASME Code Class 1, 2, and 3 components. In addition, the amendment would make the proposed Unit No. 1 TS similar to the Unit No. 2 TS and the Combustion Engineering Standard Technical Specifications (STS), thereby promoting consistency between the units.

The licensee proposes to delete Tables 4.4-6, 4.4-7, and 4.4-8 from the TS. Table 4.4-6 contains the inservice inspection (ISI) program for safety class 1 components. Table 4.4-7 contains the ISI program for safety class 2 components. Table 4.4-8 contains the ISI program for safety class 3 components. The combination of these three tables is commonly referred to as the licensee's ISI program. The ISI program for most licensees is usually contained in a licensee-controlled document, and the actual program is not usually reproduced in the TS. Although the program will be removed from the TS, the program will remain in effect as a licensee-controlled document, subject to the ISI rules of the Commission.

The licensee proposes to combine the limiting conditions of operation (LCO), action statements, and surveillance requirements for the Code Class 1, 2 and 3 components (TS 3.4.10.1). Presently, Code Class 1 components are the subject of TS 3.4.10.1 and Code Class 2 components are the subject of TS 3.4.10.2. TS 3.4.10.3 contains the Code Class 3 component requirements. In regard to the proposed LCO statement, the licensee proposes to change the statement to read: "The structural integrity of ASME Code Class 1, 2, and 3 components (except steam generator tubes) shall be maintained in accordance with Specification 4.4.10.1." The licensee proposes to have this LCO applicable in all modes, versus the current requirement for applicability in modes 1 through 4. The proposed LCO and its applicability are similar to the Unit 2 TS and the STS. The licensee proposes the same action statements as contained in the Unit 2 TS and STS. In addition, the licensee proposes the surveillance requirement to read: "No additional surveillance requirements other than those required by Specification 4.0.5." Lastly, all remaining LCO's, applicability modes, action statements, and surveillance requirements will be deleted.

In order to reference the ISI program as a licensee-controlled document, the licensee proposes a new TS 4.0.5, which consists of five sections. Section a. will reference 10 CFR 50.55a(g) (Codes and Standards-Inservice Inspection Requirements), which in turn references the ASME Code/ISI program. Section b. will illustrate the surveillance intervals. Section c. will provide for interval extensions. Section d. will state that the ISI activities are in addition to other specified surveillance requirements. Section e. will specify that nothing in the Code shall be construed to supersede the requirements of any technical specifications. The new TS 4.0.5 is essentially the same as what is contained in the Unit 2 TS and the STS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI program contains the requirment as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In connection with the second standard, the licensee provided the following:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and [the] St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and

Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI Program contains the requirements as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The licensee addressed the third standard as follows:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The change to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the [s]pecifications has not been changed. The change incorporates the format/wording of the Combustion Engineering - Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications.

The change to Technical Specification 3.4.10 - Structural Integrity - ASME Code Class 1, 2 and 3 Components is proposed to achieve consistency between the St. Lucie Unit 1 Technical Specifications and [the] St. Lucie Unit 2 Technical Specifications. Three (3) separate Limiting Conditions for Operation [LCO] have been incorporated into one (1) LCO. Reference to Inservice Inspection Tables and Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been deleted. Reference to Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Inspection of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR 50.55a(g). Also, the St. Lucie Unit 1 ISI Program contains the requirements as provided in the appropriate Edition and Addenda of Section XI of the Code. Therefore, use of the modified specification would not involve a significant reduction in [a] margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because:

(1) the ISI program will remain in effect as a licensee-controlled document referenced in the TS instead of the program itself being a TS,

(2) the ISI program will still be governed by the Commission's rules and regulations,

(3) the combining of the LCO's, applicability modes, action statements, and surveillance requirements is basically a reformatting of the TS,

(4) the addition of a new TS 4.0.5 will establish the relationship between the TS and the Code of Federal Regulations that deal with ISI and the ASME Code itself, and

(5)the proposed TS are basically those contained in the Unit 2 TS and STS, which have been previously approved by the staff.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 28, 1987 (TSCR 112, Rev. 1) Supersedes September 9, 1986 request (TSCR 112)

Description of amendment request: The proposed amendment would revise the Radiological Effluent Technical Specifications (RETS) to improve clarity, make the RETS more specific to TMI-1 without changing intent or substance, and to improve consistency with Standard Technical Specifications (STS). Examples of changes include grammatical improvements, inclusion of plant-specific instrument identification numbers, and to eliminate certain time limits on inoperable channels for certain radiation monitors provided compensating actions are taken, consistent with STS. The Systems covered by the RETS do not include emergency systems intended to protect against core-melt accidents or their consequences. Rather, the RETS are intended to help control the normal and routine operation of Rad Waste Systems and the normal and routine releases of small amounts of radioactivity to the environment.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 112, Rev. 1 to revise the RETS for TMI-1. It has evaluated TSCR 112, Rev. 1 to determine if a significant hazards consideration exists. The licensee has concluded, based upon the evaluation presented below, that this license amendment request involves no significant hazards considerations.

The results of the licensee's evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

The proposed changes provide clarity and consistency with the current NRC Guidance and:

1. does not affect plant design or operation, and therefore would not involve a significant increase in the probability or consequences of an accident previously evaluated;

2. does not involve modification to existing plant equipment, and therefore would not create the possibility of a new or different kind of accident from any accident previously evaluated;

3. does not involve changes which would affect the safety analysis of the plant, and therefore would not involve a significant reduction in a margin of safety.

The proposed amendment combines Example (i) and Example (vii) of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870) in that the changes are purely administrative or are changes to conform with the current NRC guidance which result in minor changes to operations clearly in keeping with the Standard Radiological Effluent Technical Specifications, NUREG-0472, Rev. 3.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's conclusion. Because of the large number of RETS changes included in the proposed amendment, a public meeting was held on August 24, 1987 to clarify and discuss the changes so that the staff could assure itself that each of the changes, and all of the changes taken collectively, was minor and did not involve significant hazards. Most of the changes are administrative in nature. The remaining changes do not involve emergency safety systems or core melt accidents but relate to routine operation of Rad Waste Systems and/or Effluent Systems (some of which interface with the environment). Minor changes are proposed to make the TMI-1 RETS more consistent with STS. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 24, 1987 (TSCR 174)

Description of amendment request: The proposed amendment would revise the technical specifications to incorporate updated reactor coolant system heatup and cooldown limits for operation to 10 effective full power years. The updated limits will account for irradiation effects on the reactor pressure vessel nil ductility temperature based on surveillance capsule data.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 174 to incorporate updated reactor coolant system heatup and cooldown limits for operation to 10 effective full power years. It has evaluated TSCR 174 to determine if a significant hazards consideration exists. The licensee has concluded, based upon the evaluation presented below, that this license amendment request involves no significant hazards considerations in that operation of TMI-1 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The results of the evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is nonductile failure of the reactor coolant pressure boundary. The updated pressure-temperature limits have been established in accordance with the requirements of 10 CFR Part 50, Appendix G. Extending the curves for applicability to 10 EFPY is based on maintaining the design margin assumed in the original curves. Operation of the facility in accordance with the proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of 10 EFPY. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The design basis event related to the change is nonductile failure of the reactor coolant pressure boundary. The proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of 10 EFPY and is unrelated to the possibility of creating a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment revises the heatup and cooldown curves to reflect information gained from the analysis of Capsule TMI-1-C, and to extend the curves to cover 10 EFPY of operation. The results of the analysis of this capsule were reported in GPUN letter to NRC dated May 5, 1986 (5211-86-2080). The report provided additional information on the neutron fluence and Reference Temperature Nil Ductility Temperature (RT_{NDT}) for the reactor vessel material. The updated information is reflected in the revised heatup and cooldown curves. Extending the curves for applicability to 10 EFPY is based on maintaining the margin of safety assumed in the original curves. This margin of safety is assured by the results of the surveillance capsule analysis. The updated pressure-temperature limits have been established in accordance with the requirements of 10 CFR Part 50 Appendix G. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The Commission has provided guidelines pertaining to the application of the three standards by listing specific examples in 48 FR 14870. The proposed amendment is considered to be in the same category as example (ii) of amendments that are considered not likely to involve significant hazards consideration in that the proposed change constitutes an additional control not presently included in the technical specifications. This change is similar in that it involves a change to the heatup and cooldown curves that places more restrictions on heatup and cooldown than previously existed. Thus, operation of the facility in accordance with the proposed amendment involves no significant hazards considerations.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The change will revise the technical specifications to be applicable for 10 EFPY (currently 5 EFPY), based on new surveillance data, to protect against the same potential accident which has been previously evaluated. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 18, 1987 as supplemented July 31, 1987.

Description of amendment request: The proposed amendment would revise Section 6.0, Administrative Controls, of the Technical Specifications (TSs). The proposed amendment would modify the TSs as follows:

(1) Delete the organizational charts, Figures 6.2.1-1 and 6.2.2-1;

(2) Change the requirements (TS 6.2.4) for dedicated and dual role functions of the Shift Technical Advisor to comply with the Commission's policy statement on "Engineering Expertise on Shift";

(3) Delete the position of Vice-President-Safety and Environmental with the Manager-River Bend Oversight to assume the direction of the Independent Safety Engineering Group (ISEG), TSs 6.2.3.1 and 6.2.3.4;

(4) Increase the number of members of the Facility Review Committee (FRC) by two and change the titles of the Assistant Plant Manager-Operations, Radwaste and Chemistry and Assistant Plant Manager-Maintenance and Material, TS 6.5.1.2;

(5) Specify that the Senior Vice President (currently Vice President)-River Bend Nuclear Group, shall receive reports of the investigation of TS violations and related reports produced by the FRC (TS 6.5.1.6) and written notification within 24 hours of disagreements between the FRC and the plant managers (TS 6.5.1.7.c), and that the Senior Vice President-RBNG (currently Vice President) shall be included in the Emergency Plan and implementing procedures (TS 6.5.2.1);

(6) Reduce the total number of members of the Nuclear Review Board (NRB) from twelve to eleven. This change also would designate the Manager-River Bend Oversight as Chairman of the NRB (currently Vice President-Safety and Environment) and the Manager-Quality Assurance as Member and Vice Chairman (currently Vice President-RBNG). The Outage Manager and the Director-Joint Ownership Participation would be added to the NRB. Several title changes and deletions from the NRB are also proposed.

(7) Change TSs 6.9.1 and 6.9.2 to reflect the revisions to 10 CFR 50.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The offsite organization for unit management and technical support is identified in Chapter 13 of the current Safety Analysis Report. The proposed change to the Technical Specification Section 6 deletes organizational charts (Figures 6.2.1-1 and 6.2.2-1). A 10 CFR 50.59 unrevieved safety question determination (USQD) will be performed on future proposed changes per River Bend Station procedures.

The proposed change of requirements for the dedicated and dual role function of Shift Technical Advisor as shown in Section 6.2.4, is being requested to comply with the Nuclear Regulatory Commission Policy Statement dated October 28, 1985, concerning "Engineering Expertise on Shift". This proposed change will enhance the required level of engineering expertise composite in the minimum shift crew complement.

The addition of two (2) members to the FRC, the Chemistry Supervisor and the Process Systems Supervisor, will provide a representative forum of respective areas of plant operations. This proposed change will intensify the level of review and add additional experience not presently provided in the Technical Specifications. The proposed change of Assistant Plant Manager-Operations, Radwaste, and Chemistry to Assistant Plant Manager-Operations and Radwaste accompanied with the creation of the position of Chemistry Supervisor (mentioned above) is a functional change of responsibility that will enhance the level of administrative control and the effectiveness of the chemistry program. This enhancement is administrative in nature only and has no impact on any accident analysis or safety margin.

The proposed change of Assistant Plant Manager-Maintenance and Material to Assistant Plant Manager-Maintenance involves the functional change of relieving responsibilities associated with the control of materials and offers greater administrative control and effectiveness concerning selected maintenance activities.

Reporting of the investigation of Technical Specification violations and related reports produced by the FRC shall be forwarded to the Senior Vice President-RBNG as shown in the proposed change to Technical Specifications Section 6.5.1.6. Written notification within 24 hours shall be provided to the Senior Vice President-RBNG of disagreements between the FRC and the Plant Manager as shown in proposed changed to Section 6.5.2.1. These changes enhance the level of management involvement and attention on the subject reporting and approval responsibilities.

The NRB is composed of a Chairman, Member and Vice Chairman, and nine (9) other members, with the Chairman, Member and Vice Chairman being manager level positions.

These revisions provide a total of eleven (11) NRB members, down from the previous twelve (12). The level of independent review and expertise is maintained, while ensuring that a split vote does not occur and that the simple majority vote rules.

The proposed changes to the NRB membership are title changes in nature except for the addition of the Outage Manager and the Director-Joint Ownership Participation. The addition of these members provides an independent representation on the NRB to reflect experience from these respective disciplines in the NRB function of independent review and audit of its responsible activities and areas as specified in Section 6.5. In addition, the change to the NRB membership does not affect the level of expertise represented since the technical and management responsibilities are still embodied. The experience level is sufficient to implement the NRC responsibilities.

Routine Reports and Special Reports will be submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the Regional Office and a copy to the NRC Resident Inspector as shown in the proposed changes to Sections 6.9.1 and 6.9.2. These changes are being requested to comply with NRC rules and regulations (final rule) effective January 5, 1987 concerning addressing and delivery of correspondence from licensees to the NRC.

These proposed changes affect administrative controls, organizational modifications, and enhancements and, as such, have no effect on plant equipment or the technical qualifications of plant personnel. In addition, they do not change any safety limit or safety analysis. Therefore, no increase in the probability or the consequences of an accident previously evaluated exits.

These proposed changes do not create the possibility of a new or different kind of accident. Plant design and operation is not affected by the new organizational structure. No physical changes are being implemented as a result of the proposed changes in administrative controls. No change in performance criteria exists which would deviate from the technical specification limiting conditions for operation. These changes do not effect the qualifications of personnel who operate RBS nor do they involve any change to the overall operating philosophy of RBS.

No technical limits are being changed or reduced as a result of the proposed changes in administrative controls. They do not change NRB responsibilities and organizational modifications alone do not reduce the margin of safety. No significant reduction in the margin of safety will occur.

Since the proposed amendment does not change any safety analysis as described in the FSAR nor does it create the possibility of a new or different type or accident or significantly reduce the

margin of safety, GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1987.

Description of amendment request: The proposed amendment would revise Table 3.7.10-1, Total Predicted Settlements of Major Structures, of the Technical Specifications (TSs). The proposed amendment would (1) reduce the total predicted settlement for E Tunnel, Settlement Marker No. 28, from 3.8 inches to 3.3 inches; and (2) increase the total predicted settlement for G Tunnel, Settlement Marker No. 34 from 0.4 inch to 1.3 inches.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

This change in predicted settlement to 1.3 inches for Marker No. 34 is based on actual observation and comparison and remains well within the previously evaluated design envelope of 1.32 inches. Additionally, no adverse differential settlement has occurred between the G Tunnel and the Unit 1 Fuel Building.

Settlement readings at most markers, excluding Marker No. 34, have indicated approximately 60% of their total predicted values. If this were also the case at Marker No. 34, a total settlement of 1.3 inches would be expected. The total settlement as calculated for Marker No. 34 in the original analysis (before adjustment for construction schedule) is 1.32 inches. Since receiving an operating license on August 29, 1985, quarterly settlement measurements for Marker No. 34 have indicated 0.85, 0.84, 0.91, 0.94, 0.99, 1.03, 0.99 and 1.01 inches, respectively. No abnormal indications have occurred. Additionally, Marker No. 32 (which the adjustment to Marker No. 34 was based on) had settled 79% of its total predicted value (more than the 60% average) primarily due to the structure size and a bearing pressure of approximately 2.25 times that of a Marker No. 34. This factor also influenced the overly conservative adjustment made to Marker No. 34.

Marker No. 34 is located at the unconstructed Unit 2 end (west) of the G Tunnel. Therefore, it is of no concern with respect to differential settlement. However, data from other comparable markers (i.e. Marker No. 33 at the east end of the G Tunnel) indicates that no adverse differential settlement has occurred and settlement has remained within the Technical Specification allowable ranges. Therefore, modification of the predicted settlement for Marker No. 34 will not adversely impact these design assumptions.

The change from 3.8 inches to 3.3 inches for Marker No. 28 is in accordance with the design calculations. This change will provide for a more conservative limit on the settlement allowed at this marker. The change to 3.3 inches for Marker No. 28 will make the Technical Specifications agree with the design calculations as originally performed. The surveillance test procedure is being revised to incorporate the more conservative administrative total settlement limit of 3.3 inches until revised in the Technical Specification.

This change does not involve a design change or physical change to the plant, and does not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases. Thus, there is no significant increase in the probability or consequences of any accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change in predicted settlement for Marker No. 34 remains within the previously evaluated design envelope of 1.32 inches and does not involve a design change or physical change to the plant.

The G Tunnel contains safety-related piping for the Standby Cooling Tower. The G Tunnel was to be used to interconnect the Standby Service Water loops of River Bend Station Units 1 and 2. However, since Unit 2 has been cancelled, the piping running to Unit 2 has been terminated near the Unit 1 Standby Cooling Tower. Thus, there is no safety-related equipment within at least 150 feet of settlement Marker No. 34 in the west end of the G Tunnel which could be affected.

The change to 3.3 inches for Marker No. 28 is in accordance with the original design calculations. These changes do not involve a design change or physical change to the plant, and do not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases.

Thus, no new accident scenario is introduced by this change of total predicted settlement to 1.3 inches for Marker No. 34 or to 3.3 inches for Marker No. 28.

3. This change would not involve a significant reduction in the margin of safety because:

The predicted settlement is based on actual observation and comparison with other markers. Revising the prediction for Marker No. 34 ensures consistency with the predicted values of other markers and remains within the previously evaluated design envelope of 1.32 inches. No adverse differential settlement has occurred between the G Tunnel and the Unit 1 Fuel Building. Calculations for Marker No. 32 show that the structural bearing load is approximately 2.25 times that of Marker No. 34's structure. This conservatism, plus the fact that most major settlement occurs within the first few years, suggests that the remaining predicted structural settlement will be consistent with the proposed 1.3 inches. The change to 3.3 inches for Marker No. 28 is in accordance with the original design calculations and is conservative with respect to the current value. These changes do not involve a design change or physical change to the plant, and do not alter the initial assumptions made in the static design of major safety related structures as defined in the Technical Specification bases. Additionally, the Technical Specification bases do not define any margin of safety for structural settlement.

Thus, the margin of safety is not significantly reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Connor, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 7, 1987.

Description of amendment request: The proposed amendment would revise Section 3.8.1., AC Sources-Operating, of the Technical Specifications. The proposed amendment would modify the Action statement relating to demonstrating the operability of the diesel generators with offsite circuits inoperable or onsite diesel generators inoperable as follows:

(1) Delete the requirements to start the diesel generators (DGs), synchronize and load them to the safety buses during periods when offsite power is in a degraded condition as currently required by Action statements a and f of TS 3.8.1.1;

(2) Modify the requirement to start, synchronize and load the remaining diesel generators when one diesel generator is inoperable due to any cause other than preplanned maintenance or testing, as required by Action statements a, b, d and g of TS 3.8.1.1. The proposed change would revise these Actions to require the operability of the remaining diesel generators be demonstrated only if the other diesel generator became inoperable as the result of a "valid failure" as defined in Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Elective Power Systems at Nuclear Power Plants", Revision 1, August 1977. The section 3/4.8.1 Bases would also be modified to include a proposed definition of a valid failure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

This change does not affect the availability or function of equipment and/or systems. The reduction in DG testing would not subject the remaining redundant operable DGs to periods of inoperability and reduced reliability while connected to offsite and nonvital loads which occur during the required testing when one other DG is already inoperable. This would tend to decrease the probability or consequences of an accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

By not testing the remaining operable DGs as currently required by Technical Specification 3.8.1.1, no possibility of a new or different accident previously evaluated is created because no new modes of operation are introduced. All equipment functions remain as previously evaluated in the River Bend Station FSAR and SER. Conformance with applicable Regulatory Guides is maintained as indicated in FSAR Section 1.8.

3. This change would not involve a significant reduction in the margin of safety because:

The perceived gain in safety from demonstrating the operability of the remaining redundant DGs upon the loss of one DG is, in part, to identify potential common mode/generic failures. If a DG were discovered inoperable while in the standby service mode (i.e., no failure during a "valid test") then the potential common mode/generic failure can be investigated and operability of the remaining DGs verified without increased testing. Furthermore, the increased testing represents a reduction of the margin safety due to the vulnerability of the DG when connected to offsite and nonvital loads. Additionally, the Technical Specification bases do not define any margin of safety for this surveillance requirement.

The proposed amendment, as discussed above, has not changed the system design, function or operation as discussed in the FSAR and therefore, will not increase the probability or the consequences of a previously evaluated accident and will not create a new or different accident. Adequate assurance of DG availability is maintained by the testing frequencies specified in the normal Technical Specification surveillance requirements. Also, the results of the change are clearly within acceptable criteria with respect to system components, design requirements and applicable Regulatory Guides. As a result, the ability to perform as described in the FSAR is maintained and therefore, the proposed change does not result in a significant reduction in the margin of safety. Therefore, GSU proposes that no significant hazards considerations are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 14, 1987.

Description of amendment request: The proposed amendment would revise the minimum critical power ratio (MCPR) for the second cycle, delete the maximum average planar linear heat generation rate (MAPLHGR) information for the fuel being discharged at the end of cycle 1, and add the reload bundle MAPLHGR information for fuel being added for cycle 2 operation. The plant-specific information used to determine reactor limits was submitted by the licensee by letter dated July 31, 1987. In addition, the fuel bundles that are being recycled would have their alpha-numeric identification updated to be consistent with the identification in the General Electric Standard Application for Reload Fuel (GESTAR), and various Technical Specification (TS) Bases would be modified to reflect the updated information. The TSs would be modified as follows:

(1) The MCPR for cycle 2 operation would be changed to 1.07 compared to 1.06 as required by TS 2.1.2 for cycle 1 operation. Pages B 2-1, B 3/4 1-2, B 3/4 2-2 and B 3/4 2-4 of the TS Bases would also be modified to reflect this revised MCPR;

(2) The MAPLHGR (current Figure 3.2.1-1) for core fuel type P8SIB071 would be deleted because this fuel is to be removed from the reactor at the end of cycle 1;

(3) Current Figures 3.2.1-2 through 3.2.1-5 would be renumbered 3.2.1-1 through 3.2.1-4 and the alpha-numeric identification of the fuel bundles would be updated to be consistent with the identification in GESTAR;

(4) The MAPLHGR versus average planar exposure would be modified for core fuel type BP8SRB278;

(5) Figures 3.2.1-5 and 3.2.1-6, MAPLHGR versus average planar exposure, would be added for new bundle types BP8SRB299 and BP8SRB305. These new bundle types will be added to the core in Reload 1. TSs 3.2.1 and 4.2.1 and Bases Page B 3/4 2-1 would be modified to reference the MAPLHGR versus average planar exposure Figures 3.2.1-1 through 3.2.1-6;

(6) Bases Tables B 2.1.2-1 and B 2.1.2-2 would be deleted and Bases Pages B 2-1, B 2-2, B 3/4 2-4 and B 3/4 2-5 would be revised to reference GESTAR which documents the bases for the Safety Limit MCPR including the uncertainties used and the nominal values of parameters used in the MCPR statistical analysis, and the approved transient methods used to analyze Reload 1. These are administrative changes which update the Bases for River Bend Reload 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

Safety Limit MCPR for Reload Cores and MAPLHGRs For New Bundles

Safety Limit MCPR is 1.07 for this reload core as opposed to 1.06 for the initial core; the difference is due to increased uncertainties. The bases for the Safety Limit MCPR appear in GESTAR as approved in the NRC's letter dated March 22, 1986 to Ms. J.S. Charnley from Gus C. Lainas. This report has been referenced in the Technical Specifications in place of the redundant information currently in the Bases. Plant-specific information used to determine reactor limits has been submitted to the NRC by GSU in a letter dated July 31, 1987 (RBG-26368).

The 10 CFR 50.46 establishes acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS). MAPLHGR limits are established to ensure that the acceptance criteria are met.

Two new bundle enrichments are added to the River Bend core in Reload 1. MAPLHGR limits are added to the Technical Specifications for these two bundles. The natural enrichment bundle type has been removed and therefore, the MAPLHGR limit has been deleted for these bundles.

The new bundles are similar to other bundles currently in the River Bend core.

(1) The Safety Limit MCPR is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved methods (See GESTAR), which is a statistical model that combines uncertainties in operating parameters with uncertainties used to calculate critical power. For reload cores, some of the uncertainties used in the determination of the Safety Limit MCPR are larger than for initial cores. The higher Safety Limit MCPR for reload cores accounts for these increased uncertainties. The Safety Limit MCPR for reload cores has received previous NRC approval and is documented in GESTAR. Because the new Safety Limit MCPR is set such that 99.9% of the fuel rods in the core are expected to avoid boiling transition and thereby accomplishes the same purpose as the previous limit, this change does not increase the probability or consequences of an accident previously evaluated.

This change provides MAPLHGR limits for the BP8SRB299 and BP8SRB305 bundles. The MAPLHGRs have been calculated using NRC approved methods (SAFE/REFLOOD; see GESTAR), and the results of the analysis provided in the River Bend Reload 1 Licensing Submittal demonstrate that the acceptance criteria of 10 CFR 50.46 are met with substantial margin.

Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

(2) MCPR and MAPLHGR do not represent an initiating event for an accident. The Safety Limit MCPR is adjusted in the conservative direction because of calculational uncertainties and no changes or modifications are made to the River Bend facility, so this change does not create the possibility of a different kind of accident than previously evaluated.

MAPLHGR limits are provided for each bundle type and no changes or modifications are made to the River Bend facility, so this change does not create the possibility of an accident different than previously evaluated.

(3) The Safety Limit MCPR is the point at which no fuel damage is expected to occur as discussed in GESTAR. The Safety Limit MCPR is combined with the most limiting transient change to the critical power ratio to establish the operating limit MCPR. The Safety Limit MCPR and the change resulting from the most limiting transient have been calculated by methods described in GESTAR. These methods have received previous NRC approval. Therefore, the proposed amendment does not reduce the margin of safety.

MAPLHGR's are determined by analysis to ensure the acceptance criteria of 10 CFR 50.46 are met and establish the margins of safety for fuel and the ECCS. Calculations using NRC approved models described in GESTAR yield results well within these acceptance criteria. Therefore, the proposed amendment does not result in a reduction in the margin of safety.

Change in Bundle Names

Retained bundle names are updated to be consistent with the names appearing in GESTAR.

This change is an administrative editorial change in which the names of the bundles in the River Bend core are changed to be consistent with the names appearing in GESTAR. The bundles themselves are not changed or are the limits applied to these bundles. Thus, there is no change or modification of River Bend, and no change to any existing Limiting Condition for Operation, Surveillance Requirement, or margin of safety. Therefore, this change: (1) does not increase the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) reduce a margin of safety.

The proposed amendment will not increase the probability or the consequences of a previously evaluated event and will not create a new or different kind of accident from any previously evaluated. Also, the results of this proposed change are clearly within all acceptable criteria with respect to system components and design requirements. The ability to perform as described in the FSAR is maintained and therefore, the proposed change does not involve a significant

reduction in the margin of safety. GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: July 31, 1987.

Description of amendments request: The proposed amendments would add to the Technical Specifications the requirements for a post-accident sampling system, sampling and analysis of plant effluents or, specifically, noble gas monitors, and containment high range radiation monitors. These additions are to satisfy requirements of the TMI Action Items (NUREG-0737) IIB3, II F.1.2, and II F.1.3 respectively, in accordance with the guidance provided in Generic Letter 83-37.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of the examples, (ii), of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. This amendment application relates directly to the example in that the requirements and surveillances for the post-accident sampling system, noble gas monitors, and containment high-range radiation monitors are additional limitations for operation.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 30, 1987

Description of amendment request: The proposed license amendment would revise the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan (Plan) two years beyond the current expiration date of May 3, 1987. The Plan requires that the Iowa Electric Light and Power Company (IELP/the licensee) follow the schedule of the DAEC plant modifications mandated or proposed by NRC, or identified by the licensee. The proposed amendment does not involve changes to plant systems, components, or Technical Specifications.

The Integrated Plan was originally approved in Amendment No. 91, dated May 3, 1983, and extended by Amendment No. 125, dated July 9, 1985. The objective of the Integrated Plan is to integrate all planned DAEC plant modification schedules over a period of five years to assure that individual tasks are performed in an efficient and cost/resource-effective manner.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning determination if significant hazards considerations exist, by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The extension of the DAEC Integrated Plan beyond its current expiration date of May 3, 1987, is intended to assure continuation of reliable and efficient plant modifications intended to enhance plant safety. In addition, the extension is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the Plan may reduce, but not increase, the probability or the consequences of an accident previously evaluated, will not create a new or different kind or accident from any previously evaluated, and will not involve any reduction in a margin of safety.

Based on the above, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Martin J. Virgilio, Acting.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1987.

Description of amendment request: The proposed amendment will increase the maximum allowable internal containment pressure at Waterford 3 based on a reanalysis of the limiting Main Steam Line Break (MSLB) event. Technical Specification Figure 3.6-1 presently defines the maximum containment pressure for Modes 1-4 as a curve from 15.4 psia at 80° F to 14.9 psia at 120° F. The proposed change will replace the curve with a single pressure value to account for a lower analyzed peak containment pressure and revise the measurement units from "psia" to "inches water gauge" to facilitate performance of the surveillance requirements.

As noted in the Bases, the maximum containment pressure allowed under Technical Specification 3.6.1.4 ensures that the containment peak pressure resulting from either a LOCA or MSLB event will not exceed the containment design pressure of 44 psig. To satisfy this condition, LP&L conducted a series of analyses for LOCAs (a spectrum of break sizes) and MSLBs (a spectrum of break sizes and initial power levels) to determine the event which would produce the peak pressure in containment. These analyses, summarized in FSAR Tables 6.2-1 and 6.2-2, demonstrated that the peak containment pressure of 43.76 psig occurred for a 7.4765 ft^2 MSLB from 75% power with the concurrent failure of a containment cooling train. The containment design pressure of 44 psig, therefore, allowed a margin of 0.2 psig over the calculated peak pressure. Because the allowable pressure range was small and, in anticipation of operational difficulties in maintaining containment pressure in such a narrow band, LP&L proposed (and the NRC accepted) Technical Specification 3.6.1.4 to define the maximum allowable

containment pressure as a function of containment temperature, thereby allowing an operating pressure range slightly larger than 0.2 psig for containment temperatures below 120° F.

Although some operational flexibility was afforded through expressing maximum allowable containment pressure as a function of containment temperature, the narrow pressure range has placed undue operator attention on maintaining containment pressure within Technical Specification limits. To resolve this concern, LP&L has reanalyzed the limiting MSLB event.

The peak containment pressure analyses (those presently in Section 6.2 of the FSAR and the MSLB reanalysis) are performed using a modified version of the CONTEMPT-LT Mod 26 computer code. A description of the computer code and modification is contained in FSAR Appendix 6.2B. In the Waterford 3 SER (Section 6.2.1.1) the NRC reviewed the modified computer code and found it acceptable for containment analysis.

Peak containment pressure is a sensitive function of the amount of passive containment heat sink. To support various Cycle 1 and 2 analyses, LP&L had updated the pre-licensing estimates of passive containment heat sink and exposed surface area to reflect final construction activities and other station modifications. This updated information was used in the reanalysis of the limiting 75% power MSLB. All other analysis assumptions and input data described in FSAR Section 6.2.1.1.3 were unchanged from the original analysis. Due primarily to condensation on the increased surface area, the peak containment pressure for the limiting MSLB case was reduced from 43.76 psig to 42.3 psig.

With this reduction of MSLB peak pressure, the worst peak LOCA pressure can be considered as the limiting containment accident pressure. Referring to FSAR Table 6.2-2, the new peak pressure of 43.2 psig occurs for the 9.82 ft^2 DESLS LOCA with minimum safety injection. This value in conjunction with the containment design pressure of 44.0 psig, defines a potential Technical Specification pressure range of 0.8 psig.

The proposed change places a limit of 20 inches water gauge (INWG), or approximately 0.72 psig, on the maximum containment pressure during normal operating conditions. As described in the proposed change to Bases Section 3/4.6.1.4, the calculated peak LOCA pressure margin of 0.8 psig (22.14 INWG) has been reduced by 1.20 INWG to account for potential instrument error and 0.94 INWG for conservatism. Because of the increase in pressure margin operating range, the variation of initial containment pressure due to containment temperature has been ignored in the proposed change, providing additional conservatism.

By using the peak LOCA pressure of 43.2 psig to define the allowable initial containment pressure range, LP&L is introducing conservatism into Technical Specification 3.6.1.4 well beyond instrument error concerns. Unlike the limiting MSLB case, the LOCA events have not been reanalyzed utilizing the updated containment heat sink information, primarily because of the extended schedule necessary for the analyses. While the additional cases may be analyzed in the future, operational concerns with the narrow pressure range presently in Technical Specification 3.6.1.4, coupled with the lengthy NRC analyses required, dictate submittal of this proposed change based only on the limiting MSLB reanalysis. Should the LOCA cases be reanalyzed, LP&L expects the peak LOCA pressure to be reduced to less than or equal to the reanalyzed MSLB pressure of 42.3 psig, which would provide more than double the pressure range requested by this proposed change.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed changes does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change introduces no new effect into the previously evaluated accidents (MSLB/LOCA) other than updating the MSLB to reflect plant changes in passive heat sinks. The MSLB consequences (i.e., peak pressures) are reduced while still preventing overall peak containment pressure due to the limiting LOCA from exceeding containment design pressure. Therefore, there is no increase in probability or consequences for previously analyzed events.

(2) The purpose of Technical Specification 3.6.1.4 is to prevent the maximum containment pressure during any MSLB/LOCA from exceeding the containment design pressure. The proposed change is the direct result of incorporating as-built passive heat sink data into the MSLB analysis and thereby reducing the MSLB peak pressure. No new plant systems, modes of operation or setpoint changes have been introduced which could have an effect on the course of an accident. Therefore, the proposed change will not create the possibility of a new or different accident from any previously evaluated.

(3) Technical Specification 3.6.1.4 prevents exceeding the containment design pressure. The proposed change ensures that design pressure is not exceeded by placing a limit on maximum containment pressure during Modes 1-4, based on the most limiting containment pressure event, thereby preserving safety margin. In fact, the margin from the limiting event peak pressure (calculated peak pressure plus maximum allowable containment pressure) to the containment design pressure increases from 0.04 psig under the existing Technical Specification to 0.08 psig under the proposed change. Additionally, reanalaysis of the LOCA event would be expected to result in a peak containment pressure much lower than that credited by the proposed change. Therefore, the proposed change does not involve a reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 31, 1987

Description of amendment request: This amendment would change the Technical Specifications to reflect changes in the quality assurance organization and in the projects and operational analysis organizations. The proposed changes to the quality assurance organization will provide a two-manager system that will have a clear separation of the department's in-line functions of nondestructive examination, inspection, review and

deficiency control from the independent oversight functions of audits, procurement quality, support and observations/assessments. The proposed changes to the projects area under the Site Director will provide a more equal distribution of workload and a more effective management chain of command for plant projects. Other changes involve title changes to more accurately reflect the present level of responsibility. The following specific changes are proposed:

(1) For the quality assurance organization:

a. Change the position of Director, Quality Assurance to Director, Quality Programs on Figure 6.2.1-1 and in Section 6.5.2.2.

b. Change the position of Manager, Nuclear Site QA to Manager, Quality Services on Figure 6.2.1-1 and in Section 6.5.1.2.

c. Change the position of Manager, Audits QA to Manager, Quality Systems on Figure 6.2.1-1.

d. Delete the position of Manager, Programs QA from Figure 6.2.1-1.

(2) For the projects and operations analysis organizations:

a. Add the position of Manager, Special Projects, to Figure 6.2.1-1. This position will report directly to the Site Director, GGNS.

b. Delete the position of Manager, GGNS Unit 1 Projects from Figure 6.2.1-1 and have the Manager, Plant Modification and Construction report directly to the Site Director.

c. The block in Figure 6.2.1-1 entitled "Operational Analysis Group (ISEG)" would be replaced with that entitled "Manager, Operations Analysis Group (ISEG)." The SRC Composition Section 6.5.2.2 would be revised to indicate the change in title.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The licensee's analysis is reproduced below for the two proposed changes.

(1) Quality assurance organizational changes

These changes are primarily administrative in nature. The individuals assigned to the newly created positions will meet the relevant qualifi cation requirements specified in UFSAR Chapter 13.

SERI has evaluated the proposed changes and considers them not to in volve a significant hazards consideration for the following reasons:

Standard 1

The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated, because the changes are administrative in nature. The proposed changes to the quality assurance organization will not delete any functions currently performed by the quality assurance organization but will consolidate certain functions in order to increase the effectiveness of the department['s] internal operation. Therefore, the proposed changes to the organization will not increase the probability or consequences of any accident previously evaluated because the quality assurance function will be performed more effectively through the revised organization.

Standard 2

The proposed changes will not create the possibility of a new or different accident from any accident previously evaluated because the proposed changes will not affect the managerial and administrative controls utilized to assure safe operations of the plant. The quality assurance requirements for the design, construction and operation of safety[-]related equipment will not be affected by changes to the quality assurance organization. Therefore the proposed changes to the organization will not affect the performance of the plant as previously analyzed in the FSAR.

Standard 3

The proposed change[s] will not involve a significant reduction in [a] margin of safety. The proposed changes to the quality assurance organization involve only the realignment of existing function and the addition of the new functional area of observation[s]/assessments. These changes are intended to enhance the effectiveness of the quality assurance organization. Therefore, no safety margins are affected by the proposed changes.

(2) Projects and operations analysis organization [changes]

These changes are primarily administrative in nature. The individuals assigned to the newly created positions will meet the relevant qualification requirements specified in UFSAR Chapter 13.

The proposed change[s] [do] not involve a significant hazards consideration because operation of Grand Gulf Unit 1 in accordance with this change would not:

Standard 1

Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change[s] [do] not involve a change in plant hardware, plant operating procedures, or plant emergency procedures. The changes to the [o]ffsite [o]rganization are administrative in nature in that they more equally distribute the workload among the Site Director's staff. The changes to the [o]ffsite [o]rganization are administrative in nature in that they provide a more effective management chain of command for [n]uclear [p]lant [e]ngineering support groups.

Standard 2

Create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. Th[ese] change[s] [are] administrative in nature and [require] individuals assigned to the newly created positions to meet qualifications specified in the UFSAR.

Standard 3

Involve a significant reduction in a margin of safety. No margins of safety are affected by the proposed change[s] due to their administrative nature. [The] [p]lant and offsite organization[s] [are] strengthened and qualification requirements for [the] positions are retained.

The NRC staff has made a preliminary review of the licensee's analysis and agrees with the licensee's conclusions that the three standards in 10 CFR 50.92 are met for the proposed operating license amendment for Grand Gulf Nuclear Station, Unit 1.

Accordingly, the Commission proposes to determine that the requested changes to the Technical Specifications do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: July 8, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications and associated bases relating to the minimum reactor vessel temperature for pressurization to be consistent with the measured nil-ductility temperature shifts of irradiated Nine Mile Point Unit 1 reactor vessel material specimens.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

1. The operation of Nine Mile Point 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates the results of testing of Nine Mile Point Unit 1 reactor vessel material surveillance specimens which have been irradiated during station operation. Testing of the material surveillance specimens was performed in accordance with 10 CFR Part 50 Appendix H.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the integrated neutron dose. The proposed amendment incorporates (1) the results of testing of irradiated Nine Mile Point Unit 1 reactor vessel material, (2) calculation of stress intensity factors according to Appendix G of Section III of the ASME Boiler and Pressure Vessel Code 1980 Edition with Winter 1982 Addenda and (3) the Regulatory Guide 1.99 (Proposed Revision 2) method for extrapolation with the exception of the recommended addition of one standard deviation to the nil-ductility shifts.

Operation of Nine Mile Point Unit 1 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure will be in accordance with those specified in 10 CFR 50 Appendix G and Appendix G of the ASME Code.

Therefore, the proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment incorporates pressure/temperature operating limits based on analysis of irradiated samples. No modification to the plant is required in order to implement the proposed amendment. The NRC staff notes that the existing limits are also based on analysis of irradiated samples. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel material, since safety margins specified in 10 CFR Part 50 Appendix G and the ASME Code Appendix G will be maintained.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: July 31, 1987

Description of amendment request: The licensee has proposed to revise certain of the Environmental Monitoring Technical Specifications to make them more consistent with those for Nine Mile Point Unit 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has presented its determination of no significant hazards consideration as follows:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the proposed changes affects the probability or consequences of an accident. The changes to the Environmental Monitoring Program are only administrative. Release limits will not be increased by this change. Therefore, the proposed changes will not increase the probability or consequence of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes affects the operation of any safety system. This is strictly an administrative change for consistency with Unit 2 Technical Specifications. Therefore, there is no possibility of a new or different kind of accident created by this change.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The changes to the Environmental Monitoring Program are only administrative. Release limits are not increased by this change, and plant safety systems are not affected. Consequently, there will be no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 21, 1986

Description of amendment request: The proposed amendment would: (1) revise the end-of-cycle thermal power limit to "forty (40) percent minimum", (2) revise the existing end-of-cycle limiting condition for operation from license condition 2.C.(3), and (3) add the new end-of-cycle limiting condition for operation to Technical Specification (TS) Section 3.1.7h.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The original intent of the end-of-cycle thermal power limit was to provide a precautionary measure to prevent operation in unanalyzed areas. The proposed revision takes credit for the General Electric generic BWR analysis which is a part of Amendment No. 7 to GESTAR (NEDE-24011-P-A-7-US) dated August 1985. GESTAR is the licensing topical report for reload analysis applicable to Nine Mile Point Unit 1 which has received NRC approval. General Electric concluded that the end-of-cycle licensing analysis conservatively bounds coastdown operation to 40 percent power. The proposed change does not change the original intent of License Condition 2.C.(3), but revises it to reflect more recent analyses. Removing this limiting condition for operation from the license and adding it to Section 3.1.7H of the TS is requested for administrative purposes. This change also provides clarification that this limiting condition for operation applies to coastdown operations for all fuel cycles.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment would restrict plant operation to the area analyzed and approved for end-of-cycle coastdown, thus precluding the possibility of an unanalyzed accident or malfunction.

(3) Involve a significant reduction in the margin of safety. The General Electric analysis was performed over a range of power with the safety limits analyzed including MCPR, Peak Heat Flux and peak vessel pressurization. The margin to all safety limits analyzed increased linearly as power decreased. The change to 40 percent power merely reflects the boundary conditions of the end-of-cycle licensing analysis.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Acting Director

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 1987

Description of amendment request: The amendment would revise Technical Specification 4.7.10.e.(2) to require the test results on each snubber sequentially in its assigned order in the random sample and to replace the "reject" region on Figure 4.7-1 with an expanded "continue testing" region.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has concluded that the amendment does not involve a significant hazards consideration because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes alleviate any possibility of unnecessary 100 percent testing of the Millstone Unit No. 3 snubber populations during future refueling outages. Deletion of the "reject" region does not reduce the confidence level in the snubber population because that is set by "accept" region.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with the proposed changes as no design changes have been made. The acceptance criteria for a population of snubbers has not changed. Therefore, the proposed changes will not increase the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Because there is no change to the safety limits and there is no impact on the basis of the Technical Specification.

The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 5, 1986.

Description of amendment request: The amendment would: (1) Revise Tables 4.1.1, 4.1.2, and 4.2.1 to reflect the installation of new analog trip units for reactor water level reactor protection system and ECCS initiation instrumentation (NUREG-0737, Item II.F.2 Inadequate Core Cooling Instrumen tation); (2) Revise the Technical Specifications to reflect logic changes made to implement the requirements of NUREG-0737, Item II.K.3.18. A bypass timer was added to the reactor low pressure permissive start switch contacts for each Core Spray and LPCI System division and the high drywell initiation signal was removed from the Auto Pressure Relief System; and (3) Lower the Safety/Relief Valve Discharge Pipe Pressure Switch Settings and related items.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has addressed the above three standards as they relate to the proposed changes to determine whether they constitute a significant hazards consideration. The licensee's evaluation is provided below:

1. Inadequate Core Cooling Instrumentation - NUREG-0737, Item II.F.2.

(1) These proposed changes would revise the Technical Specifications to reflect the upgrading of reactor vessel water level instrumentation used for the ECCS and reactor protection systems at Monticello. The installation of this instrumentation was recommended by the NRC Staff in Generic Letter 84-23 dated October 24, 1984. The specific Monticello modification of the level columns and installation of analog instrumentation was approved by the NRC staff in a letter dated May 28, 1985. The proposed Technical Specification changes revise the surveillance specified for water level instrumentation to make it applicable to the new analog instrumentation instead of the originally-installed mechanical level switches. Since these changes will result in more reliable reactor vessel water level instrumentation for initiation of ECCS equipment and tripping the reactor, plant safety will be enhanced and the probability or consequences of an accident involving a failure or malfunction of this instrumentation will be reduced.

There are a small number of corrections to information provided on Tables 4.1.1 and 4.2.1 to make them accurately describe installed instrumentation. These are purely administrative changes and cannot affect the probability or consequences of any accident.

(2) These changes deal with surveillance testing requirements, specifically calibration intervals applicable to upgraded reactor water level instrumentation. The revised surveillance is consistent with NRC staff guidelines previously applied to similar instrumentation installed for recirculation pump trip and alternate rod injection initiation. For these reasons the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As discussed above, the proposed changes revise the Technical Speci fications installed for reactor vessel water level. The new instrumentation replaces less reliable instrumentation provided in the original plant design. All of the original ECCS and reactor protection system functions are accomplished by the new instrumentation. The margin of safety is therefore increased by the installation of this instrumentation and the issuance of Technical Specifications appropriate to the new equipment. There are a small number of administrative changes which add clarification and which are descriptive in nature. They have no effect on any safety margin.

2. ADS Logic Modifications - NUREG-0737, Item II.K.3.18.

(1) The proposed Technical Specification changes reflect the completion of a modification to the Automatic Pressure Relief System at the Monticello Nuclear Generating Plant required by the NRC's TMI Action Plan and previously reviewed and found acceptable by the NRC staff. The changes permit automatic actuation of the Automatic Pressure Relief System on small reactor coolant system breaks which do not increase drywell pressure. The original plant design required both low-low reactor water level and high drywell pressure signals for actuation of the Automatic Pressure Relief System.

These changes will allow the Automatic Pressure Relief System to respond automatically to a wider range of small break accidents and plant safety will be improved. An additional surveillance test of the inhibit switch is also added which will increase the reliability of this function and reduce the probability of spurious operation. For this reason the changes will not result in any increase in the probability or consequences of an accident.

(2) As discussed above, the proposed Technical Specifications changes accommodate a modification made to the plant which was a requirement of the TMI Action Plan. The modification makes the Automatic Pressure Relief System less dependent on operator action. Response to analyzed accidents requiring reactor depressurization is improved. Spurious operation is prevented by including a new timer in the logic design. Inhibit switch surveillance further reduces the probability of spurious operation. No new type or different type of accident is introduced by adding additional requirements related to this logic change to the Technical Specifications.

(3) As discussed above, the proposed changes are related to a TMI Action Plan modification which increases margins of safety by making the Automatic Pressure Relief System less dependent on operator action. Design features intended to reduce unwanted low pressure ECCS pump starts on water level transients are preserved.

3. Safety/Relief Valve Discharge Pipe Pressure Switches and Related Items.

(1) The proposed amendment would revise the Technical Specifications to lower the setpoint specified for the safety-relief valve discharge pipe pressure switches to permit them to function as valve position detection instrumentation at low reactor pressures. This setpoint change has been evaluated and found to have no effect on the low-low set logic function. The switches will detect a safety/relief valve actuation on sensing 30 psid in the discharge line instead of 50 psid. Since there will be no change in the operation of the low-low set logic, and the pressure switches will be more responsive at low reactor pressures for valve position indication purposes, this change will enhance the accident monitoring function. There will be no increase in the probability or consequences of any accident previously evaluated.

The change in function description in Table 3.2.7, the additions to Table 4.2.1, and the revision to Specification 3.6.E.2 are administrative changes. They have no effect on any component. They provide clarification and eliminate redundancy. For these reasons they can have no effect on the probability or consequences of any previously analyzed accident.

(2) The proposed reduction in pressure switch setpoint will make the switches more response valve position indicators at low reactor pressures. No new accidents or different types of accidents are created by this setpoint change.

(3) The proposed administrative changes are for purposes of clarification and elimination of redundancy. No actual revisions in equipment or procedures will result from these changes. They cannot create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, the proposed changes revise a Technical Specification setpoint and provide clarification and elimination of redundancy. The changes will result in a more responsive safety/relief valve position indication system at low reactor pressures and clearer Technical Specification requirements. Margins of safety are, therefore, enhanced.

The staff has reviewed the licensee's evaluation and concurs with its conclusions. Based on the information provided, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Sacramento Muncipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 29, 1987

Description of amendment request: The proposed Technical Specification amendment would add requirements for the meteorological monitoring instrumentation to the Rancho Seco Nuclear Generating Station Technical Specifications. There are no meteorological instrumentation requirements in the existing Specifications. The proposed addition to the Specifications includes limiting conditions for operation, surveillance requirements, and the bases associated with the meteorological monitoring instrumentation.

Meteorological monitoring requirements are included in Technical Specifications to ensure that the capability exists to estimate radiation doses offsite in the event of an airborne radioactive release from the site. The proposed amendment also includes revisions to the table of contents to accommodate the additional specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). Examples of actions involving no significant hazards considerations include: (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature, and (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The changes included in the proposed amendment fall into the two categories referenced above. The majority of the changes include additional limitations and surveillances associated with the meteorological monitoring instrumentation (example ii). The proposed change to the table of contents is encompassed by example (i), a purely administrative change.

On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 C Street, P. O. Box 15830, Sacramento, California 98513

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 29, 1987

Description of amendment request: The proposed amendment would modify the surveillance requirements of Specification 4.10 "Control Room/ Technical Support Center Emergency Filtering System," and its related Bases. One proposed change would add a surveillance to assure that the system is capable of maintaining the Control Room and the Technical Support Center at a temperature of no more than 80° F for at least 3 hours. Another proposed change would delete the requirement to perform post maintenance associated surveillances of the system's automatic actuation features. The automatic actuation features would be tested once per refueling period or once every 18 months whichever occurs first. A surveillance would be added to assure that the makeup air flow entering the system does not exceed 1760 CFM.

The other changes associated with the proposed amendment involve changes in nomenclature for specifying surveillance parameters and changes to the bases section which describe the rationale for the surveillance requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility does not involve a significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated since the functional requirements of the Essential Filtering System are not changed by the proposed amendment. Although the proposed amendment does include a request to delete certain post maintenance associated surveillances of system automatic actuation features, the requirement to test the automatic actuation during the refueling interval will be retained. This is not a significant reduction in surveillance requirements and does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed since the functional requirement of the system have not changed and existing accident analyses remain applicable.

The proposed changes do not involve a significant reduction in the margin of safety. The amendment addresses only surveillance requirements and the proposed changes are minor. The impact on the margin of safety is insignificant.

The Commission has also provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). The examples of actions involving no significant hazards considerations include (i) a purely admini strative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature and (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Except for reduction in the surveillances described above, most of the proposed changes impose additional limitations, restrictions, and surveillance. Therefore, the proposed changes are similar to the second example and do not involve significant hazards considerations. The remainder of the proposed changes are changes in nomenclature and are similar to the first example; therefore, they do not involve a significant hazards consideration.

Based on the above discussion, the staff agrees with the licensee's findings that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: July 6, 1987

Description of amendment request: The amendment would revise Technical Specification (TS) Sections 6.2, "Organization," and 6.4, "Training." The changes delete the organization charts from the Technical Specifications and revise the retraining and replacement training program. The proposal to delete the charts has been endorsed by the Westinghouse Owner's Group as a lead plant item. Shearon Harris is the lead plant for this item.

Previously, organization changes have resulted in South Carolina Electric and Gas Company (SCE&G) processing and NRC review of license amendment requests. Consistent with the NRC and industry commitment to improve TS, SCE&G proposes to delete the organization charts from the TS, thereby eliminating needless expenditure of both NRC and utility resources. As in the past, the NRC will continue to be informed of organizational changes through other required submittals.

For example, Chapter 13 of the Final Safety Analysis Report provides a description of the organization, as well as detailed organization charts. As required by 10 CFR 50.71(e), SCE&G submits annual updates to the FSAR. 10 CFR 50.54(a)(3) and 10 CFR 50, Appendix B, govern changes to the organization described in the Quality Assurance Program; some of these organizational changes require prior NRC approval. The NRC resident inspector will also be made aware of any changes in the organization.

The proposed change to the training section revises the retraining and replacement training program to meet or exceed the requirements of amended 10 CFR 55 effective May 26, 1987. The Final Safety Analysis Report is being revised to reflect this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves a significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined for the deletion of organization charts that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Through SCE&G's Quality Assurance programs and efforts to maintain only the most qualified personnel in positions of responsibility, it is assured that safety functions performed by the on-site and the corporate organizations will continue to be performed at a high level of competence. Also, for the revision of training requirements, the licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed TS change only revises the administrative section to incorporate the new 10 CFR 55 requirements which improve the operator licensing process and examination content.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The revised 10 CFR Part 55 improves the safety of the nuclear power plant by improving the operator licensing process and examination content.

The staff has reviewed these determinations and is in agreement with them.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: April 17, 1987 (TS 87-12)

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 6.8.5.a, "Primary Coolant Sources Outside Containment," by deleting references to the charging system, iodine cleanup system, and the hydrogen recombiner system and by adding the Reactor Coolant System (RCS) Sample System to the list of primary coolant sources outside containment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92 about the issue of no significant hazards considerations. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

A review of Sequoyah technical specifications revealed some unjustified discrepancies between Section 6.8.5.a of unit 1 technical specifications and the same section of unit 2 technical specifications Section 6.8.5.a contains a list of systems which have portions outside containment that could contain highly radioactive primary coolant fluids during a serious transient or accident. The list given in the unit 1 technical specifications erroneously includes the charging system, iodine cleanup system, and hydrogen recombiner system. At Sequoyah the charging system is part of the chemical and volume control system (CVCS). Because the CVCS is included in the list, the charging system should not be listed separately. An iodine cleanup system does not exist at Sequoyah, therefore, it should not be included in the list. The hydrogen

recombiner system does exist at Sequoyah, but this system does not have portions outside containment, therefore, it should not be included in the list.

The RCS sample system is listed in this section in the unit 2 technical specifications, but it is not listed in the unit 1 technical specifications. The RCS sample system is appropriate for the section, and it should be added to the list given in the unit 1 technical specifications.

In its conclusion, the licensee addressed the issue of no significant hazards consideration as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change will correct an erroneous and apparently inadvertent amendment made to Section 6.8.5.a of Sequoyah's unit 1 technical specifications. This change will make the systems listed in Section 6.8.5.a appropriate for the design at Sequoyah and will reestablish consistency between the list of systems shown in the unit 1 and unit 2 technical specifications.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not change the plant's design, procedures, or testing; therefore, it will not create any new accidents.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change does not affect the plant's design basis or its operation.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 12, 1987 (TS 87-15)

Description of amendment requests: The proposed amendments would modify Technical Specification (TS) Table 3.6-2, "Containment Isolation Valves," as follows:

1. Add two flow solenoid valves, designated as FSV-30-134 and -30-135, to Table 3.6-2, Section A, "Phase 'A' Isolation," in both the unit 1 and unit 2 TS.

2. Relist in sequential order the listing of the valves in Table 3.6-2, Section A, so that the valves are presented in sequential order of both system number and valve number in both the unit 1 and unit 2 TS.

3. For the unit 1 TS only, correct the valve designations of entries 14 through 30 of Table 3.6-2, Section C, "Containment Vent Isolation," to include a hyphen between the alpha code descriptor and the system number, and between the system number and the valve sequence number.

4. Correct the function description of entries 26 through 30 of Table 3.6-2, Section C, to read "Cntmt Bldg UPR Compt Air Mon" in both the unit 1 and unit 2 TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the technical specifications changes table 3.6-2 to include flow solenoid valves FSV-30-134 and -30-135 in the listing of containment vent isolation valves that receive a Phase "A" containment isolation signal. The omission of the subject valves from table 3.6-2 was an oversight. The subject valves currently undergo testing as containment isolation valves as identified in surveillance instructions SI-158.1 (leak rate testing), SI-166.1 (stroke time testing), and SI-166.4 (functional testing). The proposed technical specification change would provide for the two valves to be subjected to the limiting condition for operation (LCO) for containment isolation valves (LCO 3.6.3) and the corresponding surveillance requirements (SRs) (SR-4.6.3.1, -4.6.3.2, -4.6.3.3, and -4.6.3.4). Thus, the proposed amendment would provide for increased administrative controls over the subject valves. Also, the other changes are administrative in nature, involving relisting in sequential order the valves listed in table 3.6-2 and the correction of typographical errors. The proposed amendment affects no changes in equipment, setpoints, limits, or operating procedures.

Therefore, the proposed amendment involves no significant increase in either the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Flow solenoid valves FSV-30-134 and -30-135 are designed, installed, and maintained as containment isolation valves. Safety analyses reported in chapter 15 of the Sequoyah Final Safety Analysis Report (FSAR) take credit for the isolation function of the subject valves. As stated above, other changes that would be affected by the proposed amendment are strictly administrative in nature. The proposed amendment does provide for the two valves of interest to be subjected to the appropriate LCO and associated SRs for containment isolation valves. The proposed amendment does not involve either a change in hardware capabilities or a modification in the operation of the plant. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed amendment would subject flow solenoid valves FSV-30-134 and -30-135 to the LCO for containment isolation valves (LCO 3.6.3) and the associated four SRs (SR-4.6.3.1, -4.6.3.2, 4.6.3.3, and -4.6.3.4). This action would provide additional assurance that the two valves would perform their intended function and provide for remedial action should it be determined that the valves are inoperable. Again, as stated above, the proposed amendment also provides for correcting typographical errors and organizing the entries into a more readily usable format and thereby reduces the potential for errors in using the subject table. Thus, the proposed amendment provides for an increase in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: March 10, 1987

Description of amendment request: This amendment, if approved, will modify the WNP-2 Technical Specifications by revising the new fuel storage vault criticality monitor alarm/trip setpoint value in Table 3.3.7.1-1 from less than or equal to 10R/h(a) to a revised value of less than equal to 5R/h(a).

As discussed in the WNP-2 Final Safety Analysis Report Section 12.3.4.5, the criticality monitor alarm setpoints are calculated using the criteria from 10 CFR 70.24(a)(1) which require detecting a dose rate of 20 rads per minute of combined neutron and gamma radiation at 2 meters. The current alarm setpoint value of less than or equal to 10R/h(a) was determined by calculations using criteria from the appendix of ANSI Standard 16.2 1969, "Criticality Accident Alarm System." This proposed change reflects utilization of the revised criteria presented in Appendix B to ANSI/ANS Standard 8.3 1979, "Criticality Accident Alarm System." The calculated dose rate using the methodology as defined in the revised Bases is 5.05 R/hr. The allowable value for the alarm setpoint was therefore established at less than or equal to 5R/hr. This setpoint will meet or exceed the criteria set forth in 10 CFR 70.24(a)(1).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the new calculational method is considered to predict more accurately the combined gamma and neutron dose rate that the criticality monitors would sense in the dry storage area for new fuel. The proposed change does not create the possibility of a new or different kind of accident than previously evaluated because no new systems or procedures are introduced by this request. The proposed change does not involve a significant reduction in a margin of safety because the currently accepted criteria in ANSI/ANS 8.3 1979 result in an alarm/trip setpoint value that is more conservative than that resulting from the previously accepted criteria.

Based on our review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: April 21, 1987

Description of amendment request: The licensee has proposed a modification to the "Administrative Controls" section of the WNP-2 Technical Specifications. The proposed amendment involves changes of position titles and changes in responsibilities of designated positions. The licensee has also asked to remove from the organization charts in the Technical Specifications certain positions which they believe represent unnecessary level of detail.

The position of Technical Director (Technical Specifications Section 6.8.2 and Figure 6.2.1-1) has been eliminated. This was a support position which reported directly to the Managing Director. This support is now provided by the Deputy Managing Director and the other supporting Directors.

The position title, Support Services Director (Figure 6.2.1-1 and in Section 6.8.2), has been changed to Support Services Manager to provide consistency throughout the Supply System. No deletion of support to WNP-2 or change of personnel is represented in this proposed change.

The position title, Audits Manager (Figure 6.2.1-1), has been changed to Programs & Audits Manager due to a consolidation of resources in the Licensing and Assurance Directorate. No deletion of support to WNP-2 is represented in this change. The performance of the audits of unit activities as described in Section 6.5.2.8 will not be adversely affected by this proposed change.

The position title, Plant Quality Assurance Manager (Figures 6.2.1-1, 6.2.2-1a, and page 6-8), has been changed to Quality Assurance/Quality Control (QA/QC) Manager to reflect more accurately total responsibility. No deletion of support to WNP-2 or change of personnel is represented in this proposed change.

The licensee has also proposed to delete certain positions from the Organization Charts (Figures 6.2.2-1a. and b.) that are not explicitly required by NRC to be listed in the Technical Specifications. The responsibilities of these organizational units are maintained at the Managerial level. Deletion of the level of detail of the organizational charts will enable the Supply System to make title changes at the supervisory level without requiring a change to the technical specifications. The Instrumentation and Control (I&C) technicians are used for general work and provide assistance as requested but do not report directly to the Control Room Supervisor nor are they required to. No deletion of support to WNP-2 is represented in this change.

Basis for proposed no significant hazards determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not increase the probability or consequences of an accident previously evaluated because the changes are administrative changes only and overall commitments and functional capabilities are not reduced. The proposed changes do not create the possibility of a new or different kind of

accident because the section of the technical specifications affected by the changes does not enter into the postulation of accident scenarios. The proposed changes do not involve a significant reduction in a margin of safety because the changes do not represent a reduction of support to WNP-2. The program requirements do not change.

Based on our review of the proposed modifications, the Commission proposes to determine that the proposed changes to the WNP-2 Technical Specifications involve no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of Amendment Request: June 1, 1987

Description of Amendment Request: The licensee has proposed amending Table 4.3.2.1-1 in the Technical Specifications (TSs) to delete the requirement to perform a periodic channel check on certain reactor water level isolation switches. The Supply System stated that the isolation actuation instruments originally installed were replaced by other instruments in order to comply with environmental qualification requirements set forth in 10 CFR 50.49. However, the Supply System stated that the new instruments are of a design not readily amenable to the monitoring specified in Table 4.3.2.1-1.

As part of the actions taken to comply with 10 CFR 50.49, the Supply System replaced four non-environmentally-qualified level indicating trip switches that provide the Reactor Water Level 2 containment isolation function. Table 4.3.2.1-1, "Isolation Actuation Instrumentation Surveillance Requirements," Items 1.a.2, 2.c, and 3.g. require that a channel check be performed once per shift during operational conditions 1, 2, 3, and 4. This requirement is typical for those types of devices that provide both a trip and indicating function or those devices that can be checked by derivation of the sensed parameter. The new design configuration relies upon non-indicating level switches for the isolation function only. The Supply System stated that the new design does not require or support the performance of a channel check.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The replacement devices are specifically applied to perform the design bases function during the previously evaluated accident.

The proposed amendment does not create the possibility for an accident or malfunction of a different type than any previously evaluated. The logic design configuration is not altered, thus providing similar component failure protection.

The amendment does not involve a significant reduction in a margin of safety. The replacement trip switches were recognized as an improvement over the existing components by nature of being environmentally qualified and as such, represent an improvement in the margin of safety.

Based on its review of the proposed modification the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036

NRC Project Director: George W. Knighton

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 23, 1985, as revised by letters dated September 15, 1986 and February 19, 1987.

Brief descripiton of amendment: The amendment revises the Technical Specifications relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The position of Senior Vice-President, Nuclear will report directly to the President and Chief Executive Officer of Boston Edison Company.

Date of issuance: August 25, 1987

Effective date: August 25, 1987
Amendment No.: 104
Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 12, 1986 (51 FR 5271). Subsequent notice was made on June 17, 1987 (52 FR 23096). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 27, 1987
Brief description of amendments: The amendments changed the Technical Specifications to include operability requirements for the pressurized nitrogen system that has been installed as a backup to the plant instrument air system.
Date of issuance: August 20, 1987
Effective date: August 20, 1987
Amendments Nos.: 111 and 138
Facility Operating Licenses Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18973)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: December 4, 1986, as supplemented March 3, 1987
Brief description of amendments: These amendments clarify Sections 3.5 and 4.5 - Reactor Containment Fan Coolers following a recent modification to the reactor containment fan coolers and convert the entire section into the Standardized Technical Specification format.
Date of issuance: August 17, 1987
Effective date: August 17, 1987
Amendment Nos.: 107 and 97
Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13334)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 8, 1986
Brief description of amendment: The amendment revises the surveillance requirement contained in the Technical Specifications for testing the partial movement of control rods. The proposed change clarifies the term "partial movement." In addition, it changes the testing frequency from a nominal two week surveillance interval to a nominal 31 day interval.
Date of issuance: August 21, 1987
Effective date: August 21, 1987
Amendment No.: 121
Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9565)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 17, 1986, as supplemented July 1, 1987
Brief description of amendments: The amendments modified the Technical Specifications (TSs) to add two containment penetration conductor over current protective devices to TS Table 3.8-1A for Unit 1 and two to TS Table 3.8-1B for Unit 2.
Date of issuance: August 18, 1987
Effective date: August 18, 1987
Amendment Nos.: 30 and 21
Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26583)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1987
No significant hazards consideration comments received: No
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 29, 1987
Brief description of amendment: The amendment corrects errors and restates some specifications in the same way they are stated in the Unit 2 Technical Specifications.
Date of issuance: August 14, 1987
Effective date: August 14, 1987
Amendment No. 112
Facility Operating License No. DPR-66. Amendment revised the license and the Technical Specifications.
Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24549)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: February 10, 1987 and supplemented by letter dated April 10, 1987
Brief description of amendment request: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to (1) revise the meteorological monitoring instrumentation specification to include both the primary and redundant instruments, and (2) revise the specification to allow an alternative to grab sampling. The requested changes regarding radiation monitoring setpoints are still under review.
Date of issuance: August 27, 1987
Effective date: August 27, 1987
Amendment No.: 113
Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11362)

The April 10, 1987 letter provided supplemental information which did not change the initial determination of no significant hazards as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: December 23, 1986, as supplemented May 29, 1987

Brief description of amendment: The amendment permits the allowable peak linear heat rate to be 15 kw/ft for all axial fuel elevations for all times in core life.

Date of Issuance: August 13, 1987

Effective Date: August 13, 1987

Amendment No.: 84

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2881)

The May 29, 1987 letter was in response to the staff's request for additional information, and did not change the initial determination of no significant hazards as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: May 8, 1987

Brief description of amendment: The amendment modified the Technical Specifications by deleting Surveillance Requirement 4.3.7.2.a.2 which required that the extraction steam non-return valves be cycled through one complete test cycle of partial closure at least once per seven days.

Date of issuance: August 20, 1987

Effective date: August 20, 1987

Amendment No.: 81

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23099)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: March 27, 1987

Brief description of amendments: The amendments modified the Technical Specifications by revising the alarm setpoint for the Unit 2 core spray sparger differential pressure and adding this setpoint for Unit 1.

Date of issuance: August 24, 1987

Effective date: August 24, 1987

Amendment Nos.: 146 and 82

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20800)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366 Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: March 31, 1986

Brief description of amendments: The amendments modified the Technical Specifications related to testing of the onsite emergency diesel generators.

Date of issuance: August 25, 1987

Effective date: August 25, 1987

Amendment Nos.: 147 and 83

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22237)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 4, 1986 (corrected on February 25, 1987 and May 29, 1987)

Brief description of amendment: Changed the administrative section of the Technical Specifications to revise the organizational reporting structure for the Radiological and Environmental Controls department.

Date of Issuance: August 14, 1987

Effective date: August 14, 1987

Amendment No.: 131

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45203) and March 12, 1987 (52 FR 7683)

The May 29, 1987 submittal provided additional clarifying information and did not change the findings of the initial notices.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 26, 1986

Brief description of amendment: The Duane Arnold Energy Center Technical Specifications are revised to allow the Standby Gas Treatment System tests to be performed in the flowrate range of 3600-4000 cubic feet per minute.

Date of issuance: August 18, 1987

Effective date: August 18, 1987

Amendment No.: 145

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1987, 52 FR 5858

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: November 16, 1985 and December 9, 1985

Brief description of amendment: This amendment changed the footnote of Surveillance Requirement 4.4.3.1.c on Reactor Coolant System Leakage Detection Systems and TS Section 3.3.7.9 on Fire Detection Instrumentation.

Date of issuance: August 14, 1987

Effective date: August 14, 1987

Amendment No.: 7

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1985 (50 FR 51625)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: December 18, 1986

Brief description of amendment: The amendment revises the Technical Specification Section 3.3.3.1 to delete the control building inlet ventilation signal from Tables 3.3-6, 4.3.3 and corresponding action statement no. 27.

These requirements were deleted because they duplicate requirements in Technical Specification Section 3.3.2 (functional unit 7e of Tables 3.3-3 and 4.3-2).

Date of issuance: August 21, 1987

Effective date: August 21, 1987

Amendment No.: 9

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7689)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: May 5, 1987

Brief description of amendment: The amendment revised the Technical Specification Sections 4.8.1.1.2 and 3.3.2 (Table 3.3-5, item 11.a) to increase the emergency diesel generator startup time from 10 seconds to 11 seconds and to increase the 4 KV Bus undervoltage response time from 12 seconds to 13 seconds.

Date of issuance: August 24, 1987

Effective date: August 24, 1987

Amendment No.: 10

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23103)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 4, 1987

Brief description of amendment: The amendment established new Rod Block Monitor (RBM) setpoints as a result of Monticello-specific analyses performed by General Electric. The setpoints replace existing RBM setpoints that were determined from a generic analysis. Table 3.2-3 of the Technical Specifications is changed to reflect the new RBM Upscale Setpoints. The minimum critical power ratio (MCPR) is changed to 1.30 in the associated bases.

Date of issuance: August 26, 1987

Effective date: August 26, 1987

Amendment No.: 49

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24542 at 24555)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 18, 1987, supplemented June 18, 1987.

Brief description of amendment: The amendment revised Table 3.1.1 to eliminate the requirement for IRM operability while in the Run Mode and to eliminate the APRM downscale scram. The change provides relief to the licensee from the previous Technical Specification requirement of placing the plant in a "half scram" condition while performing required APRM channel testing and maintenance activities.

Date of issuance: August 26, 1987

Effective date: August 26, 1987

Amendment No.: 50

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24542 at 24556).

The June 18, 1987 letter replaced information that had originally been proposed to be deleted from the Bases of the TS in the February 18, 1987 change request. It also provided some additional information (from GE) and clarification related to placing the mode switch in the Run position. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 13, 1987

Brief description of amendments: The amendments revise the steam generator water level low reactor trip setpoint

from 25 to 15 percent of the narrow range instrument span.

Date of Issuance: August 27, 1987

Effective date: August 27, 1987

Amendment Nos: 17 and 16

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13344)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: April 8, 1987

Brief description of amendment: This amendment changed the Susquehanna Steam Electric Station (SSES), Unit 1 Technical Specifications to delete the requirements that the mechanical snubbers' functional test shall verify that, "the drag force shall not have increased more then 50% since the last surveillance test."

Date of issuance: August 17, 1987

Effective date: As of its date of issuance to be implemented by October 1, 1987.

Amendment No.: 67

Facility Operating License No. NPF-14. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20804)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: December 9, 1986

Brief description of amendment: This amendment revised the Susquehanna Steam Electric Station, Unit 1 Technical Specifications to include operational control on modifications to improve the containment isolation function and testability of the feedwater system.

Date of issuance: August 17, 1987.

Effective date: Upon startup following the third refueling outage.

Amendment No.: 68

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 8, 1987

Brief description of amendments: These amendments revised the Susquehanna Steam Electric Station (SSES) Units 1 and 2 Technical Specifications to increase Sodium Pentaborate concentration in the Standby Liquid Control System.

Date of issuance: August 25, 1987

Effective date: Unit 1 is effective upon startup for Cycle 4 operation. Unit 2 is effective upon startup for Cycle 4 operation of Unit 1.

Amendment Nos.: 69 and 38

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18984)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 3, 1987

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to: (1) incorporate the operating limits (e.g., core physics, thermal and hydraulic limits, etc.) for all fuel types for Cycle 2 operation of Limerick, Unit 1; (2) incorporate a change in slope of the flow-biased Average Power Range Monitor (APRM) scram and rod block setpoints for operating flexibility or margin improvement options and (3) modify the Bases associated with core reloads.

Date of issuance: August 14, 1987

Effective date: Prior to startup of Limerick Unit 1 in Cycle 2

Amendment No.: 7

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23104)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 11 and October 27, 1986, and as consolidated and revised June 4, 1987.

Brief description of amendment: The amendment revises TS Sections 6.2 and 6.3 which pertain to the plant operating shift organization and qualifications.

The June 4, 1987 submittal combines and revises the submittals of July 11 and October 27, 1986 and contains no substantive changes.

Date of issuance: August 21, 1987

Effective date: August 21, 1987

Amendment No.: 111

Facility Operating License No. DPR-59: The amendment revised the echnical Specifications.

Dates of initial notices in **Federal Register:** October 8, 1986 (51 FR 36102) and December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 22, 1987, as supplemented June 30, 1987

Brief description of amendment: The amendment permitted a temporary increase in the Main Steam Line Radiation-High-High scram and isolation trip setpoints to allow operation with expected higher radiation levels resulting from hydrogen injection testing.

Date of issuance: August 17, 1987

Effective date: August 17, 1987

Amendment No.: 8

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24557) and July 15, 1987 (52 FR 26596)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 30, 1987

Brief description of amendment: The amendment increased the minimum critical power ratio limits provided in Technical Specification Figure 3.2.3-1 for operable end-of-cycle recirculation pump trip and main turbine bypass systems.

Date of issuance: August 25, 1987

Effective date: August 25, 1987

Amendment No.: 9

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24557)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: April 20, 1987

Brief description of amendment: This amendment adds License Condition 2.I. regarding the implementation of the International Atomic Energy Agency (IAEA) Safeguards at Salem Nuclear Generating Station, Unit 1.

Date of issuance: August 24, 1987

Effective date: August 24, 1987

Amendment No.: 81

Facility Operating License No. DPR-70. This amendment revised the License.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24559)

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 6, 1987 (TS 225)

Brief description of amendments: The amendments clarify the applicability of definition 1.0.C.2 so that the definition will not be erroneously applied while in Cold Shutdown condition or Refuel mode. Definition 1.0.C.2 for Units 1, 2 and 3 is changed by adding the word "definition" and by deleting the phrase "if the unit is already" so that the sentence beginning on the thirteenth line of the Browns Ferry Technical Specifications definition 1.0.C.2 reads, "This definition is not applicable in Cold Shutdown or Refueling."

Date of issuance: August 20, 1987

Effective date: August 20, 1987, and shall be implemented within 60 days.

Amendments Nos.: 134, 131, 106

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13350)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: December 15, 1986 (TS 222)

Brief description of amendments: The amendments change the Technical Specifications to add drywell leakage measurement and recording requirements in response to NRC Generic Letter 84-11.

Date of issuance: August 26, 1987

Effective date: August 26, 1987, and shall be implemented within 60 days.

Amendments Nos.: 137, 133, and 108

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2891)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 16, 1987 (TSC 87-21)

Brief description of amendments: The amendments correct the line items alignment for functional units 20, reactor trip breakers, and 21, automatic trip logic, of Table 3.3-1, "Reactor Trip System Instrumentation." Additionally, the channels to trip, minimum channels operable, and applicable mode requirements for the same functional units are revised to be consistent with the Standard Technical Specifications (NUREG 0452).

Date of issuance: July 20, 1987

Effective date: July 20, 1987

Amendment Nos.: 56, 48

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26598)

These amendments were inadvertently issued in advance of the comment period expiration date. The licensee was notified and no action was taken until the expiration of the comment period. The State of Tennessee was also notified. No State or public comments were received.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland this 3rd day of September, 1987.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects,

Office of Nuclear Reactor Regulation.

[Doc. 87-20665 Filed 9-8-87; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 70-1257]

Finding of No Significant Impact; Renewal of Materials License No. SNM-1227 Advanced Nuclear Fuels Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Materials License No. SNM-1227 for the continued operation of the Advanced Nuclear Fuels Corporation (ANF) fuel fabrication facility at Richland, Washington.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of the license which allows ANF to continue operating the fuel fabrication facility, including a new incinerator.

The Need for the Proposed Action

The ANF facility is one of several industrial facilites dedicated to the fabrication of fuel elements for light-water reactors. Although the demand for nuclear reactors has declined, there is a continuing demand to meet the needs for operating reactors. Because ANF is a supplier of fuel for reactors, denial of the license renewal would necessitate expansion of similar activities at another existing fuel fabrication facility or the construction and operation of a new plant. Although denying the renewal of the SNM license for ANF is an alternative available to the NRC, it would be considered only if issues of public health and safety cannot be resolved.

Environmental Impacts of the Proposed Action

The radiological impacts of the ANF facility were assessed by calculating the maximum dose to the individual living at the nearest residence and to the local population living within a 80-km (50 mile) radius of the plant site. Effluent release data was used to estimate the 50-year dose commitment to the maximally exposed individual living at the nearest residence; the committed doses are: whole body 1.4×10^{-4} mrem; bone 7.1×10^{-4} mrem; and lung 3.3×10^{-3} mrem. The doses are well below the environmental radiation dose limits established by the Environmental Protection Agency (40 CFR Part 190). The collective whole-body dose to the population within a 80-km (50 mile) radius of the plant is 4.8×10^{-3} man-rem which is only about 1.4×10^{-5} percent of the population dose of 33,750 man-rem resulting from the natural background radiation dose in the area. Liquid effluents are discharged to the Richland Municipal Sewer and are considered minor. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

One alternative would be to deny the renewal application. This would result in the facility shutting down. Although denial is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Agencies and Persons Consulted

In addition to reviewing the applicant's request, the staff contacted the Department of Ecology and the Air Pollution Control Authority in the State of Washington.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the license renewal of Materials License No. SNM-1227. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the following documents: (1) Supplement to Applicant's Environmental Report, September 1986, (2) Revised Application for Renewal, July 1987 submitted by letter dated August 7, 1987, and (3) Responses to NRC questions, April 30, and May 18, 1987.

This Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U. S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 2nd day of September 1987.

For the Nuclear Regulatory Commission.

Leland C. Rouse, Chief,

Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 87-20664 Field 9-8-87;8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Environmental Assessment and Finding of No Significant Impact; Georgia Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.73 to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee) for the Edwin I. Hatch Nuclear Plant, Unit 2 (the facility), located at the licensee's site in Appling County, Georgia. The exemption is needed for the licensee to comply with other requirements of the Commission.

Environmental Assessment

Identification of Proposed Action

The exemption will permit the licensee to comply with the requirements of section 3.3.6.2.a. of the facility Technical Specifications.

The existing Technical Specifications require that when seismic monitoring instrumentation has been inoperable for a period of 30 days, a special report is to be submitted to the Commission within the next 10 days. This special report is in lieu of the Licensee Event Reports that otherwise would be required by the facility Technical Specifications.

A revised Licensee Event Report system was established by 10 CFR 50.73, which became effective on January 1, 1984. Licensees of operating nuclear power plants were advised by Generic Letter 83-43 to change their plant Technical Specifications to conform to the revised reporting requirements. However, the Generic Letter also stated that any existing Technical Specification requirements for special reports should be continued. The exemption will permit the licensee to comply with 10 CFR 50.73 except for the special report regarding inoperable seismic monitoring instrumentation.

The Need for the Proposed Action

The exemption is needed to enable the licensee to comply with the special reporting requirements regarding inoperable seismic instrumentation without being in violation of the reporting requirements of 10 CFR 50.73.

Environmental Impact of the Proposed Action

The proposed aciton is administrative only and will have no environmental impact.

Alternative to the Proposed Action

Not granting the exemption also would have no environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2," dated March 1978.

Agencies and Persons Consulted

The NRC staff initiated this exemption action. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see Generic Letter 83–43, "Reporting Requirements of 10 CFR Part 50, Sections 50.72 and 50.73, and Standard Technical Specifications," dated December 19, 1983; and the licensee's letter to the NRC dated February 13, 1987, file SL–1878, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Bethesda, Maryland, this 3rd day of September 1987.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Project Director, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR Doc. 87–20662 Filed 9–8–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–247]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Consolidated Edison Company of New York, Inc.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–26, issued to Consolidated Edision Company of New York, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would revise the Technical Specifications to permit the Residual Heat Removal pumps to remain operable during the performance of the Safety Injection System Test. The change is being proposed to facilitate outage planning. The proposed amendment is in accordance with the licensee's application dated May 29, 1987, as supplemented August 3, 1987.

10 CFR 50.92 states that a proposed amendment will involve a no significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident previously evaluated, or (3) involve a significant reduction in margin of safety.

The license provided the following analysis:

". . . operation of Indian Point Unit No. 2 in accordance with this change would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any physical change in plant equipment. Maintaining an RHR pump in an operable condition during the performance of the safety injection system test will actually decrease the probability of a postulated accident and will leave unchanged the consequences of such an accident. There are two parameters that must be reviewed to yield this conclusion. First, the Safety Injection Ssytem test will not be functionally different from that which has been performed in the past. Therefore, with respect to this parameter, which does not change, the probabilities and consequences of postulated accidents remain identical. The second parameter inherent in the proposed change is the maintenance of RHR cooling during the Safety Injection System test. By maintaining an RHR pump operable during the test, decay heat removal is retained and need not be disrupted at any time during the test. Having an operable RHR System is always as safe or safer than having it inoperable for any period of time. With respect to this parameter, there is, therefore, an actual decrease in the probability of an accident and no change has been introduced in the consequences of that accident. The overall result, therefore, of the proposed change is the summation of the above which results in a slight decrease in the probability of an accident and no increase (or decrease) in the consequences of that accident.

2. increase the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the proposed change does not involve any physical change in plant equipment and the Safety Injection System test is functionally no different than that performed in the past. The basic difference will be that a RHR pump will be operable and, if this should fail, both RHR pumps will be inoperable which is the same condition under which the test has always been performed in the past. The proposed change, therefore, introduces no new or different kind of accident from any previously evaluated.

3. involve a significant reduction in a margin of safety. But not disrupting decay heat removal at any time during the Safety Injection System test, the margin of safety inherent in the RHR systems use is actually increased. Once again, having the system operable at all times is always at least as safe or safer than disrupting it for any period of time. Any failure in the system, with the proposed change in effect, renders the plant condition identical to what it would have been without the change and, therefore, the margin of safety in the system, as well as overall, cannot decrease and may well increase."

In addition, the licensee has indicated the RHR pumps were blocked from starting during the system actuation test to minimize the potential wear associated with frequent testing. The RHR pumps are tested quarterly during reactor operation. As a result, the blockage was considered acceptable.

Based on the above, the staff proposes to determine that proposed changes will not result in a significant hazards determination.

The Commission is seeking public comment on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regultory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By October 9, 1987, 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 particiapte 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 of 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 would 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 witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (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 Robert A. Capra, Acting Director, Project Directorate I-1, Division of Reactor Projects, I/II: 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 Mr. Brent L. Brandenburg, 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of 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 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Bethesda, Maryland, this 2nd day of September 1987.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Acting Director, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 87-20663 Filed 9-8-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24869; File No. SR-Amex-86-27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc.; System Modification to the Amex/Toronto Stock Exchange Trading Linkage

The American Stock Exchange, Inc. ("Amex") submitted, on October 16, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to implement a modification to the electronic trading linkage between the Amex and the Toronto Stock Exchange

("TSE").[1] The modification will enable Exchange terminals on the Amex floor to display the TSE quote on issues traded through the linkage in both Canadian and U.S. dollars, reflecting current currency conversion rates. Prior to the modification, the Amex specialist has had to convert manually the TSE quote into U.S. dollars using the conversion rate and the Canadian equity price.

As originally intended, the converted Canadian quote was to be displayed on Bridge Data terminals on the Amex floor. Bridge would also supply the currency conversion rate, capturing the best bid and offer on the Toronto currency market, which consists of a number of competing Canadian banks. The Amex has since further developed the modification to allow its Exchange terminals to receive both the Canadian equity quote and the Toronto currency market quote. The Exchange terminal automatically computes the quotes, thereby allowing the specialist to display simultaneously the TSE quotes in Canadian and U.S. dollars.[2]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 24016, January 20, 1987) and by publication in the **Federal Register** (52 FR 3070, February 2, 1987). No Comments were received regarding the proposal.

The concept of automatic currency conversion is consistent with the goal of the facilitation of trading through international linkages. In approving the Amex-TSE linkage, the Commission anticipated the need for, and eventual implementation of, such a currency conversion mechanism. In its initial application to establish the linkage, the Amex noted that an automatic currency conversion mechanism would help minimize any U.S. dollar/Canadian dollar exchange rate risk, and would allow the settlement of transactions effected on the TSE through the linkage to be effected in the United States in U.S. currency.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the proposal will facilitate transactions in securities, consistent with the purposes of section 6(b)(5) of the Act,[4] by allowing the TSE quote to be displayed automatically in both U.S. and Canadian dollars, thereby eliminating the need for the specialist to convert manually the Canadian price into U.S. dollars in order to compare prices in the Amex and TSE markets.[5] The conversion factor to be used—the inside quote from the Toronto currency market—is a fair and recognized standard for determining Canadian dollar conversion rates.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 2, 1987.

[FR Doc. 87-20687 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24870; File No. SR-MSRB-87-8]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Books and Records

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to rule G-8 on books and records which would require dealers complying with SEC rule 17a-3, instead of rule G-8, to make and keep records of deliveries of rule G-32 disclosures as required by rule G-8(a)(xiii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

(a) Rule G-32 prohibits a dealer from selling during the underwriting period new issue municipal securities to a customer unless the dealer delivers to the customer by settlement of the transaction a copy of the final official statement if one is prepared by or on behalf of the issuer. Rule G-8(a)(xiii) requires dealers to make and keep records of all deliveries of official statements or other disclosure documents required under rule G-32. This recordkeeping requirement was adopted by the Board in August 1985 to encourage dealers to formalize their procedures for delivering disclosures to their customers and to aid the enforcement organizations in determining compliance with the rule.

Rule G-8(f) provides that municipal securities brokers and dealers (other than bank dealers) which are in compliance with rule 17a-3, the recordkeeping rule of the Commission, will be deemed to be in compliance with the requirements of rule G-8, provided that certain additional records required by rule G-8 are in any event maintained. Rule 17a-3, however, does not require brokers and dealers to make and keep records of deliveries of rule G-32 disclosures. The Board has been informed by the NASD that certain firms, acting pursuant to rule G-8(f) and SEC rule 17a-3, are not maintaining records of such deliveries. The Board believes that, since firms must be able to

---

[1] The Commission approved the Amex-TSE linkage on September 20, 1985. The Amex-TSE linkage is the only electronic linkage between a primary market in the United States and a primary market in a foreign country. *See* Securities Exchange Act Release No. 22442 (September 20, 1985), 50 FR 39201.

[2] The Amex explained the changes to the system in an amendment to the filing. *See* letter from J. Bruce Ferguson, Assistant Vice President, Amex, to Stephen Luparello, Staff Attorney, Division of Market Regulation, SEC, dated August 4, 1987. ("Amendment No. 1")

[3] *See* Amendment No. 1 at 2. The currency quote received by the Amex from the Toronto currency market will constitute the exchange rate for transactions effected through the linkage on the TSE. When the TSE specialists receives an order, he will note the price of the order and the conversion rate specified by the Amex specialist. The TSE specialist will check the Toronto currency market to confirm the currency quote, and then execute simultaneously both the equity trade and currency transaction. If either the currency or equity quote price is no longer available, the TSE specialist will bounce the trade back to the Amex specialist. According to the Amex, the currency transaction minimizes the risk resulting from fluctuations in the U.S./Canadian dollar exchange rate between the time of execution and the time of settlement. At present, the Amex and TSE are formulating further modifications to the linkage to eliminate the manual aspect of the currency transaction.

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission emphasizes that the form and method by which quotes and trades are sent and received, including foreign currency conversion factors, are the most important aspects of a trading linkage, therefore, in order to ensure the protection of investors utilizing international linkages, it is necessary for the exchanges to submit all such modifications, prior to their implementation, to the Commission for review.

prove to examiners that rule G-32 disclosures were made to customers, compliance with rules G-8(f) and 17a-3 will not excuse the obligation to keep some kind of record of rule G-32 disclosures. The proposed rule change would calrify this matter by amending rule G-8(f) to require dealers complying with SEC rule 17a-3, instead of rule G-8, to make and keep records of deliveries of official statements as required by rule G-8(a)(xiii).

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster competition and coordination with persons engaged in regulating transactions in municipal securities, and in general, to protect investors and the public interest, and section 15B(b)(2)(G) of the Act, which authorizes the Board to adopt rules to prescribe records to be made and kept by municipal securities brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20688 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24871; File No. SR-MSRB-87-9]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Suitability

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to rule G-19 on suitability which would require a dealer effecting a transaction in municipal securities with or for a discretionary account, to make an affirmative determination of the suitability of the transaction based upon information available from both the issuer and the customer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-19 on suitability prohibits a municipal securities professional from recommending a transaction in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of the transaction. Rule G-19(c) permits a municipal securities professional to make recommendations only if, after making a reasonable inquiry, he has reasonable grounds to believe and does believe that the recommendation is suitable for the customer in terms of information available from the issuer of the security, and the customer's financial background, tax status, and investment objectives.

Rule G-19(d)(ii), requires a dealer to determine that a transaction in municipal securities is suitable for the customer in light of information supplied by the customer as set forth in paragraph (c)(ii) before effecting a transaction with or for a discretionary account. Rule G-19(d)(ii) does not, however, require that the transaction be suitable in light of information available from the issuer as required by paragraph (c)(i). When rule G-19 was amended in 1985, the Board failed to revise rule G-19(d)(ii) to reference new section (c)(i). The proposed rule change would amend paragraph (d)(ii) to prohibit dealer from recommending a transaction for a discretionary account unless the dealer first determines that the transaction is suitable in terms of both customer and issuer information.

In addition, rule G-19(d)(ii) references subparagraph (c)(ii)(B), which permits a dealer to recommend a transaction in municipal securities when information about the customer is not known or furnished, if the dealer has no reasonable grounds to believe and does not believe that the recommendation is unsuitable. The Board, however, has consistently interpreted rule G-19(d) to bar a professional from effecting a transaction in municipal securities with or for a discretionary account if the professional does not have sufficient information to make an affirmative determination with respect to the suitability of the transaction for the customer. The proposed rule change would require a dealer to make an affirmative determination of the

suitability of a transaction for a discretionary account.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to foster competition and coordination with persons engaged in regulating transactions in municipal securites, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20689 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24867; File No. SR-MSRB-87-7]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Uniform Practice and Customer Confirmations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing amendments to Board rule G-12 on uniform practice and G-15 on confirmation, clearance, and settlement of transactions with customers (hereafter referred to as the "proposed rule change") which would correct the cross-references in the good delivery requirements of rules G-12(e) and G-15(c) to the confirmation provisions of rule G-12(c) and G-15(a).

II. A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rules G-12(e) and G-15(c) specify the requirements for physical deliveries of securities on inter-dealer and customer transactions, respectively. Among other things, the rules require all certificates delivered on a transaction to be identical with respect to certain features and to be accompanied by a delivery ticket containing a description of the securities. These requirements are stated by cross-reference to certain items of information required on confirmations by rules G-12(c) and G-15(a).

In 1986, the Board amended rules G-12(c) and G-15(a) to require a disclosure on the confirmation if securities are subject to federal taxation or the federal alternative minimum tax. In adding these disclosure requirements, certain provisions in rules G-12(c)(vi) and G-15(a)(iii) were renumbered. The proposed rule change would amend rules G-12(e) and G-15(c) to correct the cross-references to these confirmation provisions.

The proposed rule change also would amend rules G-12(e)(iii) and G-15(c)(ii) to require delivery tickets to include the same designations regarding taxability and alternative minimum tax as are required on confirmations under rules G-12(c)(vi) and G-15(a)(iii). This will conform the securities description required on the delivery ticket by rules G-12(e) and G-15(c) with the descriptions required on confirmations.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules—

> designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information . . . and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it will apply to all brokers, dealers and municipal securities dealers equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 1, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20690 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 2, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AMC Government Income Fund
Common Stock, $.01 Par Value (File No. 7-0373)

L.A-Z-Boy Chair Company
Common stock, $1.00 Par Value (File No. 7-0374)

Real Estate Investments Trust of California
Shares of Beneficial Interest, No Par Value (File No. 7-0375)

Roebling Property Investors Inc.
Common stock, $.01 Par Value (File No. 7-0376)

British Airways PLC
Final Installment American Depository Receipts (File No. 7-0377)

Carteret Bancorp, Inc. (Holding Co.)
Common stock, $.01 Par Value (File No. 7-0378)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 24, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20640 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 2, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

V.F. Corporation
Common Stock, No Par Value (File No. 7-0372)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 24, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20641 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15962; 812-6774 and 812-6775]

Application; Bankers Life Assurance Co. of Nebraska

September 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Bankers Life Assurance Company of Nebraska ("Bankers"), Bankers Life Assurance Company of Nebraska Separate Account VA-1 and Bankers Life Assurance Company of Nebraska Separate Account VA-2 ("Account(s)"), and BLN Investment Corp ("Investment Corp").

Relevant 1940 Act sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2) and 27(c)(2) of the 1940 Act.

Summary of application: Applicants seek an order to permit them to issue variable annuity contracts ("contracts") which will deduct a Mortality and Expense Risks Charge.

Filing date: The applications were filed on June 25, 1987, and amended on August 25, 1987.

Hearing or notification of hearing: If no hearing is ordered, the applications will be granted. Any interested person may request a hearing on the applications, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and

the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Julian H. Hopkins, Esq., 5900 "O" Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Margaret Warnken, Financial Analyst (202) 272-2058 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the applications; the complete applications are available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-2382 (in Maryland (301) 258-4300).

Applicants' Representations

1. Bankers is a stock life insurance company incorporated under the laws of the State of Nebraska on June 22, 1983 and is a wholly-owned subsidiary of Bankers Life Assurance Company of Nebraska ("Bankers Life Nebraska"). Bankers is licensed to sell life insurance in 32 states and the District of Columbia. Investment Corp is a wholly-owned subsidiary of Bankers Life Nebraska and a registered broker-dealer. Investment Corp will serve as the principal underwriter for the contracts.

2. Bankers established the Accounts on May 28, 1987, under the laws of the State of Nebraska, and the Accounts are registered as unit investment trusts under the 1940 Act. Account VA-1 was established by Bankers to act as the funding entity for certain flexibility premium variable annuity contracts. Account VA-2 was established to act as the funding entity for certain single premium variable annuity contracts.

3. Premium payments, less any applicable premium tax, are allocated to Account VA-1. Account VA-1 is currently divided into four Subaccounts, each of which invests in one portfolio of the Sowers Series Fund, Inc. The Fund, a diversified, open-end management investment company, was organized as a Maryland corporation on November 6, 1985. The Fund currently has four portfolios: the Bond Portfolio; the Growth Portfolio; the Money Market Portfolio; and the Discretionary Portfolio. Bankers may, from time to time, establish additional Subaccounts. Bankers may substitute or add additional portfolios of the Fund or, where appropriate, of other registered open-end investment companies. Ameritas Investment Advisors, Inc., an affiliate of Bankers, is the adviser for the Fund.

4. The Premium payment, less any applicable premium tax, is allocated to Account VA-2. Account VA-2 is currently divided into five (5) Subaccounts, each of which invests in one portfolio of the Variable Insurance Products Fund. The Fund, a diversified, open-end management investment company, was organized as a Massachusetts Business Trust on November 13, 1981. The Fund currently has five portfolios: the Equity-Income Portfolio; the Growth Portfolio; the Money Market Portfolio; the High-Income Portfolio; and the Overseas Portfolio. Bankers may, from time to time, establish additional Subaccounts. Bankers may substitute or add additional portfolios of the Fund or, where appropriate, of other registered open-end investment companies. Fidelity Management & Research Company is the adviser for the Fund.

5. The contracts offered by Account VA-1 are flexible premium variable annuity contracts. The contracts offered by Account VA-2 are single premium variable annuity contracts. Both are designed to aid individuals in long-term financial planning and provide for the accumulation of capital on a tax-deferred basis for retirement or other long-term purposes. The contracts provide for the accumulation of the contract values on a variable basis and payment of monthly annuity payments on a fixed basis. The contracts may or may not qualify for any special tax treatment under the Internal Revenue Code. The minimum premium payment Bankers will accept for the flexible premium contract is $50.00; the minimum premium payment for the single premium contract is $5,000.

6. Bankers assumes mortality and expense risks under both contracts. The mortality risk borne by Bankers under the contracts is that the annuitants under the contracts may live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts and thus, the actual future costs Bankers will incur in making the annuity payments may exceed the amounts Bankers will derive from the contracts. In addition, Bankers bears a mortality risk under the contracts in that Bankers guarantees the purchase rates for the annuity income options available under the contracts and it guarantees that, prior to the annuity date, the amount of the death benefit under the contracts will be the greater of the current accumulation value of the contracts, less any applicable withdrawal charge and any applicable annual contract fee (cash surrender value), and the sum of the premium payments made or the premium payment made in the case of the single premium contract. The expense risk undertaken by Bankers is that the charge for administration costs under the contracts may be insufficient to cover the actual future costs incurred by Bankers for providing contract administration services.

7. By assuming the mortality and expense risks, Bankers assures the annuitant that neither annuitant's own longevity, nor an improvement in life expectancy greater than allowed for in setting the annuity rates, will have any adverse effect on the monthly annuity payments the annuitant will receive under the contracts. It, therefore, relieves the annuitant of the risk that he will outlive the funds he has accumulated for retirement.

8. Bankers imposes a daily charge against the assets of the Subaccounts to compensate Bankers for costs incurred by assuming these risk equal 0.003425% of the average daily net assets of the respective Account. The annual rate of the charge, which is compounded daily, is 1.25%, consisting of approximately .55% for the mortality risk and .70% for the expense risk. Bankers guarantees that this charge will never increase. If this charge is insufficient to cover the assumed risks, the loss will fall on Bankers. Conversely, if the charge proves more than sufficient, any excess will be added to Bankers' general account funds.

9. Applicants represent that the charge under the contracts for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the mortality and expense risks charge. In order to avoid any possibility that questions may be raised as to the potential applicability of those provisions to this charge, however, Applicants request exemption from those provisions to the extent necessary to permit the assessment of a charge for mortality and expense risks against the assets of each respective Account. Applicants submit that the mortality and expense risks charge is a reasonable charge to compensate Bankers for the risk that annuitants under the contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts and for the risk that administrative expenses will be

greater than the amounts derived from the administration charge(s).

Bankers represents that the charge of 1.25% for mortality and expense risks assumed by Bankers is within the range of industry practice with respect to comparable annuity products. This representation is based upon Bankers' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Bankers will maintain at its Home Office, available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and result of, its comparative survey.

10. A withdrawal charge is imposed on certain partial and full withdrawals and upon certain annuitizations. These charges reimburse Bankers for expenses it incurs in selling contracts, including commissions to registered representatives and other promotional expenses. No withdrawal charge will be assessed against a withdrawal of accumulation value or annuitization after the contract has been in force more than nine contract years in the case of the flexible premium contract, and six contract years for the single payment contract. Similarly, no withdrawal charge will be assessed against the first withdrawal in any contract year of an amount up to 10% of the accumulation value as of the date of the withdrawal.

Where a partial or full withdrawal is made or amounts are applied under an annuity option, the amount withdrawn or annuitized (less any amount entitled to the 10% exception) will be subject to a withdrawal charge expressed as a percentage of the accumulation value withdrawn or annuitized as follows:

For account VA-1		For account VA-2	
Percnt	Policy year	Percent	Policy year
9	1	5	1
8	2	5	2
7	3	4	3
6	4	3	4
5	5	2	5
4	6	1	6
3	7	0	7+
2	8		
1	9		
0	10+		

In the case of a partial withdrawal or annuitization, the withdrawal charge will be allotted pro rata among the Subaccounts based on the accumulation value in each Subaccount prior to the withdrawal or annuitization. In the case of a full withdrawal or annuitization, the withdrawal charge is deducted from the amount paid to the owner. A withdrawal charge will not be assessed if after the first five contract years for the flexible premium contract, nor after the first two contract years for the single premium contract, any portion of the accumulation value is applied under the certain Annuity Income Option C, as a life annuity. Further, the sum of all withdrawal charges will not exceed 9.0% of the premium payments made as of the time of the withdrawal or annuitization for the flexible payment contract. The sum of all withdrawal charges will not exceed 6.5% of the premium paid for the single premium contract.

The amount derived from these charges may not be sufficient to cover all of the distribution expenses. Should the actual amounts derived from the withdrawal charges prove insufficient to cover actual distribution expenses, any deficiency will be met from Bankers' general account funds, including amounts derived from the mortality and expense risks charge.

Bankers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the contracts will benefit each Account and its contract owners. The basis for such conclusion is set forth in memoranda which will be maintained by Bankers at its Home Office and will be available to the SEC. Moreover, Bankers represents that the Accounts will invest only in an underlying investment company which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such a plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such investment company within the meaning of section 2(a)(19) of the 1940 Act.

11. Bankers deducts an annual contract fee of $30 from the accumulation value of the contract to reimburse Bankers for the administrative costs of maintaining the contract on Bankers' computer system. Additionally, a charge of .20% of the accumulation value of the single premium contract is calculated and deducted from the accumulation value of that contract on the last valuation date of each contract year. This charge is designed to reimburse Bankers for administrative expenses incurred in connection with issuing the contracts and ongoing administrative expenses incurred in connection with servicing and maintaining the single premium contracts. These administrative charges are guaranteed not to increase, and Bankers does not expect to make a profit on these charges.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20631 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17374]

Application and Opportunity for Hearing; Citicorp

September 1, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "1939 Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement dated as of June 1, 1987, under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disquality the Trust Company from acting as Trustee under any of such indentures or the Agreement.

Section 310(b) of the 1939 Act provides, in pertinent part, that if a trustee under an indenture qualified under the 1939 Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

Applicant Alleges That

(1) The Trust Company currently is acting as Trustee under four indentures

under which Applicant is the obligor. The indenture dated February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the indenture dated August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Trust Indenture Act of 1939. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes".

(2) Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On June 25, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated as of June 1, 1987 (the "1987-9 Agreement") with Citicorp Mortgage Securities, Inc. ("CMSI"), Packager Servicer, under which there were issued on June 25, 1987 Mortgage Pass-Through CitiCertificates, Series 1987-9, 9.00% Pass-Through Rate (the "Series 1987-9 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to four-family mortgage loans (the "1987-9 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $75,033,788.82 at the close of business on June 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987-9 Certificates. On June 25, 1987, Applicant, the parent of CMSI, entered into a Guaranty of even date (the "1987-9 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987-9 Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1987-9 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-9 Guaranty. The 1987-9 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987-9 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987-9 Certificates were registered under the 1933 Act (Registration Statement of CMSI, Citicorp and the Originators named therein on Forms S-11 and S-3, File No. 33-12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The Series 1987-9 Certificates were offered by a Prospectus Supplement dated June 10, 1987, supplemental to a Prospectus dated June 10, 1987. The 1987-9 Agreement has not been qualified under the 1939 Act.

(4) The obligations of Applicant under the Indentures and the 1987-9 Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987-9 Guaranty are unlikely to cause any conflict of interest in the trusteeships of the Trust Company under the Indentures and 1987-9 Agreement.

(5) Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-17374, which is a public document on file in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549.

Notice is further given that an interested person may, not later than September 25, 1987 request in writing that a hearing be held on such matter, stating the nature of the interest, the reasons for such request, and the issues of law or fact raised by said application that are controverted, or request notification if the Commission should order a hearing. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an Order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20634 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15960; (File No. 812-6757)]

Application; Discover Credit Corp.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption from all provisions of the Investment Company Act of 1940 ("1940 Act").

Applicant: Discover Credit Corp.

Relevant 1940 Act sections: Exemption requested pursuant to section 6(c) from all provisions.

Summary of application: Applicant seeks an order permitting it to operate as a finance subsidiary of Sears, Roebuck and Co. ("Sears") by borrowing money in domestic and foreign debt markets and lending the proceeds thereof to certain subsidiaries of Sears in exchange for such subsidiaries' unsecured notes.

Filing dates: The application was filed on June 11, 1987, and amended on August 17, 1987.

Hearing or notification of hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 25, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Discover Credit Corp., 12 Read's Way, New Castle, Delaware 19720.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a wholly-owned subsidiary of Sears and its primary business will be to finance various

activities of certain direct and indirect subsidiaries of Sears operating within the Dean Witter Financial Services Group ("DWFSG") by advancing funds to DWFSG in exchange for their unsecured notes. Applicant presently intends to raise funds for such financing by offering and selling short-term commercial paper notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon the exemption provided in section 3(a)(3) thereof. Applicant will not offer or sell such commercial paper notes to the general public, but instead will market these notes only to an institutional customer base. Applicant will remit to DWFSG at least 85 percent of the proceeds of the commercial paper program as soon as practicable after receipt thereof, but in no event later than six months after Applicant receives such proceeds.

2. Although it has no present plans to do so, Applicant may also issue medium and long-term debt securities in the future, which will either be registered under the 1933 Act or be subject to a statutory exemption therefrom. In the case of a public offering of securities not exempt from registration under the 1933 Act, Applicant will not sell such securities until the registration statement pertaining thereto has been declared effective by the SEC. Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with the offer and sale of such securities. Further, prior to issuance, the commercial paper notes and any other debt instruments issued by Applicant will have received one of the three highest available investment grade ratings from at least two nationally recognized rating services; however, no such rating will be required if, in the opinion of Applicant's counsel, an exemption from registration is available under section 4(2) of the 1933 Act.

3. In the case of an offering of debt securities not requiring registration under the 1933 Act, Applicant will provide each offeree with disclosure materials which will include a description of the business of Sears and other data of the character customarily supplied in such offerings. These disclosure materials will be updated as soon as practicable to reflect any material changes in the financial condition of Sears and its subsidiaries taken as a whole.

Applicant's Legal Analysis

1. Applicant notes that because a majority of its assets will consist of the unsecured notes of the DWFSG borrowers, it may be deemed to be an investment company within the meaning of section 3(a) of the 1940 Act. Therefore, Applicant requests an order exempting it from all provisions of the 1940 Act asserting that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicant contends that purchasers of its commercial paper and other debt securities will be protected in a manner that renders the protections provided by the 1940 Act unnecessary. In this regard, Applicant notes that prior to borrowing funds from Applicant, each of the DWFSG borrowers will agree, absent regulatory restrictions, to pay interest to Applicant on its borrowings at rates sufficient to maintain Applicant's earnings (before income taxes and fixed charges) at a level of at least 1.25 times Applicant's aggregate interest costs and fixed charges. The amounts and maturities of Applicant's notes from the DWFSG borrowers will, in any case, be sufficient to allow Applicant to make timely payments of principal and interest to the holders of its debt securities.

3. In addition, prior to issuance of any debt securities by Applicant, Sears and Applicant will enter into a Net Worth Maintenance Agreement which will provide that (i) Sears will continue to hold all legal title to and beneficial interest in all of the outstanding voting stock of Applicant; (ii) Sears will cause Applicant to have a tangible net worth (defined to mean the sum of the capital stock, paid-in capital and retained earnings of Applicant plus subordinated indebtedness of Applicant held by Sears or its subsidiaries after deducting the book value of all intangible assets of Applicant) of at least $1.00 until the retirement of all outstanding debt of, and all outstanding debt guaranteed by, Applicant; (iii) such agreement is for the benefit of the holders of all outstanding debt securities issued or guaranteed by Applicant; (iv) Applicant will, for the benefit of such holders, timely take all necessary action under such agreement to require Sears to perform its obligations thereunder; (v) each holder will have a direct and immediate right of action against Sears to enforce Sears' obligations under such agreement should Applicant fail to take such action, and (vi) such agreement may not be amended in a manner so as to relieve Sears of its obligations thereunder, and may only be amended in ways no less favorable to Applicant and its creditors.

4. Applicant asserts that, although the Net Worth Maintenance Agreement will provide that it shall not be construed as a direct or indirect guarantee by Sears of Applicant's obligations, the protections afforded holders of Applicant's debt securities by such agreement as well as other terms and limitations to which Applicant has expressly consented (which are described fully in the application), provide investor protection sufficient to render a direct or indirect guarantee unnecessary. Accordingly, Applicant submits that the limited nature of its activities coupled with the protections afforded by the Net Worth Maintenance Agreement alleviate the need to regulate it as a registered investment company under the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 2, 1987.

[FR Doc. 87-20629 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15955; 812-6738]

Application; MONY Life Insurance Co. of America et al.

September 1, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: MONY Life Insurance Company of America (MONY America") and MONY Legacy Life Insurance Company ("MONY Legacy"); MONY America Variable Account S and MONY Legacy Variable Account S ("Account(s)"); and The Mutual Life Insurance Company of New York ("MONY").

Relevant 1940 Act sections: Exemption requested *under* section 6(c) *from* sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d), and Rules 6e-3(T)(b)(12), 6e-(T)(b)(13) and 22c-1 thereunder.

Summary of application: Applicants seek an order to permit a charge for state premium taxes of state franchise taxes incurred in connection with the premiums paid under certain Variable Life Insurance with Additional Premium Option contracts and any successor contracts ("contracts") to be deducted in ten equal annual installments beginning on the first contract anniversary following each premium payment, with any unpaid balance to be deducted upon

surrender, maturity or exchange of the contracts.

Filing date: The application was filed on May 28, 1987, and amended on August 28, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC, 20549. MONY Life Insurance Company of America and MONY Legacy Life Insurance Company, c/o Willard G. Eldred, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300)).

Applicants' Representations

1. MONY America is the corporate successor to Vico Credit Life Insurance Company, which was incorporated under the laws of Arizona on March 6, 1969. MONY Legacy was organized under the laws of New York on December 29, 1983. MONY America and MONY Legacy are wholly-owned subsidiaries of MONY, a mutual life insurance company organized under the laws of New York in 1842.

2. Each of the Accounts is registered under the 1940 Act as a unit investment trust. There are currently six subaccounts within each of the Accounts, and each subaccount invests only in a corresponding portfolio of MONY Series Fund, Inc.

3. MONY, the principal underwriter for the contracts, is registered with the SEC as a broker-dealer, and is a member of the National Association of Securities Dealers.

4. MONY America and MONY Legacy will deduct 2.5 percent of each premium payment to compensate Applicants for state taxes imposed on premiums or based on premiums received by Applicants. For each premium the charge will be deducted in ten equal annual installments beginning on the first contract anniversary following each premium payment. Upon surrender, maturity or exchange of a contract, the balance of any unpaid installments will be deducted from the value of the contract in computing the cash value and surrender value of the contract.

5. Imposition of the charge for premium taxes in the form of an amortized deferred charge with any unpaid balance charged at surrender, maturity or exchange is more favorable than a charge that is deducted when the premium is paid. The account of the contracholder's investment in the Account is not reduced as when the charge is taken in full upon payment of a premium. The total amount charged to any contractholder is no greater than if the charge were taken from the premiumn when paid.

6. The Applicants do not anticipate making a profit on the deferred charge for premium taxes. The charge does not take into account the time value of money (which would increase the charge to factor in the investment cost to MONY America and MONY Legacy of deferring collection of the charge).

7. Applicants submit that greanting exemptive relief for the deferred premium tax charge is supported by relevant SEC precedent. In adopting Rule 6e-3(T) the SEC allowed issuers of flexible premium variable life insurance contracts to deduct sales loads upon surrender or lapse of the contract. The same reasoning that justifies the exemptive relief in Rule 6e-3(T) for deferred sales loads also justifies exemptive relief for deferred premium tax charges. The SEC has issued several exemptive orders that permit a contingent deferred premium tax charge on flexible premium variable life insurance contracts.

8. Accordingly, Applicants request an exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 22c-1 thereunder to the extent necessary to permit the charge for premium taxes to be deducted in the manner described above. Applicants submit that the exemption requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants represent in connection with the relief requested that, if Rule 6e-3(T) is amended, they either will comply with the rule as amended or seek additional appropriate exemptive relief.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20635 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15961; File No. 812-6836]

Application; Pacific Select Fund

September 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 (the "Act").

Applicant: The Pacific Select Fund ("Applicant").

Relevant 1940 Act sections: Exemption requested under section 6(c) from the provisions of sections 13(a)(2), 18(f)(1) and 22 (f) and (g) of the Act and approval requested under section 17(d) of the Act and Rule 17d-1 thereunder.

Summary of application: Applicant seeks an order of the SEC granting exemptions from the Act to the extent necessary to implement a proposed Trustees' Deferred Compensation Plan (the "Plan") for its trustees and to permit certain joint transactions related to the Plan.

Filing date: August 18, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issue you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Jeffrey S. Puretz, Esq. or Wendy B. Finck, Esq., 1730 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-

3017 or Lewis B. Reich, Special Counsel (202) 272–2061, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 252–4300).

Applicant's Representations

1. Applicant is a series-type open-end, diversified management investment company comprising eight series (the Money Market Series, the Bond Series, the Government Security Series, the High Yield Bond Series, the Growth Series, the Multi-Strategy Series and the International Series) (collectively, the "Series") each of which has its own investment objective and policies.

2. Shares of Applicant are currently offered only to the Pacific Mutual Life Insurance Company Separate Account (the "Separate Account") of Pacific Mutual Life Insurance Company ("Pacific Mutual"). The Separate Account, which is registered as a unit investment trust under the Act, funds the variable death benefits and policy values of variable life insurance policies offered by Pacific Mutual. Pacific Mutual serves as investment adviser of Applicant.

3. Applicant's Board of Trustees consists of five individuals. Each of the trustees who is not an "interested person" of Applicant within the meaning of section 2(a)(19) of the Act currently receives $8,000 annually, $1,500 per Board of Trustees meeting attended, and $500 per Audit Committee or Nominating Committee meeting attended, in addition to expenses incurred in attending such meetings. Applicant pays no other remuneration to its trustees. The amounts paid to the trustees are expected to be insignificant in comparison to the total net assets of Applicant.

4. The purpose of the Plan is to permit individual trustees who are not interested persons of Applicant to elect to defer receipt of their trustees' fees, in order to avoid diminution or loss of social security benefits to which the trustees may otherwise be entitled, to enable the trustees to defer payment of income taxes, or for other reasons. Applicant further submits that the availability of such a defereed fee arrangement will enhance Applicant's ability to attract and retain trustees of high caliber.

5. Plan will allow individual trustees to elect to defer receipt of fees which otherwise would become payable to them for services performed after the date of the election. The election shall continue in effect until terminated in writing and any such termination shall take effect on the first day of the calendar year beginning after receipt of the notice of termination. An election shall be irrevocable as to payments deferred in conformity with that election. Each deferred fee will be credited at the time when it otherwise would have been payable to an account on Applicant's books that will be established for each electing trustee. Interest on each trustee's account will be compounded on the first day of each quarter based upon the balance of each trustees's account as of the first day of the peceding quarter. The interest rate used will be the prevailing 90-day U.S. Treasury bill rate at the beginning of the preceding quarter, and will be used for the entire succeeding quarter.

6. All amounts credited to the account of a trustee shall be paid to the trustee in accordance with the payment option selected by the trustee at the time the trustee makes an election to defer compensation. An election takes effect at the beginning of the calendar year next following the year in which an election is made. In the event of the trustee's death, amounts payable to him under the Plan will thereafter be payable to his designated beneficiary; in all other events, the trustee's right to receive payments will be non-transferable.

7. Applicant's obligation to make payments of amounts accrued under the Plan will be a general unsecured obligation payable solely from its general assets and property. None of Applicant's shares will be purchased for any trustee's account, nor will any special fund or separate account be established for deferred fees. The Plan does not obligate Applicant to retain a trustee in such capacity, nor will it obligate Applicant to pay any (or any particular level of) trustee's fees to any trustee.

8. Applicant's requests exemption from sections 13(a)(2, 18(f)(1), 22(f) and 22(g) of the Act, and an approval pursuant to section 17(d) and Rule 17d–1 thereunder, to the extent necessary to permit implementation of the Plan described above.

9. Applicant contends that the requested exemption is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further contends that its participation in the proposed Plan is consistent with the provisions, policy and purposes of the Act and is not less advantageous to Applicant than to its participating trustees.

10. With respect to the requested exemptions from sections 18(f)(1) and 13(a)(2), Applicant submits that the Plan contains none of the characteristics of senior securities,[1] which led Congress to enact the restrictions on the issuance of such securities set forth in section 18 and 13(a)(2) of the Act. Applicant contends that it would not be "borrowing" from its trustees in the sense that concerned Congress, *e.g.*, borrowing for securities speculation. Additionally, Applicant asserts that all liabilities created by accruals under the Plan would be offset by essentially equal assets which would not otherwise exist if the fees were paid on a current basis. Applicant further asserts that the Plan would not induce speculative investments or provide the opportunity for manipulative allocation of Applicant's expenses and profits; control of Applicant would not be affected; and, given the common existence of deferred compensation agreements today, the Plan would not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

11. As to section 22(f) of the Act, Applicant contends that it was designed to bar only those restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by SEC rule or regulation, neither of which circumstance would apply to the restriction on transferability of a trustee's benefits under the Plan. Applicant asserts that the restrictions under the Plan would be clearly set forth in the Plan and would not adversely affect the interests of the trustee or of any of Applicant's shareholders.

12. Applicant contends that the legislative history of section 22(g) of the Act indicates that Congress was primarily concerned with the dilutive effect on the equity and voting power of the common stock of, or units of beneficial interest in, an open-end company if securities were issued for consideration not readily valued. Applicant submits that the Plan would not have this effect, particularly in view of current disclosure requirements applicable to trustee compensation. Applicant further submits that Applicant's obligation to make payments under the Plan would not be "issued" for services or for property other than cash or securities. Applicant

[1] Applicant does not concede that the Plan is a "security" as defined in section 2(a)(36) of the Act.

contends that although any trustee's fees which might become payable to a trustee would clearly be for services, any such fees would become payable independent of the Plan. Applicant further contends that the plan would provide for deferral of payment of such fees and thus, should not be viewed as being "issued" in return for services but in return for Applicant not being required to pay such fees on a current basis.

13. Applicant asserts that section 17(d) of the Act and Rule 17d-1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction "on a basis different from or less advantageous than that of" the affiliated person. Applicant submits that the Plan is not a joint transaction between Applicant and its trustees within the meaning of these provisions as the interest to be accured on the deferred amounts is to be based on the objectively determinable interest rate applicable to 90-day Truasury bills, so that the Plan will possess none of the profit-sharing characteristics of a joint transaction. Applicant contends that the effect of the Plan would be to defer the payment of fees that Applicant otherwise would be obligated to pay on a current basis as services are performed by the trustees. Applicant further contends that liabilities create by the accruals under the agreement would be offset by essentially equal fund assets, which would not otherwise exist if the trustee's fees were paid on a current basis (that is, the fees otherwise payable to the trustee would remain as part of Applicant's general assets and property). Applicant contends that there is no expectation of profits being generated through Applicant or other investments on behalf of the trustees since Applicant would be undertaking no funding or investment commitment under the Plan and the interest earned by the trustees during the deferral period would not be tied to Applicant's investment performance but rather to the objectively determinable interest rate applicable to 90-day Treasury bills during the immediately preceding quarter.

14. Applicant asserts that deferral of a trustee's fees in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Additionally, Applicant asserts that it is expected that deferral would have a negligible effect on its assets, liabilities, net assets and net income per share. Applicant further asserts that when all payments under the agreement have been made to the trustee, the trustee would be in a position no better than if any deferred fees had been paid to him on a current basis.

15. Applicant believes that its ability to recruit and retain highly qualified trustees would be enhanced if it were able to offer its trustees the option of deferred payment of thier trustee's fees. Applicant contends that this bEN%F)t to Applicant and its shareholders outweighs any tax or other benefit that may be realized by an individual trustee under the prop/sed Plan.

16. Applicant submits that the exemption requested is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that its participation in the Plan is consistent with the provisions, policies and purposes of the Act and is not less advantageous to Applicant than to its participating trustees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20630 Filed 9-8-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1025]

Public Information Collection Requirements; Submission to the Office of Management and Budget (OMB) for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection: Application for Diplomatic Exemption From Taxes on Utilities/Gasoline.
Originating office: Office of Foreign Missions.
Form number: DSP-99.
Type of request: New.
Frequency: On occasion.
Respondents: Foreign missions and personnel.
Estimated number of responses: 8,000.
Estimated number of hours needed to respond: 2,800.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Dated: August 26, 1987.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 87-20618 Filed 9-8-87; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1113]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 6, 1987 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, DC. The meetng will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommuncations. The purpose of the meeting is to review preparations for the international meeting of Study Group 7 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520 (telephone (202) 647-2592).

Dated: August 27, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-20619 Filed 9-8-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to the Office of Management and Budget

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements

imposed upon the public which were transmitted by the Department of Transportation on September 3, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on September 3, 1987.

DOT No: 2974
OMB No: 2125-0072
Administration: Federal Highway Administration
Title: Speed Monitoring Program Procedural Manual (Annual and Quarterly Vehicular Speed Data Reporting Requirements)
Need for Information: For each state to meet the requirements of 23 U.S.C. 141(a) to annually certify enforcement of the speed limit described in 23 U.S.C. 154(a).
Proposed Use of Information: For FHWA to judge the effectiveness of the State's speed limit enforcement program.
Frequency: Quarterly/Annually
Burden Estimate: 53,040 hours
Respondents: State highway agencies
Form(s): None

DOT No: 2975
OMB No: 2120-0514
Administration: Federal Aviation Administration
Title: Aviation Insurance
Need for Information: The information is included on air carriers applications for insurance when insurance is not available for private sources.
Proposed Use of Information: To provide insurance to air carriers when during national emergencies (wark risk) insurance is not available from private companies.
Frequency: On occasion
Burden Estimate: 30 hours
Respondents: Air carriers
Form(s): None

DOT No: 2976
OMB No: New
Administration: Office of the Secretary
Title: Airline Service Quality Performance
Need for Information: To provide air travelers more adequate data on performance of the carriers in meeting published schedules and in handling baggage.
Proposed Use of Information: To make information on airline performance available to the public.
Frequency: Monthly
Burden Estimate: 654,055 hours
Respondents: Air carriers
Form(s): RSPA Form 234 and addendum

DOT No: 2977
OMB No: 2125-0536
Administration: Federal Highway Administration
Title: Motor Carrier Safety Assistance Program
Need for Information: For FHWA to determine State compliance with specific legislative and administrative requirements for grants funds.
Proposed Use of Information: For FHWA to monitor and evaluate the progress of each State's program for grants and to justify grants for succeeding years.
Frequency: Quarterly
Burden Estimate: 1,764 hours
Respondents: State highway agencies
Form(s): FHWA Form MCSAP-3

Issued in Washington, DC, on September 3, 1987.

Richard B. Chapman,
Acting Director of Information Resource Management.

[FR Doc. 87-20681 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-9-7; Dockets 43655, 45057, 45058, 45059, and 45094]

Aviation Proceedings; Order Instituting Show-Cause Proceeding To Allocate Frequencies Under U.S.-Philippines Air Transport Agreement

AGENCY: Department of Transportation.

ACTION: Order instituting show-cause proceeding.

SUMMARY: The Department has tentatively decided to allocate the U.S.-Philippines Route 2 frequencies available to U.S. air carriers on October 1, 1987, as follows: (a) Renew Northwest Airlines' current allocation of 11 weekly frequencies and United Airlines' current allocation of seven weekly frequencies; (b) allocate to Continental Airlines for operation independently, in its own name, two weekly frequencies for its proposed Honolulu-Manila service, and (c) make these allocations effective through September 30, 1990. The attached order also tentatively grants Continental Airlines' request for exemption authority to provide scheduled combination service between Honolulu and Manila, provided that it starts service by October 28, 1987, its proposed startup date. Since the bilateral agreement limits to three the number of carriers which may be designated to serve U.S. Route 2 and limits to 20 the number of weekly roundtrip frequencies which can be operated on Route 2 through September 30, 1990, the order also tentatively denies the requests of Northwest, United, Air Micronesia, and Hawaiian Airlines for allocation of the newly available U.S.-Philippines frequencies and the applications of Air Micronesia and Hawaiian for exemption authority.

DATES: Answers and/or objections to the Department's tentative findings and conclusions as set forth in Order 87-9-7 should be filed by September 10, 1987. Replies to any answers and/or objections are due by September 15, 1987.

ADDRESSES: Answers and/or objections and replies should be filed in Docket

43655, addressed to the Documentary Services Division (C-55), U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Dockets 43655, 45057, 45058, 45059, and 45094.

Dated: September 3, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-20691 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[AC No. 105-2B]

Proposed Revision to Advisory Circular on Sport Parachute Jumping

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on draft Advisory Circular (AC) 105-2B.

SUMMARY: The draft advisory circular provides a substantial degree of updated information and some of the new terminology now used in sport parachuting. Other areas include revised information pertaining to the assembly of major parachute components, as well as the installation and removal of equipment.

DATES: Comments must be received on or before November 9, 1987.

ADDRESSES: Mail or deliver comments on the draft advisory circular to: Federal Aviation Administration, Office of Flight Standards, Aircraft Maintenance Division, Attention: AFS-340, AC No. 105-2B, Room 340, 800 Independence Avenue SW., Washington, DC. 20591. Comments may be inspected in Room 340 weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John R. Woods, AFS-340, at the above address, telephone: (202) 267-3803.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited from all interested parties. A copy of the draft advisory circular referenced herein may be obtained by contacting the person identified under "For Further Information Contact."

Discussion of the Draft Advisory Circular

The draft circular is intended to provide general information and clarify any misunderstandings by the parachute industry pertaining to the assembly of major parachute components and the removal and installation of aircraft equipment.

In preparing the draft advisory circular, the FAA has received favorable comments from key organizations of the parachute industry. However, in rewriting the paragraph entitled Assembly of Major Parachute Components, many questions were asked by these key organizations. Therefore, the FAA has concluded that it is in the public interest to solicit as many comments as possible from the general public pertaining to the entire draft advisory circular.

Issued in Washington, DC, on July 9, 1987.

William Brennan,

Acting Director of Flight Standards.

[FR Doc. 87-20598 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement; San Francisco Public Utilities Commission

SUMMARY: Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement is being prepared for the proposed San Francisco Municipal Railway (MUNI) Metro Turnaround Project in downtown San Francisco, California. The MUNI, an operational branch of the City and County of San Francisco's Public Utilities Commission (PUC), proposes to construct a turnaround facility for the Market Street subway with UMTA Federal capital grant assistance and local funding. The proposed action would provide a more efficient and flexible track configuration beyond the downtown terminus of the existing MUNI Metro subway.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen C. Clark, UMTA Region IX, 211 Main Street, Suite 1160, San Francisco, California 94105; telephone (415) 974-7317 or Mr. Everett M. Hintze, Utilities Engineering Bureau, San Francisco PUC, 1155 Market Street, San Francisco, California 94103; telephone (415) 554-0706.

Project Description/Objectives

The existing stub and track arrangement at the San Francisco Municipal Railway Metro level of the Embarcadero Station constrains the Metro from meeting existing and future headways during peak hours. The MUNI Metro Turnaround Project is designed to construct a turnaround facility for the Market Street subway to provide a more efficient turnaround arrangement. This will allow MUNI to:

Provide additional capacity to accommodate the growth in ridership on the existing Metro System as forecast by the City for the year 2007.

Provide the opportunity to reduce coupling of trains at West Portal and Duboce Portal, thus reducing passenger delays and operating expenses.

Improve operating reliability by nominal cost changes to the vehicles and signal system.

While the proposed action would allow for a future southerly extension of the MUNI Metro System, such extension is not being considered as part of this proposed action.

Alternatives

A previous scoping meeting was held on March 5, 1986 to consider four all-underground alternatives based on the City's preliminary operating requirements. Studies since then have finalized these requirements and have allowed the development of simpler and less costly alternatives including the location of the turnaround on the surface.

A range of alternatives will be considered and evaluated in the EIS:

No action alternative.

A transportation system management alternative consisting of operational improvements to existing infrastructure.

Surface turnaround facility in the median of the realigned Embarcadero Parkway.

Underground turnaround facility beneath the Embarcadero.

Probable Effect

Construction of both the surface and underground alternatives would involve tunneling under lower Market Street and Justin Herman Plaza to minimize surface impacts. The surface alternative would use open cut construction from the south side of the Plaza to Howard Street and surface construction in the median of the realigned Embarcadero from Howard to Bryant Streets. The construction of the underground alternative involves open cut construction from the south side of the Plaza to Howard Street with a short tail track on the surface south of Folsom Street. Construction impacts would include noise and vibration, traffic and pedestrian disruption, interruption of access to businesses and parking areas,

potential for movements of BART tunnels, potential for settling of some adjacent buildings, and potential disturbance of buried archaeological resources that could be in the area. Construction of the surface facility along the Embarcadero would also include potential impacts to the Embarcadero freeway structures and existing buildings within the proposed alignment; and facility operations could have long term effects of circulation disruptions and increased noise. Beneficial impacts resulting from improved transit service will also occur.

Several other transportation projects are planned within, or adjacent to, the project area. While the proposed MUNI Metro extension to the CALTRAIN Station at Fourth and Townsend Streets is considered a secondary impact, other related projects such as the Embarcadero Parkway Project from King Street to North Point Street, the proposed MUNI F-Line extension northward to Fisherman's Wharf, and construction of new on and off ramps to the I-280 freeway, while not dependent on the turnaround project will be implemented within the same time frame and therefore the cumulative effects of these projects will be addressed.

Scoping

A scoping meeting is scheduled for September 22, 1987 at 7 p.m., Port Commission Hearing Room 3100, Ferry Building, Embarcadero at Market Street. An information packet which gives more detail on the project and expected impacts is available to the public at the Utilities Engineering Bureau, San Francisco Public Utilities Commission, 1115 Market Street. Written comments germane to the scope of the EIS will be accepted by UMTA for a period of thirty (30) days from the date of this notice. Commentors may comment on the alternatives to be considered or propose additional social, economic, or environmental impacts to be evaluated. Commentors proposing additional impacts to be evaluated should indicate which alternatives are expected to generate these impacts and give specific reasons why the impacts may be significant. Comments may be sent to UMTA or San Francisco PUC at the informational addresses given above.

Issued on: September 2, 1987.

Henry Nejako,

Deputy Regional Administrator.

[FR Doc. 87-20683 Filed 9-8-87; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: September 2, 1987.

The Department of Treasury has made revisions and resubmitted 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 regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th the Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New
Form number: 8582
Type of review: Resubmission
Title: Passive Activity Loss Limitations

Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheet 3 through 6 are used to allocate the loss allowed back to individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated burden: 17,920,307 hours

OMB number: 1545-0051
Form number: 990-C
Type of review: Resubmission
Title: Farmers' Cooperative Association Income Tax Return

Description: Form 990-C is used by farmers' cooperative to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.

Respondents: Farms, Businesses or other for-profit
Estimated burden: 74,120 hours

OMB number: 1545-0139
Form number: 2106
Type of review: Resubmission
Title: Employee Business Expenses

Description: Internal Revenue Code section 62 allows employees to deduct their business expenses to the extent of reimbursement, in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Meals and entertainment in excess of reimbursement are allowed to the extent of 80% of adjusted gross income. Form 2106 is used to figure these expenses.

Respondents: Individuals or households
Estimated burden: 8,497,650 hours
Clearance officer: Garrick Shear (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87-20623 Filed 9-8-87; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Bureau of the Public Debt; Securities and Accounting Services Reorganization

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of reorganization.

SUMMARY: Effective September 27, 1987, the Bureau of the Public Debt will reorganize the Office of Securities and Accounting Services (OSAS). After reorganization, OSAS will be comprised of the Office of the Assistant Commissioner (SAS) and the following components: (1) Division of Public Debt Accounting, (2) Divison of Customer Services, (3) Division of Securities Accounts, and (4) Division of Review and Analysis.

FOR FURTHER INFORMATION CONTACT: Michael Smiley, Director, Division of Management Analysis, Bureau of the Public Debt, E Street Building, Washington, DC 20239-0001, 202-376-4135.

SUPPLEMENTARY INFORMATION: The OSAS reorganization was undertaken because the Department of the Treasury is converting to a full book-entry environment for its offerings of marketable securities. This reorganization reflects the reduction in workload associated with handling definitive securities, and increases OSAS' technical and professional responsibilities for managing a highly-automated nationwide book-entry securities program. The reorganization will improve operations along functional lines, and enhance internal and external lines of communication.

Under the general authority vested in the Secretary of the Treasury in 5 U.S.C. 301 and 31 U.S.C. 321, approval for the reorganization was granted on April 2, 1987, by the Assistant Secretary of the Treasury (Management).

Dated: August 10, 1987.

Van Zeck,

Deputy Commissioner.

[FR Doc. 87-20637 Filed 9-8-87; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCEMENT TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, September 8, 1987. [52 FR 32642 August 28, 1987]

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: September 3, 1987.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued September 3, 1987.

[FR Doc. 87–20721 Filed 9–4–87; 11:33 am]

BILLING CODE 6570-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 2, 1987.

TIME AND DATE: 10:00 a.m., Thursday, September 10, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *White County Coal Corporation,* Docket No. LAKE 86–58–R, etc. (Issues include consideration of requirements for taking enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. *Greenwich Collieries,* Docket No. PENN 85–188–R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–20733 Filed 9–4–87; 12:47 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Issues regarding the qualifications of Federal Reserve Bank and Branch directors.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: September 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–20809 Filed 9–4–87; 4:00 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0441]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 87-18267 beginning on page 29841 in the issue of Wednesday, August 12, 1987, make the following correction:

§ 178.1010 [Corrected]

On page 29842, in the second column, in § 178.1010(c)(29), in the 14th line, "(HFF-310)," should read "(HFF-330),".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 341, and 369

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products

Correction

In rule document 87-18144 beginning on page 30042 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30043, in the first column, in the first complete paragraph, in the eighth line, "antacid" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2830 et al.]

Medical Devices; Withdrawal of 67 Proposed Rules Classifying Dental Devices

Correction

In proposed rule document 87-18266 beginning on page 30107 in the issue of Wednesday, August 12, 1987, make the following correction:

On page 30107, in the table, in the first column, in the 38th entry, "highlight" should read "headlight".

BILLING CODE 1505-01-D

federal register

Wednesday
September 9, 1987

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its regulations in response to a petition for rulemaking. The proposed rule would establish a uniform standard for OSMRE's evaluation of responses by State regulatory authorities to notifications of possible violations (ten-day notices or TDN's). Under the proposed rule, OSMRE would accept a State regulatory authority's response to a TDN as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act, in accordance with the Surface Mining Control and Reclamation Act of 1977 (the Act), unless OSMRE makes a written determination that such response was arbitrary, capricious, or an abuse of discretion under the State program. The proposed rule would also establish a process by which a State regulatory authority could request informal review of a written determination to inspect by OSMRE's authorized representative.

DATES: *Written comments:* OSMRE will accept written comments on the rule until 5 p.m. Eastern time on November 9, 1987.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Washington, DC at 9:30 a.m. on October 14, 1987.

Individuals wishing to attend, but not testify at the hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that it will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearing: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC.

Request for public hearing: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–4295 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold a public hearing on the proposed rule on request only. The time, date and address scheduled for the hearing are previously specified in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating in the hearing should inform Mr. Stone (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 5 p.m. Eastern time October 9, 1987. If no one has contacted Mr. Stone to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

On May 30, 1986, the Mining and Reclamation Council of America (now part of the National Coal Association), and the Regulatory Assistance Program, comprised of ten State coal associations, presented a petition for rulemaking to OSMRE. The petitioners requested OSMRE to repeal its existing regulations authorizing the issuance of Federal notices of violation (NOV's) in States with regulatory programs approved by the Secretary (primacy States). The Director denied that part of the petition. 52 FR 21598, (June 8, 1987). The petitioners also requested OSMRE to adopt a uniform Federal standard for the evaluation of a State regulatory authority's response to a TDN, and specifically asked for an "arbitrary, capricious, and abuse of discretion" standard in 30 CFR Part 842. The Director granted that part of the petition. *Id.* Under Federal regulations, approval of part of the petition requires OSMRE to commence a rulemaking proceeding.

Several sections of the Act relate to the evaluation and enforcement of State regulatory programs. In section 101(f) Congress found that "* * * the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States; * * *." Section 201(c) authorizes the Secretary, acting through OSMRE, to make those investigations and inspections necessary to ensure compliance with the Act, and to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act. Section 517(a) specifies that the Secretary shall make such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of State programs.

Section 521(a)(1) provides that if the Secretary has reason to believe that any person is in violation of the Act, or any permit condition required by the Act, he must notify the State regulatory authority. It further provides that the Secretary shall immediately order a Federal inspection if the State fails, within ten days after notification, to take appropriate action to cause the violation to be corrected or to show good cause for such failure. This statutory provision is implemented in the Federal regulations at 30 CFR 842.11(b). If the violation continues to exist at the time of inspection or, in situations involving a TDN issued following the initial inspection, at the time of reinspection, OSMRE issues an

NOV unless a cessation order is required pursuant to section 521(a)(2). 30 CFR 843.12(a)(2). Section 521(a)(2) requires the Secretary to issue cessation orders whenever any condition or practices exist which create an imminent danger to the health or safety of the public or a significant imminent environmental harm to land, air, or water resources. When a State regulatory authority has taken appropriate action to cause a violation to be corrected or has shown good cause for failure to take such action, section 521(a)(1) does not require OSMRE to inspect an operation or to issue an NOV.

The petitioners argued that the lack of a uniform standard for the evaluation of responses to TDN's has led to considerable disparity in the treatment of coal operators and State regulatory authorities. The petitioners also argued that the absence of a standard for the evaluation of a TDN response also causes a lack of deference to a State's discretionary authority in the interpretation and enforcement of its regulatory program and results in the substitution of OSMRE's judgment for that of the State if there is a disagreement over the interpretation of the approved State program. This, they asserted, is contrary to the intent and purposes of the Act and undermines the principle of State primacy.

After consideration of the petitioners' concerns, the public comments on the petition, including those of five States, and other analyses performed by OSMRE and included in the Administrative Record, OSMRE believes that a uniform standard for TDN evaluation is necessary in order to assure consistent and even-handed treatment of all operators and all State regulatory authorities.

III. Discussion of Proposed Rule

A. TDN Standard of Review

The terms "appropriate action to cause a violation to be corrected" and "good cause for such failure" appear in the Act as the criteria for evaluating a State regulatory authority's response to a TDN. 30 U.S.C. 1271(a)(1). However, neither the Act nor the regulations define those terms. In the past, OSMRE evaluated State responses on a case-by-case basis in determining whether State actions constituted "appropriate action" or "good cause." With regard to appropriate action, OSMRE stated in 1982 that the "crucial response of a State is to take whatever enforcement action is necessary to secure abatement of the violation." 47 FR 35627–8 (Aiugust 16, 1982). The 1982 preamble did not discuss when good cause would exist for failure to take appropriate action.

OSMRE has tentatively concluded that the 1982 approach was unreasonably rigid in suggesting that only enforcement action would be considered appropriate. Other kinds of State actions, such as requiring permit revisions, could secure correction of the violation. Under a true primacy concept, a State should be given discretion to decide which actions are appropriate in a given situation.

The proposed rule would recognize the discretion given to States under primacy and require OSMRE to determine in writing that the State regulatory authority's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program before OSMRE would order an inspection or reinspection.

The proposed rule would create a uniform standard for evaluating a response by a State regulatory authority to a TDN, both under 30 CFR 840.11(b)(1)(ii)(B) and 843.12(a)(2). It would be consistent with the en banc decision of the United States Court of Appeals, which noted, "[O]nce a state program has been approved, the state agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision and the Secretary will not intervene unless its discretion is abused." *In Re: Permanent Surface Mining Regulation Litigation*, 653 F. 2d 514, 523 (D.C. Cir. 1981) (en banc), *cert. denied*, 454 U.S. 822 (1981). The proposed rule would require OSMRE to determine in writing that a State has abused its discretion before ordering an inspection that could lead to Federal enforcement.

This proposal would not affect a decision to inspect based upon § 840.11(b)(1)(ii)(C) when adequate proof is supplied that an imminent danger to the public health and safety or a significant imminent environmental harm exists. In addition, this rule is not intended to interfere with OSMRE issuance of NOV's as required by orders in *Save Our Cumberland Mountains v. Clark*, No. 81–2134 (D.D.C. 1985) and *Save Our Cumberland Mountains v. Clark*, No. 81–2238 (D.D.C. 1985).

An arbitrary or capricious response, or one that is an abuse of discretion under the State program, would be one in which the State regulatory authority has acted irrationally, or without adherence to correct procedures, or inconsistently with applicable law, or without proper evaluation of relevant criteria. To add perspective to this proposed TDN evaluation standard, OSMRE would also provide guidance in the rule as to specific kinds of situations which would constitute appropriate action or good cause under the State program.

B. Appropriate Action

The proposed rule would identify "appropriate action" as enforcement or other action authorized under the State program to cause the violation to be corrected. Enforcement would include, but would not be limited to, the issuance of an NOV to the operator. "Other action" authorized under the State program to cause the violation to be corrected could include the initiation of the process to require a revision or modification to the operator's permit, 30 CFR 774.11(b), or the commencement of a formal proceeding to forfeit the performance bond if adequate to correct the violation and achieve reclamation. 30 CFR 800.50. The above examples are not meant to be an exhaustive list of acceptable responses.

By this rule, OSMRE would reject the concept that appropriate action to cause a violation to be corrected would only include responses showing that at the time of the State response either the condition constituting the possible violation of the Act no longer exists or the State has issued an NOV or cessation order. This proposal would recognize that sometimes situations would be complex and that, although the State must respond to OSMRE within ten days, State actions to resolve the situation and eliminate conditions constituting violations of the Act could take more than ten days. Direct OSMRE enforcement against an operation would not be utilized when no imminent danger to the public health or safety, or significant imminent environmental harm exists and when the State is acting reasonably to correct a possible violation. Under the proposed rule, appropriate action would mean that certain conditions may continue in the short term, but ultimately the violation of the State program will be resolved. OSMRE invites public comments on other responses by a State regulatory authority which may constitute "other action."

C. Good Cause

The proposed rule includes six categories of good cause. Unlike the concept of appropriate action, when good cause exists for failure to take appropriate action to cause a violation to be corrected, conditions which constitute a site-specific violation could continue in certain circumstances, when the State regulatory authority is acting

properly in implementing and enforcing its State program. A discussion of each category follows.

(1) Under the State program, the possible violation did not or does not exist. This would include situations where at the time of the State regulatory authority's inspection, the violation did not exist. If the State regulatory authority, based on its inspection of the site or its interpretation of the approved State program, determines that a violation did not or does not exist, it is the responsibility of OSMRE to demonstrate that the State's decision was arbitrary, capricious, or an abuse of discretion under the State program.

If OSMRE were to conclude that the State had not abused its discretion in concluding that conditions which OSMRE believes constitute a violation of the Act or Federal rules are not covered by the State program, then OSMRE would notify the State regulatory authority of a program deficiency under 30 CFR 732.17.

Thus OSMRE would respect primacy in that the State would be the front-line enforcement authority. At the same time, OSMRE would continue to fulfill its oversight role of assuring that State regulatory authorities effectively implement, maintain and enforce all provisions of their State programs and that such programs are consistent with the Act and Federal regulations.

(2) The proposed rule would accept a response by the State regulatory authority identifying a need for a reasonable and specified additional time to investigate whether a violation of the State program did or does exist. The determination of whether a violation exists occasionally is not readily apparent, particularly when the operation is in compliance with a permit, but the permit may be inadequate to assure compliance with the performance standards. This provision is not intended to allow prolonged delays in enforcement actions, but recognizes that it may take more than ten days to develop a rationale needed to require a permit modification or to sustain an enforcement action. OSMRE believes that it would be unreasonable to expect a State regulatory authority to act prematurely against a possible violation until it can sustain its decision.

(3) The State regulatory authority lacks jurisdiction under the State program over the violation or operation. Under the proposed rule, a State regulatory authority would not be required to take action against a violation or operation not covered by its program. In these situations, like those discussed above, OSMRE will confer with the State regulatory authority concerning any deficiencies in its approved program and take any actions necessary under § 732.17, such as program amendments, to assure that the State program is in accordance with the Act and consistent with the Federal regulations.

(4) The proposed rule would provide that when a State regulatory authority is restrained by an injunction or other order from acting on the possible violation, good cause would exist. Courts may, at times, enjoin enforcement or other actions in order to maintain the status quo, thereby preserving their jurisdiction to hear the case and consider the necessary relief. Such orders may arise when an administrative or judicial tribunal has placed an operation on a schedule to correct the violation or to reclaim the site. In the past, certain orders restraining enforcement may not have been consistent with the Act. If a State is seeking to overturn the injunction, good cause would exist. If a State regulatory authority were not seeking to overturn the restraint, OSMRE would examine the State action and determine whether it was arbitrary, capricious or an abuse of discretion under the State program.

(5) If a State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, it would also be considered to have shown good cause. For example, the State regulatory authority might find that the operator has failed to correct other violations, and that it is now pursuing or has completed a permit revocation or suspension or a performance bond forfeiture proceeding.

(6) The State regulatory authority demonstrates that extraordinary circumstances preclude enforcement or render it futile. Enforcement action would not likely cause the correction of a violation in such circumstances, or serve any other useful purpose.

D. Informal Review of Written Determinations

To further assure that OSMRE exercises a consistent national policy that protects a State regulatory authority and an operator against unnecessary Federal interference in a primary State, the proposed rule would establish a process by which a State regulatory authority could request informal review of the written determination of OSMRE's authorized representative who made the initial decision that the State's response to a TDN was arbitrary, capricious, or an abuse of discretion under the State program. The proposed rule would require OSMRE's authorized representative to immediately notify the State regulatory authority in writing of his determination that the State regulatory authority had failed to take appropriate action to cause the possible violation to be corrected or had not shown good cause for such failure. Typically the initial decision would be made at the field level by a Field Office Director. The notification could be by any method which produces a written document showing receipt by the State regulatory authority. The State regulatory authority would then have five days from receipt of the written determination to file a request for informal review of that determination by the Deputy Director of OSMRE.

An initial decision concluding that the State regulatory authority failed to take appropriate action or show good cause would not be considered to be the decision of the Secretary triggering the immediate Federal inspection requirement in section 521(a)(1) of the Act, unless the State decided not to request informal review. When informal review is sought, the OSMRE Deputy Director would make the determination contemplated by section 521(a)(1).

During the time when a State regulatory authority could exercise its review rights under the proposed rule, and after such exercise until the Deputy Director has completed such review, the authorized representative would not conduct an inspection or issue an NOV on the TDN. This proposed provision would not affect OSMRE's ability or responsibility to issue cessation orders in situations involving imminent danger to the public health or safety, or involving imminent significant environmental harm. After reviewing the written determination of the OSMRE authorized representative, and the material included in the request for informal review submitted by the State regulatory authority, the Deputy Director of OSMRE would render a decision within 15 days. The Deputy Director's decision would affirm, reverse, or modify the authorized representative's written determination.

If the Deputy Director concluded that the State regulatory authority had failed to take appropriate action or to show good cause for such failure, he would immediately order a Federal inspection. A written explanation of the Deputy Director's decision would be provided to the State regulatory authority.

If the decision resulted from a request for a Federal inspection under 30 CFR 842.12, the requestor would be notified of the Deputy Director's decision. A decision of the Deputy Director

reversing the authorized representative's initial determination would be subject to the informal review procedures of 30 CFR 842.15.

Finally, OSMRE would amend 30 CFR 843.12(a)(2) to include a reference to the proposed rule's informal review process at 30 CFR 842.11(b)(1)(iii), clarifying that the informal review process applies in such instances, and that OSMRE would not reinspect or issue an NOV during the pendency of that process. Although OSMRE is proposing to amend a portion of § 843.12(a)(2), OSMRE is not reopening the issue of its authority to issue NOV's in primacy States. For OSMRE's position in that regard, see 52 FR 21598–603 (June 8, 1987).

OSMRE specifically welcomes public comments concerning the concept and method of a process by which a State regulatory authority may request informal review of an OSMRE authorized representative's written determination on its response to a TDN.

Procedural Matters

Federal Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions proposed by the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competiton, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal authors of this rule are Daniel Stocker, Division of Regulation and Inspection, Office of Surface Mining Reclamation and Enforcement; and Hugo Fleischman, Regulatory Development and Issues Management Staff; 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5385 (Commercial or FTS).

List of Subjects

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly it is proposed to amend 30 CFR Parts 842 and 843 as follows:

Dated: August 5, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation of Part 842 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 120 *et seq.*; and Pub. L. 100–34.

2. In § 842.11, paragraph (b)(1)(ii)(B) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 842.11 Federal inspections and monitoring.

* * * * *

(b)(1) * * *

(ii) * * *

(B)(*1*) The authorized representative has notified the State regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response. After receiving a response from the State regulatory authority, before inspecting, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met.

(*2*) For purposes of this Part, an action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion under the State program shall be considered "appropriate action" to cause a violation to be corrected or "good cause" for failure to do so.

(*3*) Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected.

(*4*) Good cause includes: (*i*) Under the State program, the possible violation did not or does not exist; (*ii*) the State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program did or does exist; (*iii*) the State regulatory authority lacks jurisdiction under the State program over the possible violation or operation; (*iv*) the State regulatory authority is precluded by an administrative or judicial order from acting on the possible violation; (*v*) the State regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the State program, or (*vi*) extraordinary circumstances preclude or render futile enforcement against the possible violation.

* * * * *

(iii)(A) The authorized representative shall immediately notify the State regulatory authority in writing when in response to a ten day notice the State regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, within 5 days from receipt of such written determination for informal review of that written determination by the Deputy Directory.

(B) Unless a cessation order is required under § 843.11, no Federal inspection action shall be taken or notice of violation issued regarding the ten day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has lapsed, or if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Directory decide that the State

regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority a written explanation of his decision, and if the ten day notice resulted from a request for a Federal inspection under § 842.12 of this Part, he shall send written notification of his decision to the person requesting such inspection after completing informal review.

* * * * *

PART 843—FEDERAL ENFORCEMENT

4. The authority citation for Part 843 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100-34.

5. Section 843.12(a)(2) is revised to read as follows:

§ 843.12 Notices of violation.

(a) * * *

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

* * * * *

[FR Doc. 87-20596 Filed 9-8-87; 8:45 am]

BILLING CODE 4310-05-M

federal register

Wednesday
September 9, 1987

Part III

Department of Transportation

Office of the Secretary

14 CFR Parts 234 and 255

Airline Service Quality Performance; Final Rule and Amendment

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 255

[Docket No. 44827 Amdt. Nos. 234-1 and 255-4]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Certain air carriers will be required to submit certain flight data to the Department of Transportation (DOT or Department) for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. Upon request, these same carriers also must supply the information directly to consumers on a flight-by-flight basis. In addition, these air carriers will be required to submit information on mishandled baggage to the Department. In the notice of proposed rulemaking published in the **Federal Register** on June 10, 1987, (52 FR 22046), the Department proposed a series of regulatory and non-regulatory options to address airline delays and other service quality performance problems. The disclosure requirement and the CRS requirement, made final by this rule, are but two of the proposals that were discussed. No final decision on most other regulatory proposals has been made yet. Additional information on these and other issues may be requested shortly. Non-regulatory options, while still under consideration by the Department, are no longer being considered in the context of this rulemaking.

EFFECTIVE DATE: The final rule is effective September 9, 1987. The disclosure portions of the regulation require the submission of information beginning with September, 1987, to the Department by October 15, 1987. On or before December 15, 1987, air carriers will be required to submit certain data for CRS vendors to display in accordance with the provisions of this rule.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St. SW., Washington, DC 20590 or by phone at (202) 366-9307; Barry Molar, at the above address or by phone at (202) 366-9285; Shelton Jackson, at the above address or by phone at (202) 366-5397; or Robin Caldwell, at the above address or by phone at (202) 366-9059.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1987, the Department published a notice of proposed rulemaking (NPRM) (52 FR 22046) which proposed regulatory and non-regulatory approaches to alleviate airline delays and consumer dissatisfaction with services provided by airlines. The basis for this rulemaking, discussed more fully in the NPRM, includes information gathered in the Department's ongoing investigation into air carrier scheduling practices (Orders 87-2-4 and 87-4-17/18/19/20), consumer complaints, and documents filed by several air carriers and a public interest organization.

The proposal presented a series of alternatives and posed 70 questions for commenters to address. A thirty-day comment period was provided and more than 200 responses were filed.

The scheduling reliability regulatory proposals included:

• *A disclosure rule*, which would provide information on the reliability of carriers' service, in terms of delays and cancellations. Five alternative rules were proposed:

1. Air carriers would report flight performance and cancellation data monthly to DOT in specified markets;
2. Air carriers would report the percentage of flights by hub and system-wide that depart from the gate more than 15 minutes late and report system-wide cancellation data based on available seat miles;
3. Air carriers would report flight arrival, departure and cancellation data for specified markets to DOT monthly, in a computerized format, and CRS vendors would either be encouraged or required to put the information in their CRS displays;
4. Air carriers would be required to adjust flight times of delayed flights in schedules held out to the public; and,
5. The Department, based on data provided by air carriers, would issue an "Airline Rating".

• *A performance standard*, which would establish parameters for determining when failure to meet published schedules would be considered an unfair or deceptive practice under section 411 of the Federal Aviation Act, as amended ("Act") (49 U.S.C. 1381).

• *A computerized reservation system ("CRS") rule*, which would impose requirements on CRS vendors. This operation included four alternatives:

1. Require vendors to identify consistently late flights in the primary display screen;
2. Require vendors to display flight schedule reliability information in secondary displays;
3. Require vendors to assign a penalty factor to frequently late flights for display ranking purposes; and,
4. Require CRS vendors to modify flight ranking algorithms.

The NPRM also proposed other service quality performance regulations governing matters such as telephone reservation response time, lost baggage, denied boardings, misconnections, cabin amenities and discount fare marketing paractices.

Finally, the NPRM posed non-regulatory options on the problems of airline scheduling delays and the other consumer issues. These alternatives focused on legislative authority to require or oversee peak hour pricing at airports, provision for the Federal Trade Commission to have authority over aviation consumer matters, and non-legislative option to encourage peak-hour pricing by airports.

II. The Problem

As is evident from the data cited in the NPRM and comments in the docket, flight delays are a major concern to consumers and to those providing services to the consumers, from air carriers to travel agents. The vast majority of comments filed by individual consumers, totaling nearly 200, express problems with flight delays and cancellations, and assert that some form, of additional regulation is necessary. Consumer complaints filed with the Department, as detailed in the NPRM, also have risen. Petitions for rulemaking filed by American, Continental, and Aviation Consumer Action Project (ACAP), and responses by United, Delta, and Trans World too recognize that delays are a serious problem and that disclosure of additional information to consumers would be valuable.

Our own investigation into airline scheduling practices at Atlanta, Boston, Chicago's O'Hare, and Dallas/Ft. Worth airports (Orders 87-2-4 and 87-4-17/18/19/20) indicates that delays are a widespread problem. Preliminary data show that arrival delays of 15 minutes or more occurred on 25 to 60 percent of all flight operations, depending upon the particular air carrier and airport involved. These delay data include mechanical-related delays, which under the rule, discussed below, are not required to be reported. Even discounting such delays from the preliminary data, delay rates remain significant.

The information above indicates that delays do exist and that consumers are dissatisfied with the product being offered to them by carriers. As

explained more fully in the NPRM, delays are a function of a number of interrelated elements, including carrier scheduling practices, inclement weather and air traffic control. Mechanical problems also can result in flight delays or cancellations.

Each party to the air traffic control system, including the government and the users, is striving to reduce delays in the safest and most effective manner. On the government's part, billions of dollars are being expended annually for safety improvements, capacity expansion, construction and related projects at the nation's airports. Operational and technological changes are also being made, such as the recently implemented Expanded East Coast Plan, which, among other improvements, increased the number of arrival and departure paths from the New York airports. In addition, the National Airspace System Plan is a multi-billion dollar on-going effect directed at improving the efficiency and capacity of the air traffic control system. Air traffic flow control procedures also are being upgraded to improve the system in the safest manner possible.

Carriers, for their part, have cooperated in scheduling discussions in 1984 and again in 1987 directed at spreading out operations at a number of airports to ease congestion. As detailed more fully in comments submitted by Northwest, carriers are aware that delays can cause a loss of business and they also are making efforts to address the problem on an individual basis.

In addition, CRS vendors recently agreed individually to eliminate elapsed flight times from among the factors used to rank flights in CRS displays for non-stop markets. This should help remove one incentive that air carriers now have to publish unrealistic schedules.

However, many of the delays are predictable or recurrent. Based on historical operations, carriers know or should know that certain times of the day, days of the week, and seasons of the year are more congested than others. Yet, carrier schedules too often fail to take account of likely or predictable delay factors.

This problem of unrealistic scheduling, which most commenters agree is also a significant cause of airline delays, is clearly within the carriers' control; however, delays may be a problem that no carrier individually can totally solve.

Despite the recent movement by CRS vendors to eliminate the elapsed time factor from their display algorithms for some types of flights, carriers still may have CRS-based incentives to publish unrealistic schedules. For example, the vendors' action does not cover connecting flights or direct flights with stops and does not change the use of displacement from requested departure time in the algorithm. Thus, some CRS-based incentives may still remain. In addition, the Civil Aeronautics Board's (CAB) experience with scheduling practices attests that carriers have always had non-CRS incentives to shave schedule time. Further, because of a lack of information, existing marketplace forces provide little or no incentives against such practices. Carriers that schedule unrealistically may face little risk that the practice will result in a loss of business because consumers do not have the information they would need to choose flights on the basis of on-time performance. Correspondingly, carriers who perform well in this respect are unable to capitalize on their good performance because there are no reliable data available that would allow them to compare their performance to that of their competitors.

Without solid on-time performance information, consumers can be left with a misimpression that a particular flight will arrive at a given time when the carrier knows, or should reasonably know, that this is less then likely to occur. This can result in great inconvenience, disruptions in travelling plans and frustration for the consumer. In many cases, consumers doubtless would have made other travel arrangements had they been apprised of the flight's past reliability. As commenters to this rulemaking indicate, consumers are aware that weather and air traffic control problems can cause a delay. This rule, though, addresses that aspect of scheduling practices that falls under the control or is within the knowledge of the carrier—giving consumers a reasonable estimate of when they can expect a flight to depart or arrive given factors within the carriers' knowledge. This is something the consumer expects and deserves.

No commenter questions our authority to take the actions proposed. Under section 411 of the Act, the Department has broad authority to address unfair or deceptive practices or unfair methods of competition in air transportation. The distribution of misleading information, such as unrealistic schedules, constitutes a violation. The Department, in an effort to curb possible abuses in the distribution of scheduling information through a variety of sources, including through CRSs, has authority to take appropriate regulatory and enforcement action under sections 204, 407 and 411 of the Act. Our regulations, 14 CFR 399.81, already provide that unrealistic scheduling of flights by air carriers is an unfair or deceptive practice or unfair method of competition and enforcement action based on that section and section 411 of the Act will be pursued by the Department's Enforcement Office where the facts so warrant.

While the need to address the problem is well recognized, the matter of how has been a subject of debate. Through the rulemaking process the Department has sought to focus the debate to develop a practical and effective solution.

III. Summary of Final Rule

A. Disclosure

The final rule requires that certain air carriers, limited at this time to those with 1 percent or more of the total domestic scheduled-service passenger revenues for the 12 month period ended March 31, 1987 as reported in the Form 41 report, provide monthly flight operations data for domestic non-stop flights that serve certain airports, currently limited to those in the contiguous 48 states that had 1 percent or more of the industry's annual domestic scheduled service passenger enplanements, via computer tape to the Department. Flights delayed or cancelled for mechanical reasons would not be reported. The Secretary retains discretion under the rule to modify the list of air carriers subject to the rule, the list of airports for which they must report data and the data to be reported. This discretion would be exercised, for example, if a particular air carrier or airport not covered by the rule experienced a significant delay problem. Carriers (through their reservation agents) are also required to provide information on their flights' on-time performance to consumers upon request.

B. CRS

The second aspect of the rule requires that carriers provide monthly on-time performance information by flight to the CRS vendors and that CRS vendors display this information on their primary display screens. The information provided to vendors would be a single digit on-time performance code calculated from the data reported to the Department. We are no longer considering as part of this rulemaking the NPRM proposals to regulate algorithms used by CRS vendors to rank flights. However, we intend to monitor both delay rates and the impact of the algorithms closely, and will propose further action on this issue if necessary in the future.

C. Mishandled-Baggage Reports

In addition, the rule requires that the air carriers subject to the schedule performance reporting requirement also provide monthly data on their total number of enplaned domestic scheduled passengers and the number of mishandled-baggage reports filed by such passengers. These data are to be reported with the carrier's cover letter transmitting its schedule performance data tapes to the Department.

D. Other Issues

Other issues addressed in the NPRM, including misconnections, telephone response time, denied boardings, cabin amenities and discount fare seat availability, may be addressed at a later date. Except where otherwise noted, the other regulatory alternatives for addressing the delay and baggage issues, including establishing a performance standard, are still under consideration within the Department. On certain issues, a supplemental notice of proposed rulemaking may be issued. Non-regulatory options raised in the NPRM also remain under consideration, but will no longer be considered in the context of this rulemaking.

IV. Disclosure Rule

Under the rule, certain air carriers will be required to submit flight information to the Department for all their domestic nonstop flights serving airports with 1 percent or more of the total enplanements in the U.S. as reported in the Form 41 report. At present this includes 27 airports. The data required to be filed are discussed more fully below and detailed in a reporting directive contained in Appendix I.

The information collected will be useful to the Department for two purposes: first, to check the accuracy of information supplied to CRS vendors; and second, to make it available to the public. A delay will be defined as a flight that arrives 15 minutes or more past the scheduled arrival time.

The NPRM, in addition to proposing five disclosure alternatives, posed five general and 18 specific questions on these alternatives. Most commenters did not address the questions specifically, but instead reacted to the concept of a disclosure rule and what elements should be incorporated into it.

A. Alternative Approach/ATA

In addition to comments on the NPRM, the Air Transport Association (ATA) submitted an alternative voluntary inter-carrier agreement, with a request for prior approval of the agreement and a grant of antitrust immunity under sections 412 and 414 of the Act, to address disclosure and performance issues. The ATA comments were filed on behalf of 11 air carriers: Continental Airlines, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Northwest Airlines, Inc.; Pacific Southwest Airlines; Pan American World Airways, Inc.; Piedmont Airlines; TranStar Airlines, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; and USAir, Inc.

The ATA agreement, signed by the carriers listed above and Jet America and Alaska Airlines, Inc.; would be open to certificated air carriers, and any U.S. citizen tht has an exemption under section 416 of the Act and that operates regularly scheduled passenger service, on a voluntary basis. (This would include commuter air carriers.) Parties to the agreement would report to DOT by domestic airport pair the total number of scheduled flights, and the number of those flights which departed on-time and late, arrived on-time and late, and were cancelled. Parties to the agreement could submit explantory information to DOT for any late arrival, late departure, or cancellation. Information would be submitted within 30 days after the end of the month, and, at the party's discretion, be filed on computer tape, disc or in print. CRS vendors that sign the agreement would be prohibited from using the reported information to bias the CRS display of flights or fare information. However, such vendors could display the flight performance information in an unbiased fashion in the CRSs. The agreement would be effective for two years, and continue on a year-to-year basis; carriers could withdraw in the third year with 45 days' notice.

ATA argues that the inter-carrier agreement is preferable to rulemaking since the carriers are better able to determine pertinent consumer information. This also would avoid government regulation in this area. ATA further notes that informed consumers are better able to make judgments on airline service than the government. Finally, ATA argues that the voluntary arrangement would avoid the "intractable" question of flight performance standards, adherence to which often is beyond the control of the carrier. The ATA comments also addressed other issues, which are discussed below.

Because of the decision announced in this final rule, the ATA's application is essentially rendered moot. No further review of this request, therefore, will be taken and we will dismiss the application.

B. General Comments on Disclosure

Generally, most commenters support a disclosure rule, although differences exist as to the details on what, how, when and to whom disclosure should be made. Three of the five disclosure options are basically the same, with the real distinction being what type of information should be disclosed and to whom and how disclosure should be made. The discussion that follows, therefore, does not address specifically each of the first three alternatives, but rather addresses the questions raised in the NPRM and responses concerning the details of how the regulation should be structured. The fourth and fifth alternatives take slightly different approaches and are addressed separately.

With the exception of TranStar and Jet America, each of the signatories to the ATA agreement filed separate comments, which generally support ATA's approach. Eastern, Northwest, and America West Airlines, Inc. assert that the Department did not stress enough the importance of upgrading the air traffice control (ATC) system, and the effect weather and ATC have on delays. Eastern notes that the problem is not merely a function of "unrealistic scheduling practices" and cautions that the Department should not promote its proposal as *the* answer to delays. Eastern states, though, that carriers can and should take into account weather and ATC in developing schedules.

Northwest and America West claim that some delays also are the result of recent consolidations within the industry, which have caused transitory operational problems that are now being worked out. Northwest notes that after its merger with Republic, it experienced a deterioration in service as a result of combining the operations of the two carriers. It spent millions of dollars correcting these problems to respond to the marketplace.

Northwest specifically cautions that any data collection should not have an anticompetitive effect and argues that the NPRM did not demonstrate a need for any of the options to protect the public because the marketplace does function. Nonetheless it does not oppose the disclosure of information.

Continental favors uniform and mandatory disclosure of information by all carriers because it will enhance service competition. Continental claims that individual carrier disclosure on a voluntary basis would not be useful to consumers since they would have no meaningful basis to compare one

carrier's claims with those of another carrier.

Southwest, also a signatory to the ATA agreement, supports ATA's basic position, but argues that DOT should accomplish the same result through regulation, rather than granting blanket antitrust immunity. It also asserts that the requirement should sunset automatically after two years unless affirmatively extended.

Midway Airlines argues that sweeping regulations would increase cost without justification since the delay problem is a function of mergers, air traffic control problems and inclement weather, and because no pattern of industry-wide abuse exists. Carriers are now required to publish realistic schedules and the proposal would not reduce incentives to shave schedules. It favors increased enforcement action. In addition, a rule could place it in an untenable position—being targeted for responsibility for delays when, as a small carrier, it often is dependent upon others, over whom it has little control, to provide airport handling services.

American Airlines supports an on-time reporting requirement because such a requirement would provide benefits to consumers. It points to a competitor's published flight times to suggest that unrealistic scheduling does occur. American argues against both a regulatory standard and a rating system.

A number of other groups also generally support a disclosure rule, including the Massachusetts Port Authority (Massport), the Port Authority of New York and New Jersey (Port Authority), the Aviation Consumer Action Project (ACAP) (which initially filed a rulemaking petition in this proceeding), the New York City Department of Consumer Affairs (NYCDCA), the Michigan Department of Transportation, and the City and County of Denver.

Nearly 200 consumer comments were filed. These comments express personal complaints and experiences with certain airlines. More than 70% of these comments support some form of re-regulation of the airlines by the government. The majority believe there has been a decrease in airline service quality since deregulation and, therefore, assert the quickest solution would be re-regulation. Some typical service problems cited include lost luggage, overbookings, flight delays, and misleading advertisements on discount fares.

Although most consumer commenters suggest that direct regulation of airlines would be the best solution, a few provide some alternatives, such as adding incentives to carriers to improve performance. One commenter suggests supplying loans to those airlines that provide exemplary service. Others suggest fining those airlines that are consistently late. Other suggestions range from making airlines post their delays on the computer screens to docking the pay of airline crew members.

Response: The Department recognizes, as indicated in the NPRM and discussed above, that airline delays are a complex phenomenon with many causes that at times are not capable of being identified precisely. Certainly, as Northwest and others assert, mergers can exacerbate delays in the short term while carriers consolidate operations. Weather and ATC clearly play a role in airline delays as well.

The rule seeks to address one aspect of the problem—that portion that is under the control of the air carrier. This, as Eastern suggests, includes the ability of a sophisticated and computerized business to account for historical seasonal variations and ATC delays in determining schedules. The existence of chronically late flights, as documented in the airline delay investigation, suggests that unrealistic scheduling practices deserve a significant part of the blame for the current high level of delays.

We disagree with Midway's claim that airline delays are not an industry-wide problem. Evidence from the delay investigation shows that delays are widespread. More than 30 percent of all flights during a number of good weather sample weeks in 1986–87 in and out of Atlanta operated by two carriers arrived 15 minutes or more late. An analysis of data on flights to and from Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth this year also indicates the depth of the delay problems: nearly 25 to 60 percent of all operations, depending upon the carrier and airport, were delayed by 15 minutes or more based on a comparison of the scheduled gate arrival time versus actual gate arrival time as reported by the pilot or gate dispatcher.

While we believe the problem to be serious and wide-spread enough to warrant intervention at this time, we see no reason to consider wholesale re-regulation of airline services. The action we take here should help bring marketplace pressures and incentives to bear on the problem by improving the availability and accuracy of consumer information. We are also continuing to study other regulatory and non-regulatory approaches to this and other current consumer service problems, and will not hesitate to implement appropriate solutions if the problems persist. However, we have every expectation that these matters can be addressed effectively by measures far less drastic than re-regulation.

Finally, Southwest's proposal for an automatic sunset provision has merit, and the final rule consequently provides for termination on December 31, 1990. The termination date could be extended, if necessary, through rulemaking. This termination date is consistent with the termination date for all of the CRS rules (14 CFR 255.10(b)), and, rather than have different sections of CRS regulation terminate at different periods, one date will be used. The disclosure portion of the rule will follow the same termination date.

C. Specific Questions

1. What must be disclosed?

The rule requires that certain air carriers submit flight data to the Department. The format, specified in Appendix I, is essentially identical to that used in the Department's investigation into airline delays at Atlanta, Boston, Chicago O'Hare and Dallas/Ft. Worth, Orders 87–2–4 and 87–4–17/18/19/20. One-half of the carriers that will be subject to the rule's requirements are already familiar with it. This format should assure that the costs to carriers of submitting information are relatively small and provide the Department with the data necessary to provide information to the traveling public. The data for each scheduled operation of a scheduled domestic non-stop passenger flight generally include:

—The name of the carrier;

—The flight number;

—The airport codes;

—The date and day of the scheduled flight operation;

—Scheduled arrival and departure times;

—The actual arrival and departure time (if a scheduled operation was cancelled, that fact is to be noted as well);

—Scheduled and actual elapsed times; and,

—The differences between actual and scheduled departure, arrival and elapsed times.

A scheduled flight operation that has been delayed or cancelled for mechanical reasons will not be reported as a flight. Arrival and departure time will be measured by the time of arrival at or departure from the gate.

Comments: ATA, as detailed above, favors disclosure of information on the number of scheduled domestic flights and the number that depart on-time and

late, arrive on-time and late and are cancelled, on an airport-pair basis.

Florida Express, a large regional air carrier, argues that the data should include only the percentage of flights that depart and arrive within 15 minutes of the scheduled departure and arrival times and the percentage of scheduled available seat miles completed. It argues that the figures should be provided for each non-stop market and for the carrier's entire system. Anything less than all non-stop markets would not be useful to the consumer in selecting a flight.

American intially proposed disclosure of data on the top 250 markets. It now favors disclosure for all flights and suggests this would not be burdensome. This information then could be used in CRS displays. It specifically believes that the percentage and number of times each flight was cancelled or failed to operate and information on arrivals and departures should be disclosed. If a choice is made between arrivals and departures, it favors arrivals because the disclosure of departure information would not discourage elapsed time competition. In addition, it suggests that data aggregated by hub also be reported to encourage realistic scheduling. Concerning a percentage definition of a frequently late flight, American favors a 90 percent on-time threshold, but it argues that the best solution would be to require reports on flights and let the consumers decide.

Eastern claims that information should be provided on a system-wide basis, and that reporting for any subset would be too much of a burden on some carriers. Pan Am specifically supports the ATA's information proposal. The Association of Retail Travel Agents (ARTA) also favors disclosure of flight information for all city-pairs, although if the Department decides to narrow the scope of the data, information on the top 300 city-pairs could be required. The Michigan Department of Transportation suggests that reporting be limited to an on-time arrival percentage and the average delay in arrival, and time should be measured "gate-to-gate." It would not provide a 15 minute grace period for defining a late flight.

Delta favors information on a market-by-market basis for all markets and for all air carriers. Delta also argues that DOT should not adopt the old Civil Aeronautics Board on-time arrival formula, if ATA's alternative is rejected. Instead, it asks that disclosure be based on the average time in minutes a carrier's flights are delayed, based on the schedules for flights in particular markets. It claims that the 15 minute delay standard would not be useful since it could indicate that all of a carrier's flights were late, even when each delay was 16 minutes. Another carrier could have 75 percent of its flights listed as on-time, when the 25 percent of flights that were late were delayed more than 30 minutes. Thus, the information for the consumer may not be helpful and an average would be more useful. It suggests information be submitted quarterly.

Northwest indicates that it has no objection to measuring the percentage of flights within 15 minutes of schedule, or the use of an average figure for domestic flights. The information could be provided by flight, city-pair market, or system-wide. Northwest suggests that we could consolidate any arrival and departure flight data at a later point.

Response: The Department does not believe that the scope of the information requirement ATA proposes would provide enough useful information to the consumer. Under the ATA proposal, consumers' ability to assess the reliability of advertised schedule times and to make informed choices among available flights would be limited because they could not determine whether a particular flight had a poor performance record. Consumers would only be able to determine in a given market how the carrier's flights generally performed. Both on-time performance and carriers' incentives to hold out unreasonably short flight times can vary greatly within a given market depending on the time of day. Thus, we have decided to require information on a flight-by-flight basis instead.

The Delta average-time idea has some advantages in that it gives consumers more specific data than a 15-minute late standard. However, it would not give consumers data on a specific flight, which we believe is extremely valuable.

Initially, we will limit the airport pairs for which the information must be reported to domestic segments involving the 27 airports listed in Appendix I. These airports represent the largest airports in the contiguous 48 states, each having enplanements of 1 percent or more of the total U.S. domestic scheduled passenger enplanements. Together, these airports account for approximately 66% of all domestic scheduled enplanements at U.S. airports, and enplanements of passengers travelling to these airports from smaller points likely constitute a large percentage of total enplanements as well. While information on all markets could be of some use to consumers, we believe that our focus on the segments involving the designated airports will provide substantial benefits and will help limit the costs of reporting and dissemination. Even with the limitation, the reports will cover approximately 1500 airport pairs. Unlike proposed limitations that focus on market size (*e.g.*, the 200 or 500 largest markets), this limitation will not screen out all information on smaller, thinner markets. This, in turn, should help minimize carrier incentives to shift delays to the less dense routes out of the 27 airports.

In addition, directing our attention to these specific airports should aid all consumers, and not just those flying to, from and through the designated 27 airports. If unrealistic scheduling practices are curtailed for flights serving the largest (and most congested) airports, all consumers including passengers flying between cities not covered by this rule will benefit because of the interrelationships within the air transportation system created by carriers' massive hubbing operations (most of which are located at the largest airports). For example, if an aircraft is used for a segment between Denver and Kansas City, which is not among the 27 airports, and then for a segment between Kansas City and West Palm Beach, which is not among the 27 airports, the second segment should also receive a better on-time performance as a result of improvements in the on-time performance for the first segment. In a sense, a "domino" effect should result for flights throughout the country. Moreover, delays and misconnections associated with the large hub complexes appear to be a significant cause of the current consumer dissatisfaction. Giving consumers better information on the flights into and out of these complexes should help them anticipate and avoid such problems. At the same time, limiting the number of markets for which data are reported should help reduce the costs of reporting and disseminating the data.

The decision to limit the airports for which information is reported to those within the contiguous 48 states has the effect of excluding Honolulu. We have no indication that Honolulu has encountered significant delay problems. Moreover, we will receive delay information on almost all mainland-Hawaii airport pairs in any event, since most flights to Hawaiian destinations depart from the 27 largest mainland airports.

If evidence suggests that additional airports should be covered by this rule, the Department reserves the right to alter the list of airports in Appendix I.

Some carriers argue that submission of data on a subset of all flights would be more difficult than reporting on all of

their flights. The final rule provides carriers with the option to submit the required data on all of their flights. Voluntary information will be accepted by the Department if it is provided in the form specified by the rule and it is accompanied by a written statement describing in detail the data that are being volunteered. Once a carrier begins to file voluntary information, it must continue to do so for at least a 12-month period.

Response on other issues: We do not include a reporting requirement on misconnections, as Massport requests. This option is not foreclosed by this final rule and will continue to be reviewed. An industry average similar to the one Massport seeks may be provided by the Department in its published summaries. Carriers, of course, will be free to use the information to compare their service to the industry average in their advertising, subject to the existing on-time performance advertising requirements in 14 CFR 399.81.

Eastern and Continental suggest that the term "cancellation" should be defined to exclude those flights cancelled 48 hours prior to scheduled departure where passenger notification has been completed. Northwest notes that flight cancellation and completion data are now reported to the Department on a quarterly basis by city of origin, but it does not object to providing the information monthly. The Department will not adopt the Continental standard at this time. Instead, the data for cancelled flights will include all flights cancelled, except those cancelled for mechanical reasons, as discussed below, in order to provide the consumers with a broader picture of a carrier's performance.

2. Who will have to disclose the information?

A specific list of carriers that must file data is listed in Appendix I. The Secretary, or the Secretary's delegate, can revise the list if evidence suggests that other carriers are experiencing delay problems. Air carriers not required to file data may do so voluntarily if their submissions comply with the same format, content and timeliness requirements as apply to the larger carriers. If such carriers elect to file data, they must cover either all flights serving the airports covered by the rule or all of the carrier's flights. In addition, if such carriers begin filing such data, they must continue to do so for at least a 12-month period.

Collectively, the reporting carriers account for about 90 percent of domestic operating revenues. A review of the June 1987, *Official Airline Guide* reveals that their flights to and from the 27 largest airports account for approximately 63% of all domestic scheduled flights. These airports enplane about 66% of the total domestic passenger enplanements. At this point, it does not appear to be necessary to have all carriers report information, particularly since the carriers directed to report this information account for a large percentage of the domestic scheduled service. By limiting the number of carriers that are required to report data, the burdens on smaller carriers of reporting information are eliminated and the costs of processing and disseminating the information by the Department also are reduced. In addition, we note that the carriers that must report information and the airports specified represent a large percentage of delays nationwide.

a. *Size Exemption. Comments:* The Regional Airline Association argues that the disclosure rule should not be applied to carriers who provide service with aircraft having 60 or fewer seats, generally serve short-haul markets, and experience competition from other modes of transportation. The last factor forces RAA members to be particularly sensitive to on-time performance since, if their flights consistently experience delays, potential passengers can choose other means of travel. In addition, RAA points out that the old CAB reporting requirements did not apply to small carriers, and that most do not maintain delay data and not in the format required. The costs of doing so, it argues, would be burdensome. Excluding these carriers from the rule it claims, therefore, is appropriate.

Eastern argues that code-sharing carriers should report data as separate entities. It also notes that a late flight affects passengers without regard to the size of the carrier or the length of the flight. American shares this opinion. Pan Am claims that placing additional burdens on smaller carriers and on commuter operators is not necessary. ARTA argues that all scheduled air carriers should submit information, and small carriers should be exempt when their service is not competitive with another carrier. Eastern and American assert that size is no reason for exempting carriers from a reporting requirement. Michigan DOT also argues that all carriers including commuter airlines should report information.

Response: Eastern and American are generally correct in arguing that delays affect passengers on small planes as well as passengers on large planes. However, as an initial matter, we will limit the application of this rule to large air carriers. First, large carriers are much more likely then small carriers to maintain their flight performance data in a computerized form that makes it relatively easy for them to supply us with the required information. Thus, compliance with the rule is likely to be much more costly for small carriers than for the large carriers. Second, there may be some validity to RAA's argument that the availability of surface transportation alternatives for many of the small carriers' flights provides a significant discipline on the scheduling practices of these carriers. Given the likely cost disparity, we will refrain from requiring reports from these carriers at this time. However, we will continue to review the coverage issue, and will extend the reporting requirements to the smaller carriers if it becomes necessary.

b. *Intra-Alaskan Service. Comments:* MarkAir, an intra-Alaskan carrier, argues against applying the disclosure requirement to operations within Alaska. It cites past actions where Alaskan service has been treated differently and suggests that, because of climatic differences, a disclosure rule could adversely affect the safety of operations within the State.

Response: No airport in Alaska is among the 28 largest U.S. airports, or among the largest 27 airports in the contiguous 48 states. Thus, our reporting requirements will not mandate the submisson of any data on any intra-Alaska airport pairs.

c. *Applicability to International Operations. Comments:* American and ACAP argue that international operations, including those conducted by foreign air carriers, should be disclosed. However, most commenters agree that on-time performance for international operations should not be reported. The International Air Transport Association argues that only "air carriers," which is specifically defined in the Act to exclude foreign air carriers, should disclose the information. ATA concurs that international operations should not be included in the disclosure rule. TWA filed a response to American's comments and asserts that the rules should not be applied to international markets. It argues that operating rules differ from country to country and these rules may have an adverse affect on on-time performance. Other factors also could affect on-time performance for international operations, such as foreign labor disputes and sub-par check-in facilities. TWA claims U.S.-flag carriers "have unfairly been denied sufficient or adequate check-in and reservation facilities" at foreign airports, which

adversely affects a U.S.-flag carrier's on-time performance vis-a-vis the performance of that country's national carrier. It also cautions that if information is required from foreign air carriers, foreign carriers would object, leading to international friction.

Responses: We will not require foreign air carriers or U.S. air carriers to file data on their international flights. Under the NPRM, the proposed regulatory language suggested that "air carriers" would be subject to the rule. Thus, the NPRM did not envision this aspect of the rule applying to foreign carriers. In addition, disclosure by U.S. carriers on internaitonal flights could place them at a competitive disadvantage vis-a-vis their non-repoting foreign carrier competitors.

3. To whom must information be disclosed?

The information required to be disclosed must be submitted to the Department and, as discussed below, to CRS vendors although in a different format. In addition, upon request, carriers required to submit data to the Department and to CRS must provide on-time performance information to consumers.

Comments: Most commenters agree that information should be disclosed to DOT. The ATA alternative proposal also relies on information being provided to the Department. Massport asks that the information be summarized, distributed by the Department, and made available to airport operators.

Response: The Department will act as a collection point for the data, and will make the information available to the public as discussed below. Carriers also are free to use the information in advertising (subject to the procedures of 14 CFR 399.81(b)). As Northwest argues, this may be an effective method to distribute general information carrier performance to consumers. In addition, and as discussed below, we are requiring direct disclosure to consumers upon request during the course of reservation transaction and inquiries and disclosures to CRS vendors in order to put specific flight performance information into the hands of consumers through travel agents. Finally, the published data will be available to airport operators.

4. How should disclosure be made?

Data must be provided to the Department on computer tape. The methods by which data will be provided to CRS vendors are discussed below.

Comments: Most commenters agree that the information should be made available on computer tape to the Department. Florida Express suggests that we also permit it to be submitted in hard copy. The proposed ATA agreement also gives signatories the option of providing us a hard copy.

Response: In today's computerized airline industry, and in particular with respect to those carriers that must report information under this rule, the need for (and usefulness of) voluminous data in hard copy is less than clear. These volumes would not be easy to "skim" through for a consumer, or anyone else interested in such information. Thus, we will require that the information be submitted on computer tape. Information in this format will enable the Department to make it available to the public in a timely manner. Air carriers can utilize the waiver procedures if this format, as opposed to supplying the data by disc, is burdensome. Carriers are free to make hard copies available in addition to the computer tape, but we will not require it.

5. When and how frequently must disclosure be made?

Carriers will be required to submit the data to the Department fifteen days after the last day of each month.

Comments: The dispute in this area centers on whether to use a 10, 15 or 30 day time frame. All carriers agree that 30 days is feasible, and some note that 15 days is sufficient for carriers to compile and submit the data to the Department. ARTA argues that 10 days is sufficient.

Response: Based on our experience in the delay investigation, and because of the type of information requested, the Department believes that a 15-day reporting period is more than workable for the affected carriers. If particular problems are encountered with this requirement, they can be worked out on a case-by-case basis.

d. Specific Disclosure Options (Alternatives four and five).

Alternative Four: Under this alternative, carriers would be required to adjust flight times of delayed flights in schedules held out to the public.

At this point, the Department will reserve action on this proposal.

Alternative Five: Under this option, the Department would compile specific data, assign it a weighted factor and issue an airline rating.

At this point, the Department will reserve action on this proposal.

e. Specific Questions Raised in the NPRM on Disclosure. The NPRM also specifically asked eighteen questions on disclosure. A number of these questions have been subsumed in the earlier discussions and we do not repeat the discussion here. The Department's response with respect to each remaining issue is set out below.

1. Safety: Would the regulation adversely affect safety?

The data requirements will not adversely affect airline safety. The air carriers owe the highest duty to their passengers to provide safe air transportation. The regulation in no way seeks to interfere with that obligation. However, to avoid any possibility of penalizing carriers for their conscientiousness and concern for the safety of their passengers, we are providing that delays and cancellations caused by mechanical problems be excluded from the reported data. The intent of the rule is to provide consumers with useful information, and not to create negative incentives or to compromise safety in any way.

Comments: Eastern argues that if our rule covers each carrier's system, it would not affect safety. Pan Am claims the disclosure proposals will not affect safety.

Northwest notes that the importance of safety considerations is correctly stated in the NPRM. It indicates that what is disclosed, how the information is disclosed, and to what purpose the information is used, will affect the safety implications for any rule. Northwest states that the CAB was particularly concerned that a pilot who began a flight late not be under undue pressure to make up time to meet a specific arrival time requirement. The CAB concluded in promulgating 14 CFR Part 234 that safety considerations required special formulation of a performance standard for enforcement purposes, but that this was not necessary for disclosure purposes. Thus, CAB's disclosure rule did not allow carriers to excuse delays caused by normal seasonal variabilities, weather or ATC. The CAB's performance (or enforcement) standard, however, recognized that sometimes carriers could anticipate weather and ATC delays, but at times they could not. Northwest also claims that too much focus on elapsed or arrival time in any type of disclosure rule may create safety risks. From a safety standpoint it prefers a disclosure rule based on arrivals and departures, or departures only, which eliminates pressure to operate an aircraft to improve an arrival time rating. It also argues that disclosures in CRSs will affect safety.

American asserts that on-time disclosure would not affect safety. ARTA, which supports an updated CAB-type disclosure rule, asserts that there are no incentives for carriers to ignore

safety. Continental claims that if we exclude certain information from disclosure, particularly mechanical delays, our rules would avoid even the slightest possibility that carriers would compromise safety.

ACAP states that the airlines would not take unsafe actions, and the Department has sufficient authority to investigate if a safety concern does arise, particularly in cases where a carrier's performance shifts substantially.

Response: The disclosure rule will not adversely affect safety. First, the rule requires only disclosure of information, which no commenter argues is a safety concern. While the CRS disclosure aspect could be viewed as a measure of performance, it does not set a "make-or-break" performance standard for carriers. Instead, it provides straightforward factual information on carrier on-time performance. Further reducing any incentives to compromise safety is the increased ability of carriers to establish their own achievable realistic schedules that should result from this rule and the recent action by CRS vendors to eliminate the elapsed time factor from their display algorithm.

While requiring disclosure, the Department is not adopting a performance standard. This option remains open, as noted below, and the concerns raised by Northwest will be addressed if such a standard is adopted. Concerning disclosure in CRS's, we do not see how the dissemination of information through the CRS will affect safety any more than the disclosure of the same information by DOT, which Northwest admits will have no impact on safety. Northwest's arguments on the safety implications of CRS disclosure are discussed more fully below.

We believe that, as a general matter, the rule is structured so that perverse safety incentives are minimized; however, the rule also makes special provisions for mechanical-related delays and cancellations to eliminate any possibility that the rule might adversely affect safety. Last-minute mechanical difficulties are frequently unanticipated and obviously can have serious safety implications. Thus, as Continental suggests, the rule excludes the reporting of data relating to flight operations that are delayed or cancelled because of mechanical problems reported to FAA under 14 CFR 121.703 and 121.705. Under the rule, mechanical-based delays will include delays on both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, where the delay was attributable to the initial mechanical problem. We recognize that the exclusion of this data will affect carrier on-time performance percentages, but in balancing the need for information versus safety, safety concerns are paramount. In addition, the exclusion on this information will not penalize carriers for being conscientious with respect to the safety of their passengers.

2. *Explanatory detail: Should carriers also be required to provide a breakdown of reasons for a delayed or cancelled flight?*

The Department will not require that explanatory information on delayed or cancelled flights be provided.

Comments: Most carriers agree that such information would be cumbersome and unnecessary. Pan Am claims that it maintains such information for departures but not arrivals, and notes that it does not determine the precise cause of a specific delay, which may actually have been due to an earlier delay experienced by that aircraft. Northwest states it maintains the information internally, but not in the DOT format. The Department, it claims, would have to standardize the explanatory information to make it useful. American asserts it is too hard to assign a cause to a particular delay for internal purposes let alone to report such causes. Florida Express argues that delay information should be given without any excuses for the cause of the delays. Massport too asks that this information not be collected. Under the ATA agreement, carriers would not be required to file this information but could do so on a voluntary basis.

ARTA agrees that the information should not be submitted. Instead, carriers should be required to maintain records and provide the information to consumers, if requested. This would apply to cancellation information too. The Department would then spot check carrier records.

Response: The Department agrees that the required reporting of explanatory details on why a flight was late or cancelled would be extremely cumbersome and might not prove useful, except perhaps in an enforcement case. We see no reason to collect the data for such use at this time; it could be provided by the affected carrier, if needed. Therefore, we will not require the submission of this information at this time. In the future, if such information does prove necessary, we can require its submission.

3. *Dissemination of data to the public: How will the data be distributed?*

The Department intends to expand the current monthly report on consumer complaints to include summaries of the data required to be reported pursuant to this rule. The summaries for each carrier will include overall on-time, cancellation and baggage performance data and may include summary data for specific flights. We expect that the summaries will take about two weeks to compile. Thus, for example, the September data would be filed with the Department by October 15, and the summaries should be available by approximately October 30. In addition to the monthly summaries, the Department will make more detailed data available for public review, and flight-by-flight performance data also must be provided through CRS's, on approximately the same schedule. Of course, carriers must also provide the latest available information to consumers when they request it during reservation transactions.

Comments: Most commenters favored dissemination on a monthly basis by the Department. Northwest argues that no further dissemination is necessary since, in those instances where one carrier outperforms another, the better performing carrier will advertise its service. This avoids the necessity of requiring that information be displayed in CRS's. Florida Express agrees that there is no need to disseminate the information further since carriers will use it in advertising. American wants the information made available to carriers and CRS vendors.

Response: In addition to the Department's report and as explained in the discussion on CRS, to put this information to its fullest use, it must be displayed in CRS's. We agree that our dissemination of the reports will aid consumers and that carriers will use the information to advertise better service. However, additional disclosure is necessary to assure that passengers have access to flight-specific information at the time they make travel decisions. Disclosure in CRS's and through airline reservation clerks will meet that need. Concerning Northwest's and Florida Express' arguments on dissemination through advertising, we would hope that carriers do use the information in advertisements.

We note that the data and monthly reports on on-time performance will not be comparable to similar data maintained by the FAA, since the FAA's data measures departures from the gate and arrival at the runway, while the data reported under this rule will measure arrival and departure at the gate.

4. *Consumer benefits: What benefits will flight information provide to consumers?*

The Department strongly believes that for the marketplace to function properly, information must be available to the consumer. As the NPRM noted, though, consumers obtain information in a number of ways and in fact, as Northwest also argues, consumers now may be making choices on their general perceptions.

Comments: Eastern, Pan Am, American, ARTA and ACAP agree that consumers will benefit from having available additional information upon which to base travel decisions. The information also will give carriers an incentive to improve the service performance factors under their control, which too will aid consumers.

Response: As indicated earlier, carriers now have incentives to provide unrealistic schedules. Consumers often are confronted with such misinformation in making travel arrangements and unrealistic scheduling will influence their decisions, often in an unfair and deceptive manner. Through disclosure, carrier incentives to post unrealistic schedules should diminish and the incentives should shift to providing realistic schedules. In time, the development of more realistic schedules should reduce the delay rates, which should in turn reduce consumer frustration with airline delays. These benefits, while not computable, are real, and the rule is directed at obtaining those benefits for consumers.

5. Costs: How costly would it be for carriers to disclose the information?

Comments: Pan Am suggests that compliance with the Department's regulations, as opposed to ATA's voluntary agreement, would be more costly, although no specific data are provided. American notes that costs should not be a factor in this decision, and similar information had been submitted to the CAB for 20 years. United, Northwest, Continental and Eastern argue against requiring disclosure by ticket agents, contending that such requirement would be very costly and would produce minimal benefits. The primary cost element these carriers point to is the increased agent time that would be needed to search for and convey the on-time information to customers. United estimates its own increased personnel costs at $30 million the first year and $17 million per year thereafter. Northwest, Eastern and Continental estimate that their annual personnel costs would increase by $30 million, $40 million, and $16 million, respectively. These estimates are based on the assumption that the rule would require "flagging" of late flights in primary displays, and detailed flight performance information in secondary displays. American comments that ticket agents are already having to take time to respond to customer inquiries about flight performance, and that an effective rule could, in the long run, actually decrease this element of costs.

Response: As noted in the regulatory evaluation, the costs of our disclosure rule will not be significant. Most direct costs are related to compiling and processing a large volume of data. Computers are, of course, well-suited to performing such tasks economically. RAA's arguments concerning the costs to its members need not be addressed at this point since commuter carriers are not required to report under the rule and therefore no costs will be borne by those carriers or other small carriers.

As is discussed in greater detail in the regulatory evaluation, the reservations personnel cost estimates of United, Northwest, Eastern and Continental are overstated. They are based on the assumption that the disclosure mechanism will be much more complex and burdensome than that adopted here, and also assume that every reservations transaction would be lengthened substantially by the disclosure requirement. They also fail to recognize the fact, noted by American, that ticket agents are already spending time dealing with the on-time performance issue. The cost of that time should be excluded from any estimate. Our estimate of $7 million in added personnel costs for the industry as a result of this rule appears to be a reasonable approximation. It also appears to be an acceptable cost given the rule's likely benefits.

6. Impact on competition: What kind of impact, if any, will our rule have on competition?

As noted above, competiton can only be enhanced if the consumer has information on carriers' schedule reliability. The precise effects are difficult if not impossible to quantify, and no commenter does so. However, as ARTA notes, the information will allow consumers to weigh costs and the quality of service in making purchasing decisions.

Comments: Eastern suggests that disclosure should enhance competition. Pan Am notes that at this point it cannot determine the effects on competition. American claims it would increase service quality competition and would not affect fare competition.

Response: As noted under the discussion on consumer benefits, the disclosure of information should permit consumers to make more informed choices. By doing so, the rule will permit more effective competition on the basis of service quality as well as price.

V. Air Carrier Disclosure

The Department will require that all air carriers subject to this rule also have available the same information on their on-time performance that they are required to provide to CRS vendors, as discussed below. This information must be passed on to customers during the course of reservations and ticketing transactions upon reasonable request. Through the NPRM, we sought to determine the best methods to provide consumers with on-time performance information. The rule takes a number of avenues to achieve that solution. As discussed above, disclosure of information must be made to the Department, and as discussed below, must also be made available to CRS vendors. With the latter requirement, consumers will be able to make inquiries about, and travel agents will have available, air carrier on-time performance data. The requirement that air carrier agents too have available this same information is an obvious corollary.

We note that American suggests such disclosure is needed, and we agree. The costs of such a requirement are addressed above. We are not specifying the manner in which carriers must make the information available to their reservations agents; they may choose the method that is the most economical and effective for their circumstances. We are also not requiring that carriers' agents volunteer the information to every customer. This approach should help minimize the costs of this requirement while insuring that the consumers to whom reliable performance is most important have access to the information they need at the point of sale.

Finally, we are not imposing any explicit requirement that travel agents provide the on-time information upon request because we consider it unnecessary. Travel agents hold themselves out as impartial representatives of all airlines, and they have little incentive to refuse a request for information if it is easily available.

VI. Regulation of CRS Displays

The NPRM proposed four possible rules for modification of CRS displays to address the problem of unrealistic scheduling. Two proposals would have required display of on-time performance data in CRS's. Under one proposal, we would have required vendors to "tag" frequently late flights in primary schedule and availability displays (flights that were more than 15 minutes late would be considered late). The

proposed rule did not specify how the flights were to be "tagged," but most commenters assumed that an asterisk or similar character would be used. Under the second proposal, we would have required vendors to develop secondary screens providing more detailed information about on-time performance and cancellations.

The other proposed CRS rules would have required vendors to modify CRS algorithms to reduce CRS-generated incentives for unrealistic scheduling. Under one proposal, we would have required vendors to add 60 minutes to the elapsed time of frequently late flights for purposes of constructing schedule and availability displays. Under the other algorithm proposal, we would have required vendors to modify their flight display algorithms so that (a) differences in elapsed time of less than 30 minutes between two flights would not affect the relative ranking of those flights against each other, and (b) no penalties would be assigned to flights with departure times that were less than 30 minutes before and 30 minutes after a passenger's requested departure time.

A. The Final Rule

The Department has decided to adopt a version of the first alternative, presentation of on-time performance data in primary displays. The final rule contains two elements. The first is a requirement that carriers provide appropriate on-time performance data to vendors for inclusion in primary schedule and availability displays. The second requires CRS vendors to include this information in primary schedule and availability displays.

Two sections have been included in the new Part 234 requiring carriers to disclose certain data to vendors, as follows: For each flight segment for which carriers are required to submit on-time performance data to DOT, carriers will also calculate the percentage of operations that arrived within 15 minutes of scheduled arrival time. The calculation will be based on the performance data as reported to DOT. Delays and cancellations caused by mechanical problems will be treated as they are for reporting purposes; that is, flights affected by such problems will not be included in the calculations. Flights that are cancelled for non-mechanical reasons are to be counted as having not arrived on time. Carriers will then assign a single digit on-time performance code based on the percentile ranking of on-time performance indicated by the calculations. For example, flights with on-time performance records of between ninety and one hundred percent would be assigned a "9", and flights with on-time performance records between eighty and eighty-nine percent would be assigned an "8"

The calculation process will be repeated monthly based on the data filed with DOT. Once the calculations are made, carriers must supply the vendor with the performance code either as part of their basic schedule tape submissions, or in separate tapes that will permit vendors to match performance codes with schedules in the CRS displays. New flights will be coded with an N. Carriers that provide basic schedule data to vendors through third parties are required to provide the data to third parties no later than the same time they would provide it to CRS vendors. We anticipate that the third parties would supply it to the vendors in the normal course of supplying them flight schedule data.

Carriers are required to calculate the performance code and submit it to vendors for each flight segment for which they are required to report data to the Department and for any multistop flights that they intend to have listed in CRS's that have any such nonstop flight segment as their last leg. For a multistop or one-stop flight, the performance code should be that assigned to the last relevant nonstop flight segment. For example, the flight performance codes would be assigned to a New York-Chicago-Seattle one-stop flight as follows: the New York-Chicago nonstop flight is assigned a performance code based on performance over the New York-Chicago nonstop segment; the Chicago-Seattle nonstop flight is assigned a performance code based on performance over the Chicago-Seattle segment; the New York-Seattle one-stop flight is assigned the performance code for Chicago-Seattle nonstop flight segment—the last relevant segment.

The rule permits carriers to calculate performance codes and submit them to vendors for all flights for which data is reported to the Department. Such submissions must continue for at least a 12-month period. This requirement is consistent with the provision on voluntary reporting to DOT and will help assure that carriers do not use voluntary disclosure solely to highlight good performances. Carriers therefore have a choice: either provide the on-time performance code for flights serving the 27 airports or for all flights.

The second element of this rule amends Part 255. CRS vendors will be required to include all performance codes supplied by carriers in primary schedule and availability displays. Codes for one-stop or multistop service will be displayed as set forth above. For connecting flights, the code for each segment will be displayed. Vendors must revise their displays of the code monthly within 5 days after receiving updated information from participating carriers.

The amendment otherwise prohibits the use of flight performance data in construction of schedule and availability displays. The rule also prohibits vendors from providing additional information about on-time performance unless the information is based on data submitted to DOT pursuant to the new Part 234 and the same information is presented in the same fashion for all carriers.

B. Comments

Commenters that addressed regulation of CRS generally do not support regulations. American, ARTA, ACAP, Massport, Eastern and Northwest are the exceptions, but they do not support the same type of regulation. American and ACAP support mandatory disclosure of flight performance data in secondary screens. ARTA supports the primary screen option. Massport supports a DOT data bank on flight performance with mandatory inclusion in CRS's as well. Northwest, Eastern and American support regulation of CRS algorithms to reduce incentives for unrealistic scheduling.

1. The Need For a CRS Rule

A number of commenters oppose the concept of any regulation of CRS's in addition to criticizing DOT's specific proposals. Some commenters (Delta, Northwest) object that CRS regulation is premature, and that the problem of delays and scheduling does not require more than reporting of flight performance information to DOT at this time. Commenters, including Florida Express, United, Alaska Airlines, Mr. J. Kenneth Brubaker and the RAA, also argue that CRS regulation might not be effective. They contend that travel agents could not be relied on to assure that information actually reached customers; disclosure of information contained in CRS's would increase the time and hence the cost to travel agents of individual transactions. The cost considerations would discourage travel agents from taking the time to explain the on-time performance data in CRS's.

Commenters also complain that a CRS display regulation would exacerbate other CRS problems. USAir, PSA, Alaska Airlines, Continental, Delta, Eastern, RAA and Northwest fear that inclusion of flight performance information in CRS's would permit

vendors to reinstate carrier identity bias into CRS displays by manipulation of the performance data. Northwest, ATA, Southwest, Delta, Continental, Alaska Airlines, USAir, and PSA request that the Department prohibit the use of performance data in construction of schedule and availability displays, or at least prohibit use in a biased manner.

Florida Express, Delta, Pan American, Alaska Airlines, USAir, and PSA also object that inclusion of any flight performance data in CRS's would give vendors an excuse to raise participation fees, which they claim are already too high. They argue that the Department should not promote fee increases by requiring vendors to incorporate data on flight performance into their CRS's. In this connection, vendors United, Delta, and Eastern also note that a rule on CRS disclosure would increase programming and operating costs of CRS's. United also claims that regulations would damage delicate relationships with CRS participants. The United and Delta cost predictions focus on the proposals for secondary screens or regulations of display algorithms that the Department is not adopting at this time. On August 3, 1987, Continental and Eastern separately filed supplemental comments (we hereby grant their requests for leave to file those comments) in which they each contend that the inclusion of performance data would be inordinately costly for smaller CRS vendors. They state that their CRS vendor (presumably SystemOne) estimates the costs of including extensive performance data in CRS displays to be in excess of $2 million, with an implementation time of one to two years. The two carriers caution that a CRS requirement could have an adverse impact on smaller CRS vendors because they do not currently have as much computer capacity as the larger vendors. As discussed below, the cost estimate reported by Eastern and Continental appears to be based either on the proposed secondary display option or on the assumption that the rule would require the maintenance of a substantial amount of performance information on every flight in the system.

American claims in a letter to the Assistant Secretary for Policy and International Affairs that it can add a single character code to primary displays at a reasonable cost. American also asserts in its letter that, because of current publicity, its own reservations agents are already spending a substantial amount of time responding to requests for schedule dependability information from customers. A copy of this letter has been placed in the docket.

2. Tagging of Frequently Late Flights

Except for ARTA, no commenter supports the proposal to identify frequently late flights with an asterisk or other symbol. Opponents argue that simply identifying late flights in this manner would not provide customers with much useful information, and that it would not permit a meaningful comparison among flights. American contends that the use of some form of flag could, for some flights in some CRS's, require more than one line on the display screen to be used for the display of each flight segment. Therefore "tagging" frequently late flights would reduce the number of flight segments that could be displayed on any one screen. American requests that the Department require the tagging of flights in all displays, including carriers' individual direct access displays, if we adopt this alternative. Northwest argues that the tagging approach might put undue pressure on carriers and crews to accomplish on-time performance in order to avoid having a flight stigmatized as frequently late.

In contrast, ARTA argues that on-time performance history is valuable information that assists passengers in choosing options. It claims that "frequently late" flights should be tagged in primary screens rather than on a secondary screen, which it believes would be less effective and efficient.

3. Flight Performance Data In Secondary Screens

With respect to disclosures on secondary screens, American and ACAP argue that such disclosures will provide information needed by consumers to make performance comparisons. In addition, American argues that this approach more closely reflects consumer interests than the tagging option because it permits the agent to use primary displays that are not burdened with on-time performance data for those passengers for whom on-time performance is not a concern. The secondary screen would make the data available when agents are dealing with a customer to whom performance matters. However, opponents state that there are strong disincentives for travel agents to look to secondary displays in the course of booking a reservation; therefore, they assert that customers will rarely get the benefit of the information from secondary screens. United claims that a secondary screen approach would be very costly. Its CRS, Apollo, would assertedly incur $6.4 million in capital costs and $3 million a year in operating costs under a combination primary and secondary screen display rule, the only type of rule that United considers to be effective. Eastern and Continental state that their CRS vendor estimates the direct costs to itself of a CRS disclosure requirement at more than $2 million. The two commenters differ somewhat in their descriptions of the information they received from their vendor, but the estimate is apparently based on the secondary display option. They state that the primary source of the increased costs is the increased computer capacity they believe a CRS disclosure rule would necessitate. Eastern states that the vendor's capacity requirements would be increased by eight to ten percent. This estimate assumes that the vendor would be required to maintain detailed arrival, departure and cancellation information for every one of the 285,000 world-wide nonstop flight segments contained in the vendor's system. The two carriers also state that, unlike larger vendors, their vendor currently has no available excess computer capactiy.

4. Penalizing Frequently Late Flights in Display Algorithms

No commenter supports the proposal to add penalty minutes to elapsed time of frequently late flights. Commenters contend that a uniform penalty such as DOT proposed could be unduly harsh. Vendors argued that this alternative would be extremely costly. Some commenters also argue that inclusion of an elapsed time penalty would reduce the utility of the CRS because the CRS would contain potentially inaccurate data about the elapsed time of flights. Northwest argues that the elapsed time penalty might put undue pressure on flight crews to maintain good on-time performance records in order to avoid the penalty and maintain higher rankings in CRS displays.

5. Regulation of Display Algorithms

Four commenters, American, ARTA, Eastern and Northwest support regulation of display algorithms to reduce incentives for flight delays. These commenters argue that the use of elapsed time as a ranking factor provides incentives for carriers to publish unrealistic schedules, and that regulation is therefore necessary.

However, none supports DOT's proposal to prohibit the use of differences in elapsed time between two flights of less than 30 minutes as a factor to determine their relative display positions and to prohibit penalties for displacement from requested departure time for flights departing within 30 minutes of the requested time. Eastern

and ARTA support the Department's proposed rule on use of elapsed time, but not the restriction on treatment of displacement from requested departure time. American argues that our proposal on elapsed time would be insufficient to correct the problem and urges that DOT prohibit the use of elapsed time altogether. It further argues that the rule on displacement would have little effect on bunching of departure times because carriers have substantial non-CRS related incentives to schedule flights close together. Northwest argues that the elapsed time rule proposal is deficient because it calls for flight by flight comparison. Northwest suggests that, instead, the FAA should establish minimum elapsed times for each city-pair and DOT should prohibit carriers from publishing schedules with shorter elapsed times than the FAA minimum. Northwest supports the proposed requirement on displacement from requested departure time, but it contends that the use of 30 minutes as proposed would provide increased incentives to schedule departures on the half-hour. A 29 minute standard would avoid this result.

United specifically objects to regulation of the use of elapsed time in algorithms because such regulation would make CRS's less efficient in allowing consumers to exercise their preferences for minimizing the elapsed time of flights.

C. Response

The Department has concluded that a rule on display of performance ratings in CRS's as outlined above is justified at this time. The publication of unrealistic schedules is an unfair and deceptive practice under 14 CFR 399.81. CRS's are the primary source by which consumers get information on airline schedules, albeit indirectly, through travel agents. To permit carriers to publish potentially unrealistic schedules through CRS's without providing notice on the reliability of those schedules would permit carriers, including CRS vendors themselves, to use CRS's to deceive the public. In addition, travel agents are the primary outlet for airline tickets as well as being by far the most significant neutral source of travel information. The need to provide consumers with meaningful flight-by-flight performance information in a manner that allows them to use it in making their purchasing decisions can only be met by providing the information to travel agents in a usable form. Finally, although vendors' recent commitment to eliminate elapsed time as a ranking factor in their display algorithms for nonstop flights may reduce CRS-generated incentives, it will not necessarily eliminate them. The use of displacement from requested departure time may still provide incentives for bunching flights, which can in turn lead to delays. Moreover, elapsed time will still be a factor for multi-stop and connecting flights. To the extent that CRS's are part of the problem, the effective use of CRS's as part of the solution appears to be reasonable.

The Department has determined that its final rule on CRS displays is an effective and efficient response to the delay problem; it will ensure that information on performance reliability is available to interested customers at the primary point of sale, i.e., the travel agent. Other sources of information may provide consumers with generalized performance information. The CRS rule will insure that information on specific flights is available to consumers at the time that purchase decisions are made. Moreover, this approach addresses many of the criticisms of the four specific proposals in the NPRM and of the concept of CRS regulation in this area.

1. Efficacy of the Rule

The use of a single digit percentile ranking on the primary screen should address the complaint that simple flagging of flights would not allow meaningful comparisons. Such a performance code will permit meaningful flight by flight comparisons without resorting to secondary display screens. Therefore the extra time and expense to use secondary screens should not act as a disincentive to travel agents to provide on-time performance information to customers. In addition, travel agents may have competitive incentives to use the information. American claims that consumers are already seeking reliability information. Once it is known that data is available to travel agents through CRS's, a travel agent may risk losing business if he or she refuses to use that information. To the extent that additional information will be useful to consumers, the rule permits vendors to establish quality of service displays in an unbiased fashion.

We recognize that the use of a single-digit code has some drawbacks. Because each number encompasses a ten percentage-point range, flights with the same performance number could differ in actual performance by as much as nine percentage points. Conversely, two flights whose on-time performance differed by as little as one percent could be assigned different codes. This outcome is an unavoidable consequence of using a single digit for the code. However, we anticipate that travel agents will explain what the code means. Moreover, although a coding system allowing for more detail might be preferable, cost considerations lead us to reject an approach requiring the use of more than one digit at this time. American states that it can add a single character code to its Sabre displays at a reasonable cost, and we believe the same to be true for other vendors. We have no basis to conclude that the expense of adding multiple characters to primary displays would be similarly reasonable and, therefore, are hesitant to require vendors to make such an undertaking without testing the efficacy of the single-digit code.

This approach should also reduce the possibility that a CRS rule might adversely affect safety. Northwest's concerns stemmed largely from the use of an "arbitrary" definition of frequently late flights. The final rule specifies an on-time performance code for all flights on which data is reported. We recognize that this code will, in a sense, provide a performance measure for consumers. Incentives to achieve the highest grade will exist, but not nearly to the same degree as if we had employed a "tagging" system using one make or break standard. Without a category of "frequently late flights" or any penalty for flights falling into that category, carriers and flight crews should not feel strong pressures to avoid the stigma of such a classification. Similarly, we are not requiring vendors to adjust elapsed time of flights based on historic on-time performance at this time, and we are prohibiting vendors from using on-time performance as a ranking factor in flight displays. Since historic performance will not affect display position, it will not provide any undesirable incentives with respect to safety.

Northwest also suggests that any disclosure requirement that focuses solely on arrival time might put pressure to compromise safety. The CRS rule does focus on arrival time. However, no other commenter has suggested that arrival time reporting creates undue safety risks. Moreover, the CAB for many years required reporting of arrival time performance without any effect on safety. Even Northwest acknowledges that the Board's approach to arrival time performance, which like this rule, entailed a reporting requirement without standards, did not raise safety problems. Finally, the CRS rule accommodates safety concerns by excluding maintenance related delays from the calculation of the on-time performance code.

2. Potential for Abuse by CRS Vendors

The final rule specifically addresses the fear that a CRS rule would permit vendors to introduce bias into their displays. It prohibits the use of performance data as a factor in display algorithms, and it requires that any secondary service quality displays be constructed in an unbiased fashion based on data supplied to DOT. The rule specifies the type of data that must be included in primary displays and how it is to be included. In addition, carriers themselves will perform all data manipulations to establish the code to be included in the CRS. These features of the rule substantially reduce the risk of bias. The rule permitting carriers to calculate on-time performance codes based on voluntary reporting to DOT, and requiring vendors to display those codes should also reduce the risk of bias. It provides carriers with even greater control over how the on-time performance of their flights is reported in primary CRS displays.

Concerning the CRS fee issue, DOT is currently studying CRS fee levels in its inquiry in Docket 44643. The fee questions raised by the commenters in this rulemaking should not be studied in isolation, and we will address questions relating to overall fee levels in the general CRS inquiry. In any event, the direct costs to vendors for complying with the rule should be modest. In these circumstances, increased compliance costs should not provide vendors with any justification for substantial increases in fee levels.

3. Costs of the CRS Requirement

Vendor commenters (except for American) also expressed concerns over the cost of the rule. As shown in the Regulatory Evaluation, the direct costs of providing information to DOT and in CRS displays should be modest. Moreover, as shown in the evaluation, the costs to vendors should be a relatively minor portion of this total. In addition, DOT has fashioned the rule in a way to minimize the cost impact on vendors. The final rule avoids the programming costs of a second screen. United's estimate of substantial CRS costs is based in large measure on a secondary screen requirement and the need to process requests to view the secondary screen. Continental's and Eastern's estimates of substantial additional capacity costs also appear to be based on their anticipation of a rule that would require detailed secondary displays. Otherwise, Eastern's estimate that a CRS disclosure rule would increase its system's capacity requirements by eight to ten percent would not be credible. The inclusion of a single-digit data field for a limited number of the system's displays could not represent such a large proportion of the system's overall capacity requirements. With a primary display requirement involving only a single digit, CRS capacity and operating expenses should be much less than United, Eastern and Continental estimated.

The rule also is designed to reduce programming burdens on vendors. The rule requires carriers to calculate the on-time performance code for their operations and supply it to vendors as part of basic schedule tapes or on a separate tape. As discussed in the Regulatory Evaluation, if carriers do the former, vendors would be required only to undertake a one-time reprogramming to include the code on their schedule and availability displays. If carriers do the latter, then at most, vendors would be required to develop and operate a program to merge schedule tapes with the performance data tapes. American states that SABRE can provide a primary display of the type specified in the rule for a reasonable cost. The decision to require display of a single on-time performance code also acts to reduce the burden on vendors. Arrival performance was chosen because the comments indicate that consumers are likely to be more concerned about on-time arrivals than on-time departures.

Commenters also expressed concern that a CRS display rule would substantially increase transaction costs for travel agents. Obviously some cost increases can be expected. When passengers ask about on-time performance, the travel agent likely will be required to take additional time to answer questions. Moreover, if addition of the performance code does reduce the number of flights that can be displayed on a screen, then the search time might increase. Precise quantification is difficult, but it does not appear that the cost impact on travel agents will be substantial, nor that it will exceed the benefits from the rule.

We note that none of the travel agent commenters complained that a CRS rule would impose a substantial burden on agents.

For a variety of reasons, the specific estimates of United and Northwest appear to be excessive. United's projection of potentially millions of dollars in increased transaction costs is based on a secondary screen rule. Since DOT's rule will not require travel agents to consult secondary screens, United's estimate of the amount of increased transaction time appears to be excessive. In addition, United apparently assumes that every transaction will include a discussion of performance information, and Northwest clearly does. However, our rule does not require travel agents to disclose performance data during each transaction, only that the data be available. Therefore, United's and Northwest's assumption may not be reasonable. In addition, their argument appears to assume that the availability of data in CRS's should be treated as the cause of inquiries from passengers and hence the source of increased costs. However, American's comments suggest that the publicity on flight delays has already caused consumers to ask for performance data from reservations agents. The same is likely true for travel agents. Such a trend can be expected to continue, even with a simple DOT disclosure rule, if customers know tht data is available from some source. The CRS rule may well provide the most efficient way for agents to obtain the information. Travel agents could more easily determine the relative performance levels of two flights by consulting the CRS primary display than by consulting a printed report published by DOT or a third party.

4. Regulation of Flight Display Algorithms

DOT is not at this time giving further consideration to adopting regulations governing schedule and availability display algorithms. In this connection, we note that at least one proposed alternative in this area, establishment of minimum elapsed times by the FAA, is outside the scope of the NPRM. With respect to the proposals listed in the NPRM, the CRS vendors recently agreed voluntarily to eliminate the elapsed time factor for nonstop flights from their display algorithms. This action may address many of the concerns raised in connection with the NPRM's proposal on algorithms. However, as noted above, there is a change that CRS algorithms may continue to create incentives for carriers to publish unrealistic schedules. We intend to monitor both the delay situation and vendors' algorithms closely, and will not hesitate to initiate action in this area if warranted.

VII. Baggage Handling Performance Reports

The Department is requiring that those air carriers subject to the schedule performance reporting requirements of this rule also file a monthly report with the Department disclosing the total number of scheduled service passengers enplaned on their domestic systems and the total number of reports on

mishandled baggage received over their domestic system. Mishandled baggage is defined to include all baggage reported as lost, delayed, damaged or pilfered. Carriers must report this information with the letter transmitting their schedule performance data tapes to the Department as specified in the Reporting Directive issued by the Office of Aviation Information Management attached as Appendix I. The Department will publish comparative baggage handling information as part of a monthly consumer report.

The Department's current regulations in 14 CFR Part 254 establish a minimum carrier liability limit ($1,250.00) for loss, damage or delay in the carriage of baggage in interstate and overseas air transportation and require carriers to provide notice of their limits to passengers. Minimum liability limits for foreign air transportation are set by the Warsaw Convention, and 14 CFR 221.176 provides for notice about these limits. The Department currently has no reporting requirements on mishandled baggage.

The NPRM requested comments on baggage handling performance disclosure in response to Continental's petition for rulemaking to require carriers to report data on, among other things, the number of customers whose baggage is improperly handled per 1,000 passengers enplaned systemwide and for each hub. The NPRM specifically asked whether consumers view problems with baggage service as significant enough to warrant regulatory action and whether dissemination of baggage handling data would be useful. The Department proposed to require carriers to file monthly baggage reports that include the total number of bags checked, and the percentage of bags either lost or delayed, compared to total bags checked. It asked questions on what information would be useful, how the information should be consolidated (by flight, hub), who should disseminate it, how it could be made comparative, and the costs of reporting the information.

A. Specific Questions

1. Is There a Need for Disclosure?

The Department believes that there is a need for consumers to have available comparative information on carriers' baggage handling performance in order to assist in making flight selection decisions; consumers clearly expressed this need in their comments. Reporting of these statistics also will provide benefits by giving carriers the incentive to redress their baggage handling problems and to reap the rewards for exemplary performance.

Comments: Several carriers, including signatories to ATA's intercarrier agreement, industry associations, civic and consumer organizations, and individuals favor disclosure of comparative performance statistics on lost/misdirected baggage, which they consider the most significant area of service competition after on-time performance.

RAA, America West and Midway oppose the disclosure of baggage statistics because they see no need for that information. In their view, any increase in baggage-handling problems is transitory, a result of integration difficulties following recent mergers. Midway believes that disclosure of this data would have anticompetitive effects.

Response: The Department believes that baggage handling problems exist irrespective of recent merger activity and that consumers interested in avoiding these problems will find comparative information useful. The fact that a carrier has merged, and is correcting a baggage problem, is not necessarily of concern to a customer whose baggage is mishandled. If Midway is correct, baggage handling performance reflected in the data should improve after merging air carriers have become fully integrated. The simple report that we are requiring will enable consumer comparison of carriers' general performance in this area.

2. Who Must Submit Data?

We are restricting the application of the baggage reporting requirement to the carriers required to file schedule performance reports.

Comments: Eastern believes that baggage handling data should be submitted by all air carriers. American argues that mandatory reports are necessary from all scheduled passenger service carriers. Other commenters did not address this issue.

Response: We agree that the reports must be mandatory to ensure that enough comparable information is received to be useful to consumers. However, we have decided to require that only large carriers report this information to reduce the reporting burden of the rule and to conform with its other reporting requirements. If this coverage does not prove to be satisfactory, we can extend the requirement later.

3. What Type of Comparative Data Must be Submitted?

Under ATA's voluntary intercarrier agreement, parties agreed to file monthly missing baggage information that would include each carrier's total number of enplaned passengers traveling between points in the fifty states, and the number of such passengers who arrived at their respective destinations without one or more pieces of their checked baggage and who filed a missing-baggage trace report.

Comments: In addition to the ATA and DOT proposals, commenters suggest other ways of reporting carriers' baggage handling performance. Northwest suggests that baggage handling should be reported as the number of passengers who arrived at their destination whose checked baggage did not arrive with them and who notified the air carrier of the loss. The New York Department of Consumer Affairs suggests that airlines should disclose the percentage of total checked bags lost or involuntarily delayed. Pan American notes that only information on the number of passengers filing a missing baggage trace report would be useful.

ARTA argues that simple statistical information is all this is necessary to provide consumers with information to compare their chances of experiencing baggage problems by carrier. Both American and Northwest assert that baggage data should be aggregated on a domestic systemwide basis, but Northwest is amenable to including the international sector. It believes, however, that requiring flight-by-flight information is not realistic because of the interline problem. Continental requests that baggage mishandling involving any handling by another carrier through interline service or through ramp handling agreements be excluded from the reported data. There is no effective way to assess blame and carriers' actions to shift blame may result in more lost baggage. For similar reasons, Eastern and Northwest also request that baggage handling problems involving another carrier should be excluded.

Response: We have decided not to require a baggage report on the ratio between the number of bags checked and the number of bags received intact, because it does not necessarily reveal the number of passengers who may be affected or what their experience is likely to be on a given carrier (one person may lose all five bags checked). Also, as Pan American points out, these data are not normally kept by carriers and would be costly to produce.

We agree with ARTA, American and Northwest that simple statistical data are all that is necessary. Figures on total enplaned passengers in the domestic

system, exclusive of charters, and the total number of reports filed on mishandled baggage are normally kept and easily derived. A percentage derived from these two figures is useful to consumers as a general indicator of their chances of experiencing baggage handling problems with a particular carrier, without any need to develop a new report system or to substantially process the data. Requiring carriers to report total enplaned passengers and number of baggage mishandling reports on a domestic system basis involves less data manipulation than requiring data to be broken out by hub, airport, or type of baggage problem. Although data aggregated by hub, for example, would reveal to consumers that a particular carrier has more baggage problems at a certain hub, it could be much more burdensome to produce. Even restricting the data required to only checked baggage would make additional data manipulation necessary. Aggregation of data by carriers' domestic systems will reflect their individual baggage handling performance sufficiently for consumer comparison.

We agree with Eastern, Northwest and Continential that, if we were to require aggregation of data by flight, it would be difficult to assign reponsibility for mishandled baggage on interline flights or where a carrier contracts with another carrier for baggage handling. Carriers have less control over baggage service in those situations, which are the most likely to cause baggage problems.

Domestic system reporting will not completely resolve this problem. Requiring a carrier to report all reports on mishandled baggage it receives may still result in the inclusion of reports for mishandling caused by other carriers; however, claims that are the responsibility of that carrier similarly will be reported by other carriers. The information should even out so that the domestic system percentage provides consumers with a reliable indicator. This assumption is used by the carriers, themselves, in their standard industry interline agreement, which generally assigns responsibility to the final carrier on the interline trip to process any baggage claims regardless of fault.

We also recognize that the data on total mishandled baggage reports made will include more than those for lost or misdirected checked baggage. Carriers also receive reports on pilferage, damage and mishandling of carry-on baggage; consumers want their baggage delivered on time and intact. The use of total reports filed, including damage and pilferage reports and reports for carry-on baggage, results in a simpler report, with no need for the carriers to break out loss, delay or checked baggage figures. It also more accurately reflects all baggage mishandling problems likely to inconvenience passengers and of which they are entitled to be informed.

4. How Should the Information be Submitted or Disseminated?

We are requiring the carriers covered by this rule to submit their baggage handling information to the Department with the cover letter accompanying the schedule performance data tapes submitted to the Department each month as specified in the Reporting Directive attached as Appendix I. The Department will publish this information monthly as a rate of mishandled-baggage reports filed per 100,000 domestic passengers.

Comments: The NPRM and most commenters contemplate DOT collection and dissemination of baggage handling information on a monthly basis. ARTA supports DOT collection and dissemination of this information on a quarterly basis. The Competitive Enterprise Institute favors giving antitrust immunity to travel agents to collect and disseminate this information. ACAP believes that carriers' carry-on baggage policies should be described on the back of ticket jackets. The NYDCA suggested that baggage data be disclosed through the CRS's.

Response: We have chosen to require monthly reports because the information provided will be more recent and more useful to consumers. With quarterly reports, the information when finally published could be as much as four months out of date, which would be less useful to consumers. Also, this lag time would reduce the incentive for carriers to fix baggage problems, if they could not quickly benefit from improved statistics. ACAP's proposal to include carriers' carry-on baggage policies on the backs of ticket jackets is beyond the scope of this rulemaking. We are not requiring disclosure of this information through the CRS, because it would involve an unnecessary break-down of the data by flight and significant additional costs in using another space on the display screen. In any event, the Department will disseminate this information through a monthly consumer report. Travel agents are free to provide this information to consumers. We believe this action should be sufficient, but will continue to monitor the situation.

5. What Are the Costs of Disseminating This Information?

Comments: Eastern, ARTA and American believe that the cost of providing and disseminating simple statistical data on passenger enplanements and baggage reports will be low, because carriers already collect it. Pan American, on the other hand, claims that, if the NPRM's approach were adopted, it would need to develop a new reporting system to determine the percentage of baggage checked and lost, since it currently does not collect data on the total number of bags checked. This new system and the additional time needed at check-in to record the data would be expensive, according to Pan American. Markair, a small intra-Alaskan carrier, argues that the cost of collecting this data would be substantial. Midway asserts that the expected benefits do not justify the costs of imposing these reporting requirements. None of the commenters provided any figures.

Response: The costs of reporting baggage information will not be significant. We have estimated that it will cost the industry a total of $33,600 per year, based on $200 per month per carrier and 14 carriers. In response to Pan American's concerns, we are not requiring carriers to break out data on the total number of bags checked, something that many carriers do not now keep.

That, we agree, would be more costly than requiring disclosure of data already collected or readily ascertained by carriers. We agree with ARTA that, after experience with the rule, benefits can be quantified by comparing statistics over a period of time. To the extent that there is service competition, we should see a gradual improvement in baggage handling.

VIII. Performance Standards

The Department is not adopting a standard for on-time performance at this time, but will continue to review the necessity for such a standard and may address this issue in a subsequent rulemaking document. Under 14 CFR 399.81, the Department can take enforcement action against individual carriers for unrealistic scheduling practices and in fact, as noted above, investigations of delays at several airports are now underway and enforcement action may result.

IX. Other Service Quality Indicators

The Department also proposed to require disclosure of information on air carrier telephone response time, lost or misdirected baggage, denied boardings, misconnections and cabin amenities. With the exception of the baggage proposal, the Department at this time is not adopting disclosure rules on these

items. These issues will continue to be reviewed and may be addressed in a subsequent rulemaking.

We note that the Department currently has regulations governing domestic baggage liability and oversales (denied boardings). 14 CFR Part 250 requires extensive reporting of denied boarding information on a quarterly basis (RSPA Form 251), and the Department publishes this information quarterly.

X. Discount Fare Marketing Practices

The Department at this time will not adopt a rule governing discount fare marketing practices. This issue will continue to be reviewed and may be addressed through a subsequent rulemaking document.

XI. FAA Peak Hour Authority/FAA Authority To Require Airports To Impose Peak Hour Pricing

The Department also sought comments on two legislative efforts to impose peak hour pricing. These alternatives will continue to be considered, but will no longer be considered in the context of this rulemaking.

XII. Federal Trade Commission Authority

This alternative will continue to be reviewed, but will no longer be considered in the context of this rulemaking.

XIII. Non-Legislative Option: Peak Hour Pricing by Airports

This alternative will continue to be considered, but will no longer be considered in the context of this rulemaking.

Department Regulatory Policies and Procedures

The Department has considered the impacts of the final rule and proposals still under review and determined that they are not major within the meaning of Executive Order 12291. The final rule and the proposals are considered significant under DOT regulatory policies and procedures because of substantial public and Congressional interest and because they involve important Departmental policies. A regulatory evaluation has been prepared and placed in the rulemaking docket.

The Department has also considered the economic impact of this rule for the purposes of the Regulatory Flexibility Act. I certify that it will not have a significant economic impact on a substantial number of small entities. None of the affected certificated air carriers are small businesses within the meaning of the Act. The Department, in the NPRM, sought specific comments on the effect of any action on smaller airlines and asked how any impact could be lessened. This final rule does not require information to be filed with us by smaller air carriers, including those that RAA argues might be considered small businesses. Any other possible effects on small businesses (i.e. travel agents) may be an indirect result of this rule only, and thus the rule itself will not have a significant economic impact on these entities.

The Department has concluded that none of these proposals would represent a major federal action having a significant impact on the environment under the National Environmental Policy Act.

The final rule and some of the proposed alternatives still under consideration would impose information collection requirements that are subject to section 3504(h) of the Paperwork Reduction Act. We have submitted these requirements to the Office of Management and Budget for review and comment. The OMB approval number is 2106–0042.

Effective Date

Under section 553(d) of the Administrative Procedure Act, the Department finds good cause to make the rule effective immediately. In effect, this means that only the record keeping requirement will begin immediately. This requirement will not impose a burden on most of the carriers required to provide data to DOT by October 15, since 10 of the 14 now are providing data for 8 of the airports covered by this rule. The other requirements of the rule do not require action by the carriers until October 15 at the earliest, and thus making the rule effective immediately will not impose a significant burden on these carriers. In addition, requiring carriers to maintain data immediately will benefit consumers at the earliest possible time.

List of Subjects

14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Issued in Washington, DC, on September 2, 1987.

Elizabeth Dole,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapters A and B of the Code of Federal Regulations as follows:

Part 234 is added to read as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

Sec.

234.1 Purpose.
234.2 Definitions.
234.3 Applicability.
234.4 Reporting of on-time performance.
234.5 Form of reports.
234.6 Baggage-handling statistics.
234.7 Voluntary reporting.
234.8 Calculation of on-time performance codes.
234.9 Reporting of on-time performance codes.
234.10 Voluntary disclosure of on-time performance codes.
234.11 Disclosure to consumers.
234.12 Waivers.
234.13 Sunset.

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. 553(e) and 14 CFR 302.38.

OMB Control Number: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2106–0042.

§ 234.1 Purpose.

The purpose of this part is to set forth required data that certain air carriers must submit to the Department and to computer reservations system vendors in computerized form, except as otherwise provided, so that information on air carriers' quality of service can be made available to consumers of air transportation. This part also requires that service quality data be disclosed directly to consumers.

§ 234.2 Definitions.

For the purpose of this part:

"Flight" means any nonstop scheduled passenger flight segment with a specific flight number scheduled to be operated pursuant to a published schedule within a specific origin-destination city pair, other than transborder or foreign air transportation. In the case of reporting to computer reservations system vendors, "flight" also means one-stop or multi-stop single plane scheduled operations that include any flight segments for which performance is reported pursuant to this part.

"Late" or "late flight" means a flight that arrives at the gate 15 minutes or more after its published arrival time.

"Mechanical delay" and "mechanical cancellation" mean, respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 14 CFR 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

"Mishandled-Baggage Report" means a report filed with a carrier by or on behalf of a passenger that claims loss, delay, damage or pilferage of baggage.

"New Flight" means a flight added to a carrier's schedule to operate in a specific origin-destination city pair and not scheduled to depart within 30 minutes of any discontinued flight that was contained in the carrier's published schedules for the same city pair during the previous month.

"On-Time" means a flight that arrives less than 15 mintues after its published arrival time.

"On-Time Performance" means the percentage of scheduled operations of a specific flight that an air carrier operates on-time during a month.

"On-Time Performance Code" means a single character determined in accordance with the provisions of this part that reflects the monthly on-time performance of certain nonstop flights and single plane one-stop or multi-stop flights, the schedule and availability of which are listed in a computer reservation system ("CRS") regulated by 14 CFR Part 255.

"Reportable Flight" means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to Part 241 of this Title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Aviation Information Management.

"Reporting Carrier" means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least one percent of domestic scheduled passenger revenues in the 12 months ending March 31 of each year, as reported in reports submitted to the Department pursuant to Part 241 of this Title. Reporting carriers will be identified periodically in reporting directives issued by the Office of Aviation Information Management.

§ 234.3 Applicability.

This part applies to certain domestic scheduled passenger flights that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. Certain provisions also apply to voluntary reporting to on-time performance by carriers.

§ 234.4 Reporting of On-Time Performance.

(a) Each reporting carrier shall file RSPA Form 234 "On Time Flight Performance Report" with the Department's Office of Aviation Information Management (OAIM), on a monthly basis, setting forth information for each of its reportable flights held out in the *Official Airline Guide*, in computer reservations systems, or other in schedule publications. The report shall be made in the form and manner set forth in reporting directives issued by the Director, OAIM, and shall contain the following information:

(1) Carrier and Flight Number.

(2) Origin and destination airport codes.

(3) Published OAG departure and arrival times for each scheduled operation of the flight.

(4) CRS scheduled arrival and departure time for each scheduled operation of the flight.

(5) Actual departure and arrival time for each operation of the flight.

(6) Date and day of week of scheduled flight operation.

(7) Scheduled elapsed time, according to CRS schedule.

(8) Actual elapsed time.

(9) Amount of departure delay, if any.

(10) Amount of arrival delay, if any.

(11) Amount of elapsed time difference, if any.

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

(c) Actual arrival, departure and elapsed times shall be measured by the times at which the aircraft arrived at and departed from the gate or passenger loading area.

(d) The published arrival time and departure time of a flight shall be, respectively, the scheduled arrival and departure times in effect on the date of the scheduled operation of the flight, as shown in the most recent *Official Airline Guide*, and in computer reservations systems. Each carrier shall designate a single computer reservations system in addition to the *Official Airline Guide* as the sources of scheduled arrival time and departure time data in its reports to the Department and shall report the scheduled arrival times and departure times listed in those sources for each flight. Scheduled elapsed times, amount of departure and/or arrival delay, and elapsed time difference shall be calculated using the scheduled times shown in the designated CRS source.

§234.5 Form of Reports.

Except where otherwise noted, all reports required by this part shall be filed with the Department on ADP computer tape in the format specified in reporting directives issued by the Director, OAIM, within 15 days of the end of the month for which data are reported.

§234.6 Baggage-Handling Statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with that carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance.

§234.7 Voluntary reporting.

(a) In addition to the data for each reportable flight required to be reported by this part, a reporting carrier may report to DOT for every other nonstop domestic flight that it schedules, the reportable flight data specified in this part.

(b) Any air carrier that is not a reporting carrier may file the data specified in this part for every reportable flight that it schedules, or for every nonstop domestic flight that it schedules.

(c) Voluntary reports containing information not required to be filed (1) must be submitted in the same form and manner, and at the same time, as reports containing data required to be filed, and (2) must be accompanied by a written statement describing in detail the information that is being voluntarily submitted. A carrier that files a voluntary report must continue to do so for a period of not less than 12 consecutive months.

§234.8 Calculation of on-time performance codes.

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in reporting directives issued by the Director, OAIM. The calculations shall be performed for each reportable flight. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flight, or portion thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based upon reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

(2) Based upon the on-time performance percentage calculated in paragraph (b)(1) of this section, assign a single digit code to each flight that reflects the percentile of on-time performance achieved by the flight, as set forth in the following table:

ON TIME PERFORMANCE

	Percentage
Code:	
9	90-100
8	80-89.9
7	70-79.9
6	60-69.9
5	50-59.9
4	40-49.9
3	30-39.9
2	20-29.9
1	10-19.9
0	0-9.9

(3) For a one-stop or multi-stop flight, or portion thereof, listed in a CRS, the performance code for the nonstop flight segment arriving at the destination listed in the CRS shall be used.

(4) In the case of a new flight, carriers shall assign a performance code consisting of the letter "N." A flight that is not a new flight shall be assigned the performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

(c) Carriers shall calculate on-time performance percentages and assign on-time performance codes on a monthly basis. This process shall be completed no later than the 15th day of each month, when the reports required by this part are due to the Department, and the codes shall reflect the previous month's operations.

§ 234.9 Reporting of on-time performance codes.

No later than the 15th day of each month, each reporting carrier shall deliver, or arrange to have delivered, to each system vendor, as defined in 14 CFR Part 255, the on-time performance codes required to be determined above. Carriers may report the codes by insuring that they are included in basic schedule tapes provided to CRS vendors or by providing a separate tape that will permit the CRS vendors to match the performance codes with basic schedule tapes.

§ 234.10 Voluntary disclosure of on-time performance codes.

(a) Any air carrier may determine, in accordance with the provisions of 14 CFR 234.8, the on-time performance codes for the flights for which it voluntarily provides flight information to the Department pursuant to 14 CFR 234.7.

(b) A carrier may supply these additional on-time performance codes to system vendors at the same time and in the same manner as the required disclosures are made to system vendors, provided that voluntary disclosures must continue for a period of not less than 12 consecutive months, and must be supplied either (1) for each of the carrier's reportable flights and each of its single plane one-stop or multi-stop flights, or portions thereof, that it holds out to the public through a CRS, the last segment of which is a reportable flight or (2) for each of the carrier's domestic flights.

§ 234.11 Disclosure to consumers.

During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier's employees and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

§ 234.12 Waivers.

Any air carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Secretary, or his or her delegate, may be granted for good cause shown. The requesting party shall state the basis for such waiver.

§ 234.13 Sunset.

The provisions of this part shall terminate on December 31, 1990.

PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

1. The authority of Part 255 continues to read:

Authority: 49 U.S.C. 1302, 1324, 1374, 1381, 1389, and 1502.

2. Part 255 is amended by adding a definition of "on-time performance code" to § 255.3 and a new paragraph (e) to § 255.4, as follows:

§ 255.3 Definitions.

* * * * *

"On-time performance code" means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a non-stop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

* * * * *

§ 255.4 Display of information.

* * * * *

(e) System vendors shall use or display information concerning on-time performance of flights only in accordance with the provisions of this part.

(1) Within 5 days after receiving the information from participating carriers, each vendor shall include in all primary schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system vendor shall not use on-time flight performance as a ranking factor in ordering information contained in a primary display.

(3) Except as otherwise specifically provided in this part, a system vendor shall not provide any information about on-time performance in a CRS on any air carrier or foreign air carrier unless that information is based on data reported to the Department. Any such information shall be displayed in an unbiased fashion and in the same manner for all participating carriers that report to the Department.

(Approved by the Office of Management and Budget under control number 2106-0042.)

Appendix I—Reporting Directive—Office of Aviation Information Management, RSPA

[Editorial Note.—This appendix will not appear in the Code of Federal Regulations.]

I. Introduction
II. Applicability
III. Definitions
IV. Data Requirements for DOT On-Time Disclosure Reports
V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports
VI. Submission of Reports

VII. Record Retention
VIII. Data Requirements and Instuctions for CRS Disclosure

I. Introduction

Part 234 of the Department's Regulations, "Airline Service Quality Performance Reports," requires certain U.S. air carriers to submit scheduled flight performance data and mishandled-baggage information to the Department, and to provide certain on-time performance codes to CRS vendors. These data will be used to monitor each carrier's on-time performance and baggage handling, and to provide information to consumers. The scheduled flight performance data will be filed on RSPA Form 234, "On-Time Flight Performance Report." The mishandled-baggage information will be submitted as a one-page addendum to Form 234 with the required certification and transmittal letter. The on-time performance codes will not be filed with the Department, but shall be computed and supplied to CRS vendors in accordance with the procedures set forth in §§ 234.8 and 234.9 and in this reporting directive.

II. Applicability

1. Each reporting air carrier providing scheduled domestic passenger operations at a reportable airport shall file RSPA Form 234, "On-Time Flight Performance Report," if its share of the industry's total domestic scheduled-service passenger revenues exceeds one percent, based on Form 41 data for the 12 months ended March 31, 1987.

2. The reporting air carriers are Alaska Airlines, American Airlines, America West Airlines, Continental Airlines, Delta Air Lines, Eastern Air Lines, Northwest Airlines, Pacific Southwest Airlines, Pan American World Airways, Piedmont Aviation, Southwest Airlines, Trans World Airlines, USAir, and United Air Lines.

3. The reportable airports with respect to which data must be submitted to the Department are those airports located within the 48 contiguous states enplaning one percent or more of the industry's domestic scheduled-service passengers, as reported on Form 41, Schedule T-3(a), and summarized in the publication *Airport Activity Statistics of Certificated Air Carriers for the 12 Months Ended December 31, 1986 (Preliminary)*. The 27 reportable airports are:

Atlanta, Hartfield Intl.	ATL
Boston, Logan Intl.	BOS
Charlotte, Douglas	CLT
Chicago, O'Hare	ORD
Dallas-Ft. Worth Intl.	DFW
Denver, Stapleton Intl.	DEN
Detroit, Metro Wayne Cnty.	DTW
Houston Intercontinental	IAH
Los Angeles International	LAX
Las Vegas, McCarran Intl.	LAS
Memphis International	MEM
Miami International	MIA
Minneapolis-St.Paul Intl.	MSP
Newark International	EWR
New York, LaGuardia	LGA
New York, JFK Intl.	JFK
Orlando Intl.	MCO
Phoenix, Sky Harbor Intl.	PHX
Pittsburgh, Greater Intl.	PIT
Philadelphia Intl.	PHL
San Francisco Intl.	SFO
St. Louis, Lambert	STL
Seattle-Tacoma Intl.	SEA
Salt Lake City Intl.	SLC
San Diego Intl., Lindbergh Fld.	SAN
Tampa International	TPA
Washington, National	DCA

4. The reportable flight operations for which data must be submitted to the Department are all scheduled nonstop domestic passenger operations by a reporting air carrier to or from any reportable airport, except that reporting carriers shall not submit data to the Department for any scheduled flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2 of the Department's Regulations.

5. In addition to the required data for each reportable flight which must be submitted to the Department, a reporting carrier may also submit the required data for every other nonstop domestic passenger flight it holds out to the public pursuant to a published schedule. In addition, any carrier not included in paragraph II.2. of this reporting directive may voluntarily become a reporting carrier and submit Form 234 for its reportable flights or for every nonstop domestic passenger flight it holds out to the public pursuant to a published schedule, provided that the Director, Office of Aviation Information Management (OAIM), is advised beforehand. Such voluntary data must be submitted for a minimum of 12 consective months. The voluntary submissions must meet the exact reporting specifications set forth in this reporting directive. Volunteering carriers that wish to discontinue reporting after one year must advise the Director, OAIM, a minimum of 30 days before discontinuance, so that the necessary changes can be made to the Department's data programs.

6. Changes in reporting air carriers and reportable airports will be made as necessary by the Director, OAIM, under authority delegated in § 385.27 of the Department's Regulations.

III. Definitions

Definitions used in this directive include those in § 234.1 as well as the following:

1. "CRS"means a "system" as defined in § 255.3 of the Department's Regulations.

2. "Domestic operation" means a flight operation within or between the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Transborder operations are not included.

3. "Flight," for purposes of the data to be reported to the Department, means one or more scheduled nonstop operations identified by a specific flight number in conjunction with a specific origin-destination city-pair designation; e.g., flight 102 DCA–ATL–MIA includes two separate flights (DCA–ATL, ATL–MIA).

4. "Flight," for purposes of CRS disclosure, means nonstop operations as defined above, plus scheduled one-stop and multi-stop operations identified by a specific flight number in conjunction with a specific origin-designation city-pair designation; e.g., flight 102 DCA–ATL–MIA includes three separate flights for purposes of CRS disclosure (DCA–ATL, ATL–MIA, DCA–MIA).

5. "Flight operation" means a specific operation of a given flight on a given day; e.g., if flight 102 DCA–ATL operated daily, it had 31 flight operations in July.

IV. Data Requirements for DOT On-Time Disclosure Reports

1. Each reporting air carrier shall file Form 234 for each calendar month beginning with the month of September 1987. Each report shall include all nonstop domestic passenger scheduled flight operations by the reporting carrier that serve one or more of the reportable airports except operations that were delayed or cancelled because of a mechanical problem as defined in § 234.2.

2. For each nonstop flight operation serving a reportable airport, the following data elements shall be reported:

A. Carrier (Two Letter Code)
B. Flight Number
C. Departure Airport (Three Letter Code)
D. Arrival Airport (Three Letter Code)
E. Date of this Flight Operation (Year/Month/Day)
F. Day of Week of this Flight Operation (Monday = 1, . . . Sunday = 7)
G. Scheduled Departure Time as Shown in the Official Airline Guide (OAG) Pursuant to § 234.4(d)

H. Scheduled Departure Time as Shown in the CRS Selected by the Carrier as Its Data Source Pursuant to § 234.4(d)
I. Gate Departure Time (Actual) in Local Time
J. Scheduled Arrival Time as Shown in OAG
K. Scheduled Arrival Time as Shown in CRS
L. Gate Arrival Time (Actual) in Local Time
M. Difference in Minutes Between OAG and CRS Scheduled Departure Time: G minus H
N. Difference in Minutes Between OAG and CRS Scheduled Arrival Time: J minus K
O. Scheduled Elapsed Time Per CRS in Minutes: K minus H
P. Actual Gate to Gate Time in Minutes: L minus I
Q. Departure Delay (Difference in Minutes Between Actual Departure Time and CRS Scheduled Departure Time): I minus H
R. Arrival Delay (Difference in Minutes Between Actual Arrival Time and CRS Scheduled Arrival Time): L minus K
S. Elapsed Time Difference (Difference in Minutes Between Actual Elapsed Time and CRS Scheduled Elapsed Time): P minus O

3. The data format for the elements listed in paragraph 2 above shall comply exactly with the flight record field specifications set forth in Section V of this reporting directive.

4. All scheduled and actual arrival and departure times shall be reported in local time using a 24 hour clock; e.g. 3:15 p.m. shall be 1515. In using local time, the reporting carrier must adjust for time zone differences in computing data elements O, P, and S.

5. Minutes shall be reported in whole minutes; e.g., two hours = 120.

6. Flight operations that begin and end in different months shall be reported in the month in which they begin.

7. Extra section flight shall not be reported.

8. Flight cancellation information (other than mechanical cancellations as defined in § 234.2) shall be incorporated in the appropriate flight record for the cancelled flight operations by entering four zeros in data field I (Gate Departure Time) and four zeros in data field L (Gate Arrival Time).

9. Information on flights which operated but were diverted to an alternate destination shall be incorporated in the appropriate flight record for the diverted flight operation by entering the actual departure time in data field I (Gate Departure Time), and four zeros in data field L (Gate Arrival Time).

10. All numeric fields for which data are unavailable shall be zero-filled.

11. Any data field resulting from calculations involving such zero-filled fields shall also be zero-filled.

12. For data fields Q, R, and S, use positive numbers to indicate time in minutes for departure/arrival/elapsed time delays. Use negative numbers to indicate time in minutes for departures, arrivals ahead of schedule and elapsed times less than scheduled.

13. Fields M, N, Q, R, and S, which may contain either a positive or a negative value, should indicate this attribute with the appropriate hexadecimal characters in the zone portion of the unit's position in the field, as follows:

For positive values: Use the hexadecimal character "C" (bit configuration 1100). Example: Positive 23 is coded as: FO FO F2 C3.

For negative values: Use the hexadecimal character "D" (bit configuration 1101). Example: Negative 138 is coded as: FO F1 F3 D8.

If the field has a zero value, code it as FO FO FO FO.

14. All numeric fields shall be right justified, with leading zeros.

V. Report Format and Instructions for On-Time Disclosure Reports and Mishandled-Baggage Reports

1. *Transmittal Letter.* A transmittal letter shall accompany each carrier's data submission. The transmittal letter must identify the carrier and the month and year for which the data are being submitted, and contain the following information:

(A) A certification statement signed by an appropriate official of the reporting carrier. The certification statement shall read:

I, the undersigned (Title) of the above-named air carrier, certify that the attached ADP tape of RSPA Form 234, "On-Time Flight Performance Report," and the attached Mishandled-Baggage Report, are to the best of my knowledge and belief, true, correct and complete reports for the period stated.

Date: _____

Signature: _____

Name (Please Type or Print): _____

(B) the name(s) and telephone number(s) of the air carrier's staff who can be contacted to resolve problems regarding both carrier data and ADP technical matters.

(C) for control purposes, a statement indicating the total number of flight operations and unique flight numbers in the Form 234 ADP tape submission.

(D) a mailing address for tape returns.

(E) for the initial submission, a description of the data submitted, specifying whether the tape includes data only for the reportable airports or for all domestic scheduled nonstop flight operations.

(F) for the initial submission and for subsequent changes, a statement identifying the sources of the scheduled arrival and departure times used in the report: (1) Official Airline Guide in effect as of (date) ; and (2) the computer reservation system used for reporting purposes, pursuant to § 234.4(d).

2. *Mishandled-Baggage Report.* The reporting carrier's Mishandled-Baggage Report shall be attached on a separate sheet of paper to the transmittal letter. This report shall show the mishandled-baggage information for the reporting month and include the following items:

Name of Carrier _____

Month and Year of the Data Included in the Report _____

Number of Domestic Scheduled Passengers Enplaned _____

Number of Mishandled-Baggage Reports Filed with Carrier _____

3. *ADP Tape Requirements.* (A) Form 234, "On-Time Flight Performance Report," shall be filed on ADP magnetic tape. The data will be reported without summarization, with a separate flight record for each reportable flight operation. Flight records shall be sequenced by date of flight (field E) within market (fields C and D), within flight number (field B).

(B) The format for the ADP magnetic tape shall be:

(1) Magnetic tape specifications.

IBM compatible 9-track EBCDIC recording tape.

Recording density of 6250 or 1600 bpi.

Record Length = 71, Block size = 14200.

(2) External tape lable information.

- Carrier name.
- Month and year of data reported.
- File identification.
- Name and Phone Number of ADP Contact.

(3) The order of recorded information.

- Volume label.
- Header labels.
- Data records.
- Trailer labels.

(4) Volume, header, and trailer label formats.

Use standard IBM label formats.

The file identifier field of the header labels shall be ON TIME SYSTEM XX, where XX is the carrier's two letter code.

(5) Magnetic tape nonstop segment record layout.

FIELD SPECIFICATIONS FOR FORM 234, DOT ON-TIME DISCLOSURE REPORTS

Field and description	Type	Location	Length	Remarks
A—Carrier code	Alpha	1-2	2	
B—Flight number	Num	3-6	4	
C—Origin airport code	Alpha	7-9	3	
D—Destination airport code	Alpha	10-12	3	
E—Date of flight operation	Num	13-18	6	Format: yymmdd.
F—Day of the week of this flight operation	Num	19	1	Mon=1, Sun=7.
G—Scheduled departure time per OAG	Num	20-23	4	Local time, 24-hr clock.
H—Scheduled departure time per CRS	Num	24-27	4	Local time, 24-hr clock.
I—Gate departure time (actual)	Num	28-31	4	Local time, 24-hr clock.
J—Scheduled arrival time per OAG	Num	32-35	4	Local time, 24-hr clock.
K—Scheduled arrival time per CRS	Num	36-39	4	Local time, 24-hr clock.
L—Gate arrival time (actual)	Num	40-43	4	Local time, 24-hr clock.
M—Difference between OAG and CRS sched. departure time	Num	44-47	4	In minutes (2 hrs=120).
N—Difference between OAG and CRS sched. arrival time	Num	48-51	4	In minutes.
O—Scheduled elapsed time per CRS	Num	52-55	4	In minutes.
P—Actual gate to gate time	Num	56-59	4	In minutes.
Q—Departure delay time (actual minus CRS)	Num	60-63	4	In minutes.
R—Arrival delay time (actual minus CRS)	Num	64-67	4	In minutes.
S—Elapsed time difference (actual minus CRS)	Num	68-71	4	In minutes.

(6) Standards. It is the policy of DOT to support the American National Standards Institute and the Federal Standards activity in all data processing and telecommunication matters. It is our intention that all specifications in this reporting directive are in compliance with standards promulgated by these organizations.

VI. Submission of Reports

1. *Address.* The address for the Form 234 data submission and the Mishandled-Baggage Report is:

Office of Aviation Information Management, DAI-1, Room 4125, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590

2. *Due Dates.* The due date for Form 234 and the Mishandled-Baggage Report is the 15th day of the month following that to which the data are applicable. If the 15th day falls on a weekend or Federal holiday, the submission will be due at the beginning of the next work day.

3. *Enforcement.* Penalties for late filing or noncompliance with these reporting requirements will be assessed in accordance with sections 901 and 902 of the Federal Aviation Act of 1958, as amended.

4. *Missing or Incomplete Records.* Any carrier subject to this directive which does not file the required data for any period, or files incomplete data, shall submit a sworn statement of an officer that the carrier was unable to provide the data because it did not have and could not obtain the necessary records. That statement, as well as the veracity of the information and data submitted, will be subject to 18 U.S.C. 1001, regarding criminal penalties for false statements made to a government agency. The statement shall be filed with the Director, Office of Aviation Information Management, at the address in paragraph 1 above.

5. *Special Circumstances.* Requests for waivers, exceptions, extensions or other considerations shall be submitted in written form to the Director, Office of Aviation Information Management, at the address in paragraph 1 above.

6. *Return of Tapes.* ADP tapes will be returned to the carrier after the data have been reviewed and any problems resolved.

VII. Record Retention

Form 234 and the Mishandled-Baggage Report shall be considered statistical reports by the Department. The record retention requirements for statistical reports are governed by Part 249 "Preservation of Air Carrier Records" of the Department's Regulations. Specifically, § 249.20–6 requires the information supporting a statistical report to be maintained by the carrier for 3 years.

VIII. Data Requirements and Instructions for CRS Disclosure

As required by § 234.8 of the Department's Regulations, each reporting carrier providing data pursuant to this directive shall calculate a on-time performance code for each reportable (nonstop) flight included in its monthly data submission to the Department, and for each one-stop or multi-stop flight that includes a reportable flight segment as specified below. That calculation shall be carried out as follows:

1. Each reporting carrier shall compute the arrival delay in minutes for each reported (nonstop) flight operation in its monthly data submission by subtracting the scheduled arrival time for each flight operation per its CRS records (data field K) from the actual gate arrival time (data field L).

2. Using the data derived from the computation in paragraph 1 above, each reporting carrier shall calculate, for each nonstop flight in its data submission, the percentage of that flight's operations during the month that were on time (i.e., arrived within 15 minutes of the CRS scheduled arrival time). The calculation shall be performed by dividing the number of reported operations of each flight that arrived less than 15 minutes after the scheduled arrival time, by the total number of reported operations of that flight during the month.

3. For purposes of this calculation, any flight operation that was delayed or cancelled due to a mechanical delay or mechanical cancellation as defined in § 234.2, shall be excluded from both the numerator and the denominator. All cancelled and diverted flight operations not attributable to mechanical problems as defined in § 234.2 shall be included in both the numerator and the denominator and counted as late flights.

4. Each reporting carrier shall convert the percentage derived from the computations in paragraphs 2 and 3 into a one digit CRS on-time performance code for each reportable flight operated during the month, as follows:

Percent of operations of the flight that were on-time	*CRS on-time performance code*
90 to 100.0	9
80 to 89.9	8
70 to 79.9	7
60 to 69.9	6
50 to 59.9	5
40 to 49.9	4
30 to 39.9	3
20 to 29.9	2
10 to 19.9	1
0 to 9.9	0

5. New flights as defined in § 234.2 for which no on-time percentage is

available yet shall be designated with the CRS data code "N" (no record).

6. Each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every reportable flight.

7. In addition, using the procedure illustrated in this paragraph, each reporting carrier shall include the appropriate one digit CRS code (0 through 9, or "N") as a standard data element in each flight schedule it provides to the OAG and/or any CRS vendor(s), for every one-stop or multi-stop flight, or portion thereof, that includes a reportable flight as a final flight segment:

Examples:

If flight 102 operates EWR–DCA–ATL–MIA, provide one-time performance codes for:

102 EWR–DCA (calculated per paragraphs 1–5 above)
102 DCA–ATL (calculated per paragraphs 1–5 above)
102 ATL–MIA (calculated per paragraphs 1–5 above)
102 EWR–ATL: assign 102 DCA–ATL performance code
102 EWR–MIA: assign 102 ATL–MIA performance code
102 DCA–MIA: assign 102 ATL–MIA performance code

If flight 103 operates BUF–SYR–EWR–DCA, provide on-time performance codes for:

103 SYR–EWR (calculated per paragraphs 1–5 above)
103 EWR–DCA (calculated per paragraphs 1–5 above)
103 BUF–EWR: assign 103 SYR–EWR performance code
103 BUF–DCA: assign 103 EWR–DCA performance code
103 SYR–DCA: assign 103 EWR–DCA performance code

If flight 103 operates MKE–DTW–CMH–LEX, provide on-time performance codes for:

104 MKE–DTW (calculated per paragraphs 1–5 above)
104 DTW–CMH (calculated per paragraphs 1–5 above)
104 MKE–CMH: assign 104 DTW–CMH performance code

8. A flight that is not a new flight shall be assigned the on-time performance code calculated for the flight that it replaces, even if the two flights do not have the same flight number.

9. No later than the 15th day of each month, each reporting carrier shall deliver or arrange to have delivered in its CRS vendor(s), updated on-time performance codes. If a carrier relies on a third party to supply such flight information to CRS vendor(s), the carriers shall provide their flight information, including the appropriate CRS on-time performance codes, at the same time that the carrier submits its monthly flight data to the Department.

10. The calculation and assignment of on-time performance codes for flights other than reportable flights, as permitted in § 234.10, shall follow the procedures set forth above. Carriers are required to perform those calculations only for reportable flights, and for one-stop or multi-stop flights, or portions thereof, that include a reportable flight as a final flight segment, but may do so for all flights at their option.

11. No carrier may provide on-time performance codes to the OAG or to any CRS vendor(s) for any flight during any month unless the carrier also provides the required flight data for the month to the Department as specified in Part 234 and in this reporting directive.

[FR Doc. 87–20527 Filed 9–3–87; 4:35 pm]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 234

[Docket No. 44827 Amdt. No. 234–2]

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Amendment to final rule.

SUMMARY: Under a rule issued September 2, 1987, and published elsewhere today in this edition of the **Federal Register** the Department of Transportation (DOT or Department) required 14 air carriers to submit certain flight data to the Department for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. The final rule provided a specific termination date of December 31, 1990. However, this amendment deletes that termination date.

EFFECTIVE DATE: The amendment to the final rule is effective September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Sam Whitehorn or Gwyneth Radloff, at 400 7th St., SW., Washington, DC 20590 or by phone at (202) 366–9307; Barry Molar, at the above address or by phone at (202) 366–9285; Shelton Jackson, at the above address or by phone at (202) 366–5397; or Robin Caldwell, at the above address or by phone at (202) 366–9059.

I. Supplementary Information

On September 2, 1987, the Department issued a final rule that required 14 air carriers to submit certain data to the Department and to CRS vendors. In addition, these carriers were required to provide on-time performance data to consumers, upon request to the carriers' ticketing agents.

The September 2 final rule affected two parts of the Code of Federal Regulations, Part 234 and Part 255. It added Part 234 to require carriers to provide certain data to the Department, consumers and to computerized reservations systems vendors. It also had a specific termination date of December 31, 1990. Thus, after that date carriers would no longer be required to report data to the Department or to a CRS vendor under Part 255. This automatic termination date should not have been included in the final rule. Therefore, by this amendment, Part 234 is amended to reflect that Part 234 will not have a termination date. However, the Department will review the implementation of this rule 2 years after its effective date.

Because the September 2 final rule was effective upon publication, to eliminate any confusion, this amendment is also effective upon publication.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Issued in Washington, DC on September 3, 1987.

Jim Burnley,

Acting Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A of the Code of Federal Regulations as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. § 553(e) and 14 CFR 302.38.

§ 234.13 [Removed]

2. Part 234 is further amended by removing § 234.13.

[FR Doc. 87–20680 Filed 9–3–87; 4:35 pm]

BILLING CODE 4910–62–M

Federal Register

Wednesday
September 9, 1987

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Deposit of Biological Materials for Patent Purposes; Advance Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 70635-7135]

Deposit of Biological Materials for Patent Purposes

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advanced notice of proposed rulemaking sets forth proposed rules and guidelines that the Patent and Trademark Office (PTO) is considering to govern the deposit of biological materials for patent purposes.

Every patent must contain a written description of the invention adequate to instruct a person skilled in the art to which the invention pertains how to make and use the invention. In certain instances, such as with some biotechnological inventions, the written description of the invention may not in itself be adequate to permit reproduction of the invention. In these cases, the written description must be supplemented by a deposit of the biological material which constitutes the invention or on which the invention depends if the biological material is not otherwise known and readily available to those skilled in the art. The deposited material becomes unconditionally available to the public at the time the patent is granted.

The rules being considered for proposal by the PTO prescribe the conditions under which a deposit must be made, the kinds of materials that may be deposited, the type of depository which is acceptable to the Office, the time for making an original deposit, the procedures and obligations applicable to the making and maintaining of a deposit and its possible replacement, the term of a deposit and other matters relating to the deposit of a biological material. In general, the rules being considered by the PTO would continue and clarify both long-standing practices of the Patent and Trademark Office and judicially developed principles of patent law. The explanations associated with the rules that are ultimately adopted along with the substantive content of the comments and responses will be incorporated into a set of guidelines that will be published in the Manual of Patent Examining Procedure.

In response to a draft policy statement on the deposit of biological materials for patent purposes, which was circulated among interested bar and industry groups and published in the BNA-Patent, Trademark and Copyright Journal on May 22, 1986, the PTO received twenty five (25) written comments directed to that draft statement. This advance notice addresses the comments received. Interested persons are invited to comment on the rules being considered for proposal. A proposed rulemaking could be made as early as January 1988. A hearing could be held as early as March 1988.

DATE: Comments must be received on or before November 30, 1987 to insure consideration.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

Mark to the attention of Stanley D. Schlosser (703) 557-3065. All comments received will be publicly available for inspection in the PTO in room 11C28, Crystal Plaza Building 3 (2021 Jefferson Davis Highway, Arlington, Virginia).

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Schlosser by telephone at (703) 557-3065.

SUPPLEMENTARY INFORMATION: An applicant for a patent involving biological material must meet the same requirements for disclosing the invention as apply to other kinds of technology. These requirements are set forth in the first paragraph of § 112 of the patent law (Title 35, United States Code). The invention must be described in such full, clear, concise and exact terms as to enable a person skilled in the relevant technology to make and use the invention. The best mode contemplated by the inventor for carrying out the invention must also be disclosed. The statutory requirements for claiming inventions set forth in the second paragraph of 35 U.S.C. 112 also apply to inventions involving biological material. That is, claims must particularly point out and distinctly claim that which applicants for patent regard as their invention.

Where the invention involves a biological material and words alone are not sufficient to describe the invention adequately to meet the requirements of 35 U.S.C. 112, the required biological material completing the written description must either already be known and readily available and likely to continue to be available or be deposited into a suitable depository. Samples of the deposited material must be publicly and unconditionally available upon issuance of the patent. The deposit will be considered part of the patent disclosure and taken into account in determining the scope of the invention and related questions of infringement. As indicated above, the requirement for making a deposit only applies in situations where the biological material is essential to a complete disclosure and either is not known and readily available to the public, or cannot be readily produced from publicly available material according to the information contained in the patent.

A new chapter of rules of practice devoted exclusively to biological inventions, entitled "Deposit of Biological Materials for Patent Purposes", would be added, beginning with proposed new rule 1.200. This new chapter would specifically incorporate into patent practice judicially developed principles applicable to the deposit of biological materials and would be consistent with the duties and responsibilities of the United States as a signatory country to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. It must be recognized, however, that a comprehensive body of patent law has not yet been developed by the courts dealing with the treatment of inventions relating to biological material. In situations where the courts have not provided specific guidance, appropriate rules and procedures are extracted or implied as far as possible from available decisions and existing practices.

The rules being considered for proposal are intended to apply to patent rights pursued under section 101 of the patent law (Title 35, United States Code). Patent applications filed under the Plant Patent Act (35 U.S.C. 161-164) would be unaffected by this advanced notice. However, comments are solicited on the question of whether the Office should consider requiring a deposit of plants in appropriate circumstances where it is clear that a deposit is possible and is necessary to complete the description of an invention under 35 U.S.C. 162, first paragraph.

New rule 1.200 would be proposed to define the nature of biological material that falls within the scope of the rules. The definition is not intended to provide an exhaustive list of materials which may be deposited in accordance with these procedures. Rather, the need for a deposit and the types of material which must be deposited will be developed through experience and judicial decisions. Meanwhile, some guidelines can be provided.

First, biological material includes material that is capable of self-replication, either directly or after insertion into a host. Assuming the continued viability of the samples

deposited, this should provide a reproducible supply of the biological material for the term of the deposit.

Chemical compounds, no matter how important or defined their biological activity, are not regarded as biological material within the scope of these regulations. Chemical compounds are capable of description at least through the identification of starting materials and explanation of appropriate procedures used in making the compounds. It must not require undue experimentation in order to make or use the chemical compound from the written description in the patent application. Thus, materials such as proteins, enzymes, or other complex organic materials need not be deposited where the written description alone is adequate to enable those skilled in the art to make and use the claimed invention.

Plant material must be deposited when the patent application is filed outside the Plant Patent Act if needed to meet the requirements of 35 U.S.C. 112. As with other biological material, the deposit of plant material together with the written specification must enable those skilled in the art to make and use the claimed invention. Thus, if a plant itself is claimed, deposit of plant cells can be accepted only if the deposited cells will develop into the plant for which a patent is sought through the exercise of procedures either known in the art or taught in the application disclosure. Seeds may be deposited, but must be deposited in sufficient quantity to insure an adequate and timely supply once a patent is granted. The PTO solicits comments on the setting of an appropriate minimum number of seeds to ensure availability of the seed through the enforceable life of the patent. The replacement provisions of proposed rule 1.204 would also apply to replenishing the supply of seeds but may require special provisions because of the time required to provide new seeds—e.g. the replacement provision could be coupled with a terminal disclaimer provision for appropriate reasons. If a hybrid variety is claimed, the PTO will take a position that applicant must deposit the parent lines of the hybrid variety unless applicant is able to establish that propagation of the variety can be achieved by micropropagation or other techniques from the hybridized seed or plants grown from such seed. In the latter case, the deposit of the hybrid seed itself would make an adequate deposit.

While the proposed rules under consideration would be applicable to multicellular living organisms other than plants, including animals, it is anticipated that inventions relating to the development of animals having new and otherwise patentable characteristics will rely on the identification and description of a known and readily available animal that will be treated in a reproducible process to obtain the new animal variety. The PTO is presently not aware of any organization that is willing and able to undertake the responsibilities of a suitable depository for live animals.

Rule 1.201 would be proposed to provide an operative definition of when a deposit is required and also define when a biological material would be considered to be known and readily available to the public so that a separate deposit would not be required. The third paragraph of this rule would provide that there is no presumption that a specific biological material is required for the practice of an invention simply because it is mentioned in an application disclosure. The need to make a deposit of a biological material in accordance with these rules is necessitated only where the biological material is essential to meet one or more of the requirements of 35 U.S.C. 112 and is not known and readily available and cannot be obtained through procedures known in the art or described in the application from known and readily available materials.

If a biological material is known and readily available at the time the patent is granted, and there is no reasonable basis to believe that the biological material will cease to be available during the life of the patent, no requirement for a separate deposit would be made.

While it is not possible to list all circumstances under which a biological material may be considered to be known and readily available to the public, it is clear that the written description in the specification should be sufficient to allow one of ordinary skill in the art to identify and to obtain the known and readily available material. The present commercial availability of the biological material through normal commercial suppliers, particularly suppliers not under the control of those relying on the availability of the biological material, would make the material known and readily available. The mere fact that the biological material is commercially available only through the patent holder or the patent holder's agents or assigns shall not by itself justify a finding of non-availability, absent a reason to believe that access to the biological material would later be improperly restricted. Since the public has a continuing interest in the availability of information and materials necessary to make and use an invention claimed in a patent, regardless of the patent holder's interest, actual distribution of the biological matter in the marketplace may be required if commercial availability is to be relied on to establish that a specific biological material is known and readily available to the public.

Evidence that a biological material is known and readily available may also take the form of a reference in printed publications or a declaration of accessibility by those working in the field to which the invention relates which establishes wide distribution and ready availability of the biological material. The probative value of this type of evidence will depend on whether the evidence establishes that the biological materials are known and accessible without restriction to those who desire to obtain and test the biological material.

Evidence that a biological material is known and readily available may take the form of a statement showing that it is readily identifiable and available in nature in useful form or that it is available in nature coupled with the existence of a reliable screening test or procedure defined in the specification disclosure or known to those skilled in the art that could be used to isolate the required biological material with reasonable predictability from an identified genus of biological material. See *Tabuchi v. Nubel*, 194 USPQ 521 (CCPA 1977). A deposit made of a biological material that was known and accessible without restriction to those who desired to obtain and test the biological material would also satisfy the definition of being known and readily available to the public. However, since a mere reference to a biological material deposit in a patent would not necessarily mean that it was accessible without restriction to the public the burden would be on the applicant to establish its ready availability without restriction as through a statement from the depository.

New rule 1.202 would be proposed to define an acceptable depository for the deposit of biological materials for patent purposes for applications before the United States Patent and Trademark Office. This rule states that a deposit may be made either in an International Depositary Authority (IDA) as established under the Budapest Treaty or a depository recognized to be suitable by the Patent and Trademark Office. The depository may be domestic or

foreign to the United States, public or private. While it would be administratively convenient for the Patent and Trademark Office to limit acceptable depositories to an IDA, such a restricted policy would not provide a patent applicant with the type of flexibility and availability necessary in the event no available IDA would accept a deposit of a particular biological material. Nevertheless, a depository other than an IDA would be called upon to essentially establish compliance with the administrative and technical requirements set forth in the Budapest Treaty for IDAs in order to establish suitability of the depository to the Office. While there is a desire to provide flexibility to a patent applicant in selecting an appropriate depository, these guidelines are not intended to permit each patent applicant to become its own depository since both the patent owner and the public have an interest in the continued availability and accessibility of the deposit during the enforceable life of a patent and the public has a continuing interest in its availability when the patent is no longer enforceable.

Paragraph (c) of new rule 1.202 indicates that the Office will recognize the transfer of a sample to a suitable depository from a depository which either defaults or discontinues the performance of any of the tasks it should perform. Where such a transfer takes place after a patent issues, a suitable Certificate of Correction would be acceptable to identify the new depository and/or accession number. An appropriate amendment to a pending application to identify the new depository and/or accession number would not constitute new matter. Cf. *In re Lundak*, 227 USPQ 90 (Fed. Cir. 1985).

Paragraph (d) of new rule 1.202 sets forth the procedure for notifying the Commissioner of the intent to be recognized as a suitable depository by the Patent and Trademark Office. The depositories recognized as suitable by the Office will be published in the Official Gazette of the Patent and Trademark Office as will the identity of a depository which has defaulted or discontinued its performance under these rules.

New rule 1.203 would be proposed to set forth the time for making an original deposit. An original deposit may be made at any time before the application is filed or during pendency pursuant to a requirement that will be made no later than the date the Notice of Allowance and Issue Fee Due is mailed. The decision in *Lundak* indicated that a specification disclosure need not be enabling until such time as a patent is granted. Unless the examiner and applicant agree on whether a deposit is required, what must be deposited and the appropriate conditions, the deposit issues will be resolved pursuant to a rejection under 35 U.S.C. 112. The time specified in this particular rule for making a suitable deposit is the last practical moment that the Office can insure that a deposit has been made in accordance with these regulations before a patent is granted. After the issue fee is paid in an application the application undergoes preparation for printing for a period of 8 to 10 weeks so that all the information necessary for printing should be in the application file and should have been approved by the examiner as conforming to these regulations at the time the issue fee is paid. Where a deposit is made after the Notice of Allowance and Issue Fee Due is mailed, applicant would be required to file an amendment under 37 CFR 1.312 to add a description of the accession number and depository together with any required statement.

Unless the regular deposit is made before the effective filing date of an application for patent in the United States, a verified statement will be required from a person in a position to corroborate that the biological material described in the application as filed is the same biological material which is deposited in a suitable depository. The nature of this corroboration will depend on the circumstances in the particular application under consideration including the length of time between the application filing date and the date of deposit.

New rule 1.204 would be proposed to define the circumstances and procedures for replacing a deposit which is necessary for patent purposes. Failure to replace a deposit within three (3) months after learning or receiving notice from a depository that a replacement is needed may cause the application or patent involved to be treated by the PTO as if no deposit were made. The Patent and Trademark Office will apply a rebuttable presumption of an identity between the original and the replaced sample in the event a deposit is replaced where the application or patent making reference to the deposit is relied upon during any Patent and Trademark Office proceeding.

New rule 1.205 would be proposed to define the term of a deposit to be a minimum of 5 years after the most recent request for the furnishing of a sample of the deposited biological material and at least 30 years after the date of deposit. Any deposit which is made pursuant to the Budapest Treaty will be for a term acceptable to the Office. However, where a deposit is not made under the Budapest Treaty, samples must be stored under an agreement that would make them available for at least the term specified in the Budapest Treaty so long as it extended beyond the enforceable life of the patent for which a deposit was made. The enforceable life of a patent includes the original term of seventeen years, shortened by any terminal disclaimer or lengthened by any patent term extension, plus six (6) years to cover the statute of limitations and any additional time beyond this period where the enforceability of the patent remains in litigation.

The period for storing a deposit as literally stated in the Budapest Treaty is likely to cover almost all of the circumstances before the Patent and Trademark Office. However, in the event that the period of storage would expire before the earliest possible expiration date of the enforceable life of the patent, one of the basic intents of Congress to insure that the public can practice the invention claimed in an expired patent may be frustrated, and it is not believed that the period set forth in the Budapest Treaty intended for such a situation to arise. The availability of the deposited biological material which is essential for making and/or using the subject matter claimed in the patent is a legitimate ground for concern on the part of the Patent and Trademark Office. *Ex parte Lundak* (decided August 21, 1984, reversed on other grounds *In re Lundak*, 227 USPQ 90 (Fed. Cir. 1985)). The Board of Patent Appeals considered the possibility that an initially enabling disclosure might become non-enabling over a period of time. *In re Metcalfe*, 410 F2d. 1378, 161 USPQ 789 (CCPA 1969). Suggesting that a rule of reason approach similar to that applied by the Court in *Metcalfe* should continue to inhere in the deposit procedure of the Patent and Trademark Office, the Board suggested that it was appropriate to insist that the depository be contractually obligated to maintain the deposit for at least a reasonable time after expiration of the patent rights. In determining whether the period is sufficient to extend beyond the enforceable life of the patent, neither the possibility of patent term extension nor the possibility of protracted litigation will be considered. Where the minimum period of storage would not extend beyond the enforceable life of the patent, as where there is prolonged pendency of an application or continuation or divisional applications

are involved, one approach would be to require applicant to undertake to request a sample every five years beyond the 30 years measured from the date of deposit so that the deposit would be stored for a period beyond the enforceable life of the patent.

A non-viable deposit cannot be relied upon to supplement a written description in a patent application. Experience has shown that as many as 10% of the deposits made with American Type Culture Collection (ATCC) on which a viability test was conducted were not viable when received at the depository. The requirement for verification of the viability of deposits is consistent with the Budapest Treaty and is a subject of proposed new rule 1.206.

The viability of a deposit made under the Budapest Treaty is a requirement. Thus, a mere statement by applicant, an authorized representative of applicant or assignee that the deposit has been accepted under the Budapest Treaty would satisfy this rule. Otherwise, viability may be tested by the depository or any other entity provided that the material tested is received from the depository. The viability test must conclude that the deposited biological material is capable of reproduction directly or indirectly and no evidence will be required to satisfy the deposit requirement relative to the ability of the deposited material to perform any function described in the application. However, as with any other issue of description or enablement, if the examiner has evidence or reason to question the objective statements made in the application, applicants may be required to demonstrate that the deposited biological material will perform in the manner described.

A viability statement for each deposit which is not made under the Budapest Treaty must be filed in the patent application and contain the information identified in paragraph (b) of proposed new rule 1.206. The examiner shall not question the conclusion in a viability statement issued by a depository recognized under either proposed new rule 1.202 (a) or (b). If the viability test indicates that the deposit is not viable upon receipt, or the examiner cannot for scientific or other valid reasons accept a statement of viability received from the applicant, the examiner shall so notify the applicant stating the reasons for not accepting the statement and proceed with the examination process as if no deposit had been made.

New rule 1.207 would be proposed to address the conditions under which a deposit must be made in order to satisfy access to the deposit. First, access during the pendency of an application to a deposit must be available to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C. 122. A deposit pursuant to the Budapest Treaty meets this requirement. Secondly, the deposit must be made under conditions that all restrictions on the availability to the public of the deposited biological material will be irrevocably removed upon the granting of the patent. Conditions on the release of a deposited biological material such as identifying the ultimate recipient of the material, or a provision on the further transfer of the material, or any other stipulation that acts as a precondition to the release of the biological material referenced in an issued patent will be considered to be a prohibited restriction on the availability to the public of the biological material so deposited. The depository may be asked to provide to the depositor such information as the identity of sample recipients but not as a precondition to release after the patent is granted.

Since the mere description of a deposit or identity of a deposit in a patent specification is not necessarily an indication that a requirement for deposit or compliance with these rules has been made, the Office will certify whether a deposit was stated as having been made under conditions which make it available to the public provided the request contains the information set forth in Paragraph (c) of proposed new rule 1.207.

New rule 1.208 would be proposed to set forth the procedures which would be followed by an examiner once the examiner determines that a specific biological material is both essential to make and use the claimed invention and is not known and readily available within the meaning of rule 1.201(b). It is only when the examiner has made these determinations based on the record in the application being considered that the need for a deposit of the identified biological material must be considered. A deposit accepted by an IDA under the Budapest Treaty shall be accepted for patent purposes by the PTO if additional statements are made that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent, and the deposit will be replaced if viable samples cannot be dispensed by the depository.

A deposit under the Budapest Treaty would mean that a viable deposit has been made (Budapest Rule 10) in an acceptable depository (IDA) for a period of five years after the most recent request and at least 30 years from the date of deposit (Budapest Rule 9) under conditions that access to the deposit will be available during pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 CFR 1.14 and 35 U.S.C. 122 (Budapest Rule 11.1). Assurance of reasonably permanent availability of the deposited material through the depository is reasonably assured through the deposit of a viable culture under the Budapest Treaty and the requirement to make a new deposit in § 1.204(a). It is sufficient if a written statement is made by applicant, an attorney or agent prosecuting the application or a person representing the assignee that a deposit has been accepted by an IDA under the Budapest Treaty under conditions that all restrictions on the availability to the public of the deposit will be irrevocably removed upon the granting of the patent. A suitable statement would be as follows:

(1) I am (relationship to application)
(2) Viable samples of—
Material:
Accession Number:
Deposit Date:
were deposited and will be maintained with
(3) (Name and Address of Depository)
(4) Under terms which are in accordance with the provisions of the Budapest Treaty.
(5) Upon issuance of a patent on this application, all restrictions on the availability of the deposited material to the public will be irrevocably removed.

Date _____
Name _____

If the examiner determines that a deposit is required and has not been made in compliance with these rules, the examiner shall reject all the affected claims in the application under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed or why a deposit which was made cannot be accepted for patent purposes. Although the Court in *Lundak* indicated that the enablement requirement of 35 U.S.C. 112 need not be satisfied until the patent issues, the only way the Office can efficiently and effectively address the deposit issue is during the examination of the application. After the examiner has determined that a deposit is required, and until a deposit in accordance with these rules is made, or until the Office is assured in writing that a deposit in accordance with these rules will be made up to and including the date the issue fee is paid, or the examiner is convinced that a deposit is not required under the circumstances of the application being considered, the rejection will be made and maintained

by the examiner. Written assurance may take the form that an identified specimen will be deposited and maintained in an IDA under the Budapest Treaty before the issue fee is paid under conditions that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent, or any other specific assurance that the examiner can recognize and accept that there are no outstanding issues to be resolved on the deposit question.

In the circumstances where the Office has received written assurance that an acceptable deposit will be made before or on the date of payment of the issue fee, and there are no other outstanding matters to be considered relative to the patentability of the claims, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the required deposit be made within three (3) months. The period for satisfying the requirement for deposit will be extendable under 37 CFR 1.136(a), as is the case with a requirement for drawing corrections made at the time the Notice of Allowance and Issue Fee Due is mailed. In appropriate circumstances, relief also may be available under 37 CFR 1.136(b) if sufficient cause is shown for an extension of time in order to make the appropriate deposit. Sufficient cause would be decided by the appropriate Group Director. Failure to make the required deposit in accordance with the requirement will result in abandonment of the application for failure to prosecute. Since the opportunity exists to request extensions of time under 37 CFR 1.136 to make a viable deposit, no application should go abandoned for failure to make a viable deposit. However, the Office reserves the right to require the filing of a terminal disclaimer where the time required to make a viable deposit unreasonably delays the issuance of a patent.

The contents of the specification regarding any deposit made are specified in new rule 1.208(d). In addition to such identifying criteria as accession number for the deposit and the name and address of the depository, the specification should include the date of deposit (i.e. the date from which the term of deposit specified in new rule 1.205 is to be measured) and a taxonomic description of the deposit. This written description is that required by 35 U.S.C. 112, first paragraph and should be sufficient to characterize and distinguish the biological material deposited. This written description will serve to inform the public of the essential characteristics of the deposited material once the patent is granted, and will facilitate the examination process which necessarily involves comparisons with prior art biological material.

Other Considerations

The rule change being considered for proposal is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The rule changes being considered for proposal are not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed deposit practice will not impose extra work on patent applicants (whether small or large businesses or individuals).

The Patent and Trademark Office has determined that this rule change being considered for proposal is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal,State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any information collection requirements that may be contained in the proposed rulemaking resulting from proceedings under this advance notice will be submitted for OMB approval at the time the proposed rulemaking is announced.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out, 37 CFR Part 1 is being considered for proposed amendment as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Centered heading and new §§ 1.200 to 1.208 are added as set forth below:

* * * * *

Deposit of Biological Material

Sec.
1.200 Biological material.
1.201 Need to make a deposit.
1.202 Acceptable depository.
1.203 Time of making an original deposit
1.204 Replacement of deposit
1.205 Term of deposit.
1.206 Viability of deposit.
1.207 Furnishing of samples.
1.208 Examination procedures.

Deposit of Biological Material

§ 1.200 Biological material.

For the purposes of these regulations pertaining to the deposit of biological material for patent purposes, the term biological material shall include material that is capable of self-replication either directly or after insertion into a host. Representative examples include bacteria, fungi including yeast, algae, protozoa, cell lines, plant tissue cells and seeds. Viruses, vectors, cell organelles and other non-living material existing in and reproducible from a living cell may be deposited by deposit of the host cell capable of reproducing the non-living material. Materials analogous to conventional chemical compounds such as proteins and enzymes are not subject to these regulations.

§ 1.201 Need to make a deposit.

(a) Where a claimed invention is, or relies on, a biological material, the requirements of the first and second paragraphs of 35 U.S.C. 112 apply. Applicant is required to comply with these requirements in the written description of the invention, which may include reference to known and readily available biological material. If the written description does not meet the requirements of 35 U.S.C. 112, the specification may be supplemented by a deposit of samples of the biological material necessary to meet those requirements in a depository and under conditions complying with these regulations.

(b) Biological material need not be deposited if it is known and readily available to the public or can be made or isolated in a reproducible manner from known and readily available material. Biological material will be considered to be known and readily available to the public if samples of the biological material are known and accessible without restriction to those who desire to obtain and test the biological material. Samples will be considered to be accessible even though some requirement of law or regulation of the United States or of the country in which the depository institution is

located permits access to the material only under conditions imposed for safety, public health or similar reasons.

(c) The reference to a specific organism or other biological material in a specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit in accordance with these regulations is required.

§ 1.202 Acceptable depository.

(a) A deposit may be made in any International Depositary Authority (IDA) as established under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(b) A deposit may be made in any depository recognized to be suitable by the Office. Suitability will be determined by the Commissioner on the basis of the administrative and technical competence, and agreement of the depository to comply with the terms and conditions applicable to deposits for patent purposes. The Commissioner may seek the advice of impartial consultants from the biotechnology industry on the suitability of a depository. The depository must:

(1) Have a continuous existence;

(2) Exist independent of the control of the depositor;

(3) Possess the staff and facilities sufficient to enable it to examine the viability of a deposit and store it in a manner which ensures that it is kept viable and uncontaminated;

(4) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;

(5) Be impartial and objective; and

(6) Furnish samples of the deposited material in an expeditious and proper manner.

(c) If any depository under (a) or (b) defaults or discontinues the performance of any of the tasks it should perform, the Office will recognize as a substitute in any pending application or patent a viable deposit made with an IDA or depository recognized to be suitable by the Office which is transferred to said depository from the defaulting depository in the manner required for replacing a deposit under § 1.204.

(d) A depository seeking status under paragraph (b) of this section must direct a communication to the Commissioner which shall:

(1) Indicate the name and address of the depository to which the communication relates;

(2) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (b) of this section, including information on its legal status, scientific standing, staff and facilities;

(3) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds;

(5) Indicate the amount of any fees that the said depository will, upon acquiring the status of suitable depository under paragraph (b) of this section, charge for storage, viability statements and furnishing of samples of the deposit.

(e) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published in the Official Gazette of the Patent and Trademark Office.

§ 1.203 Time of making an original deposit.

(a) An original deposit may be made at any time before filing an application for patent or during pendency of the application for patent pursuant to a requirement that will be made by the examiner no later than the date the Notice of Allowance and Issue Fee Due is mailed.

(b) When the original deposit is made in a depository defined in §§ 1.202 (a) or (b) after the effective filing date of an application for patent, a verified statement will be required from a person in a position to corroborate the fact that the biological material described in the application as filed is the same biological material which is deposited in the depository defined in §§ 1.202 (a) or (b).

§ 1.204 Replacement of deposit.

(a) Where a depository possessing the original deposit cannot furnish samples of the deposit for any reason, the depository shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor shall be required to make a new deposit of the biological material which was originally deposited within three months of receiving notification that the depository cannot furnish samples. The replacement shall be made in the same depository as the original deposit except:

(1) Where the original depository has lost its status under §§ 1.202 (a) or (b) or no longer carries out its obligations applicable to the involved deposit; or

(2) Where the depository for health or other legitimate reasons is unable to provide samples to requesters outside of the jurisdiction where the depository is located.

(b) An applicant or patent owner shall notify the Office in writing as soon as reasonably possible after a replacement deposit is made in each application or patent affected. This notification shall state the name and address of the depository, the accession number for the deposit, the date of making the deposit, the results of a viability test (as provided for in § 1.206), the reason for making the replacement deposit, and a statement that the replacement deposit is to the best of the depositor's knowledge identical to the original deposit. The notification shall be placed in each application or patent file.

(c) A depositor's failure to replace a deposit within three months after learning or after receiving written notice from a depository that a replacement is needed may cause the application or patent involved to be treated in any Office proceeding as if no deposit were made.

(d) In the event a deposit is replaced, the PTO will apply a rebuttable presumption of an identity between the original and the replaced sample where the application or patent making reference to the deposit is relied upon during any Office proceeding.

§ 1.205 Term of deposit.

A deposit shall be made for a term of at least thirty (30) years after the date of a viable deposit and at least five (5) years after the most recent request for the furnishing of a sample of the deposited biological material was received by the depository. In any case, samples must be stored under agreements that would make them available beyond the enforceable life of the patent for which the deposit was made.

§ 1.206 Viability of deposit.

(a) A deposit of biological material must be viable at the time of deposit and during the term of deposit. Viability may be tested by the depository or by another provided the material tested is received from the depository. The test must conclude only that the deposited material is capable of reproduction. No evidence is necessarily required relative to the ability of the deposited material to perform any function described in the patent application.

(b) A viability statement for each deposit not made under the Budapest Treaty must be filed in the application and must contain:

(1) Name and address of the depository;

(2) Name and address of the depositor;

(3) The date of deposit;

(4) The identity of the deposit and the accession number given by the depository;

(5) The date of the viability test;

(6) The procedures used to obtain a sample if the test is not done by the depository; and

(7) A statement that the deposit is capable of reproduction.

(c) If a viability test indicates that the deposit is not viable upon receipt, or the examiner cannot, for scientific or other valid reasons, accept the statement of viability received from the applicant, the examiner shall proceed as if no deposit has been made. The examiner will accept the conclusion set forth in a viability statement issued by a depository recognized under §§ 1.202 (a) or (b).

§ 1.207 Furnishing of samples.

The deposit must be made under conditions that assure that:

(a) Access to the deposit will be available during pendency of the patent application making reference to the deposit to one determined by the Commissioner to be entitled thereto under § 1.14 and 35 U.S.C. 122, and

(b) All restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

(c) Upon request, the Office will certify whether a deposit has been stated to have been made under conditions which make it available to the public as of the issue date of the patent grant provided the request contains:

(1) The name and address of the depository;

(2) The accession number given to the deposit;

(3) The patent number and issue date of the patent referring to the deposit; and

(4) The name and address of the requesting party.

§ 1.208 Examination procedures.

(a) The examiner shall determine in each application for an invention if a deposit is needed, in case one has not been made, or if a deposit actually made is acceptable for patent purposes. A deposit accepted in any depository under the Budapest Treaty shall be accepted for patent purposes if made under conditions complying with § 1.207(b). If a deposit is required and has not been made in accordance with these regulations, the examiner shall in an Office action reject the affected claims in the application under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant shall respond to a rejection under paragraph (a) of this section by—

(1) making an acceptable deposit or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee or;

(2) Establishing that the involved biological material is known and readily available to the public or;

(3) Arguing why a deposit is not required under the circumstances of the application considered.

Other replies to the examiner's action shall be considered non-responsive. The rejection will be repeated until either paragraph (b)(1) or (b)(2) of this section is satisfied or the examiner is convinced that a deposit is not required.

(c) If an application is otherwise in condition for allowance except for the required deposit and the Office has received a written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the required deposit be made within three months. The period for satisfying this requirement is extendable under 37 CFR 1.136. Failure to make the required deposit in accordance with this requirement will result in abandonment of the application for failure to prosecute.

(d) For each deposit made pursuant to these regulations, the specification shall contain:

(1) Accession number for the deposit;

(2) Date of the deposit;

(3) Taxonomic description of the deposit; and

(4) Name and address of the depository.

Comments and Responses:

(Editorial Note.—These comments and responses will not appear in the Code of Federal Regulations)

The following responses are directed to the comments received in response to the draft policy statement on the deposit of biological materials for patent purposes. The comments are arranged to generally correspond to the order of topics addressed in the draft guidelines.

Comment: The guidelines should make explicit that it is the Examiner's, not the applicant's, burden to show that a written description is not adequate to describe the invention as claimed. This has been a real problem in that simply because a microorganism or other biological material is involved in a particular claimed invention, it is automatically assumed that a deposit should be required. This is, of course, quite out of touch with reality especially when it comes to inventions relating to recombinant technology.

Response: This suggestion has been in effect, since the PTO clearly has the initial burden of giving reasons, supported by the record as a whole, as to why the written description is not sufficient to enable one skilled in the art to make and use the claimed invention in the absence of a particular microorganism or other biological material. All assertions that the written description is not enabling without a deposit must be supported by the examiner with (1) evidence or (2) reasons to support the conclusion of noncompliance. New rule 1.201(c) being considered for proposal also provides explicitly that there is no presumption that a specific material is required simply because it is described in the specification.

Comment: If enablement and description requirements can be met with a written description, is a deposit required solely for compliance with the best mode requirement?

Response: The best mode requirement of the first paragraph of 35 U.S.C. 112 is a separate and distinct requirement from the enabling requirement. *In re* Newton, 414 F2d 1400, 163 USPQ 34 (CCPA 1969). The best mode requirement is a safeguard against the possible selfish desire on the part of some people to obtain patent protection without making a full disclosure. The requirement does not permit an inventor to disclose only what is known to be the second-best embodiment, retaining the best as a trade secret. The fundamental issue that should be addressed is whether there was evidence to show that the quality of an applicant's best mode disclosure is so poor as to effectively result in concealment. *In re* Sherwood, 615 F2d 809, 204 USPQ 537 (CCPA 1980). If a deposit is the only way to comply with the best mode requirement then the deposit must be made.

Comment: We regret that the PTO has not attempted to provide some guidance as to the circumstances under which a biotechnology invention will be deemed to be reproducible from the written description alone. One such circumstance would appear to be where sequence data for the transcriptional unit of rDNA vector is available either directly from the specification, or from the published literature.

Response: While such guidance may be of some assistance, it may be of momentary value because of the changing nature and development of technology. In addition, useful guidelines would be difficult in view of the tremendous variety of factual circumstances that play a role in determining whether the claimed invention can be practiced without undue experimentation. Some guidance is available in *Ex Parte Forman*, 230 USPQ 546 (BPAI 1986) where the Board of Patent Appeals and Interferences summarized eight (8) factors to be considered in a determination of "undue experimentation."

Comment: Please consider replacing the word "define" in the phrase "define the metes and bounds of the claimed invention" with the word—support—because applicant should be allowed to select representative biological samples to place on deposit which support rather than define the "metes and bounds" of the claimed invention.

Moreover, the deposited biological sample which applicant demonstrates, by the description in the application, to be operable should be deemed sufficient by the PTO to satisfy the deposit requirement and provide adequate basis for applicant to claim variants of the deposited material. Another comment expressed concern that limiting claims to the deposited material (*Ex Parte Jackson*) may become the norm in patent examination practice if such language is included.

Response: Claims are required to set out and circumscribe a particular area with a reasonable degree of precision and particularity. 35 U.S.C. 112, second paragraph. This requirement is separate and distinct from the requirement of the first paragraph of 35 U.S.C. 112 that the specification disclosure enable one skilled in the art to make and use the invention to a degree commensurate in scope with the claims. Under appropriate circumstances, it may be necessary to specially recite and limit the claims to the deposited biological material in order to adequately define the metes and bounds of the claimed invention. *Ex parte* Jackson, 217 USPQ 804 (Bd. App. 1982). However, the mere facts that a claimed invention requires the use of a living organism or that samples of a living organism that may be used in the claimed invention have been deposited are *never alone* sufficient to require applicant to comply with the deposit guidelines or limit any claim to the deposited material.

Comment: There is some interest that the Patent and Trademark Office be requested to print deposit information on the front page of the issued patent—analogous to the cited references rather than buried in the general text.

Response: At the last meeting of the WIPO Permanent Committee on Patent Information, a revised standard was approved recommending use of INID (*I*nternationally agreed *N*umbers for The *I*dentification of *D*ata) codes to identify bibliographic data on the front page of patent documents. A new INID Code (83) has been approved to identify information concerning the deposit of microorganisms, e.g., under the Budapest Treaty.

The PTO is not considering the publication of deposit information on the front page of an issued patent because of the substantial administrative burden that would be involved for a relatively small number of patents. No compelling need or rationale is apparent that would justify the cost for the rare case where such a format may be more convenient.

Comment: The practice of presenting a microorganism for deposit in connection with a patent application was initially adopted as a means for complying with the requirements of section 112. The PTO's current proposal would make a deposit mandatory under administrative rulemaking, for compliance with the requirements of 35 U.S.C. 112 in an invention which "depends on the use of biological material".

Response: The PTO proposal does *not* make a deposit mandatory for an invention which depends on the use of biological material. The PTO policy and deposit requirements are intended to provide guidance in those situations when it is determined that a deposit is necessary to satisfy one or more requirements of 35 U.S.C. 112. The proposed rules concern the requirements and procedures for making a suitable deposit if it is determined that a deposit is required before a patent can be granted. The guidelines associated with the proposed rules recognize that the specification may properly rely on information which is publicly available.

Comment: Some recognized culture collections do not make their strains readily available. What can a requester do if it is found that the biological material is not readily available. Most of us do not have access to legal recourse.

Response: The PTO will assume that any deposit made according to these regulations will be readily available upon the granting of the patent. This is a rebuttable presumption that could be overcome only by evidence of the nature which would show that the patent relied upon is inoperative. Since every patent is presumed valid and since that presumption includes the presumption of operability, the burden of proof is high. The PTO does not have the resources to police the depositories such that the depositor must assume the risk that the depository selected will preserve and maintain the deposit made.

Comment: It was suggested that the statement that the availability of the biological material must be such that there is no reasonable basis to question the continued availability of the biological material beyond the enforceable life of a patent was overly stringent. Citing *In re Metcalfe*, 410 F.2d 1378, 161 USPQ 789 (CCPA 1969).

Response: The suggestion that the proper perspective should be whether there is reasonable basis to believe that the biological material will cease to be available during the life of the patent has been adopted.

Comment: The draft guidelines indicated that a material would be considered to be known and readily available to the public even though some requirement of law or regulation restricted access to material for safety, public health or similar reasons. It has been suggested that the term "national security" be specifically defined in the list of exceptions since this constitutes the basis which precludes making available to the public significant amounts of governmental information. It was further suggested that the phrase "of either of the United States or of the state in which the depositor or the depository institution is located" be added after regulation in the acknowledgment of the fact that biotechnology is an international industry. Finally, it was noted that companies may find it advisable to restrict access even in the absence of any formal legal requirement for product liabilty reasons so that the PTO should regard more leniently restrictions which are fully imposed for public health reasons even if not required by law or regulation, and particularly if they are required by an insurer.

Response: First, the PTO has not seen fit to add national security as a specific item which would permit restriction on access to a biological material which would still be considered to be known and readily available. It is difficult to determine with any degree of certainty what any country may consider to be national security. Further, an invention which involved national security matters would not be published before the restrictions on access to that invention involving national security were removed.

Secondly, while the international scope of the biotechnology industry is clearly recognized, the proposal to include the country or state in which the

depositor is located would appear to be unnecessary so long as the requirement of law or regulation would apply to the depository institution where the deposit is located. accordingly, the suggestion has been adopted to this extent.

Finally, it is believed inappropriate for the PTO to accept a biological material to be known and readily available to the public on the basis of what some private insurer may require of the depositor. Unless the restriction is based on some requirement of law or regulation which restricts access to the material for safety, public health or similar reasons, the PTO will not consider that a biological material is known and readily available to the public.

Comment: It was suggested that a biological material should not have to be deposited if it could be readily reproduced from materials known and available to the public based on the description of how to make and use found in the disclosure.

Response: This suggestion has been adopted in the first sentence of new rule 1.201(b) being considered for proposal which includes the statement that the biological material need not be deposited if it can be made or isolated in a reproducible manner from known and readily available material.

Comment: The guidelines had stated that the fact that the biological material had multiple known uses would tend to provide assurance that the required biological material would continue to be available. It was noted that this might be construed to mean that a recitation of multiple uses in applicant's disclosure is evidence that the biological material would be readily available to the public which clearly it is not.

Response: The person making the comment accurately noted that the two have no bearing one to the other. However, if there was evidence that the biological material had been put to use for more than one purpose by a variety of people, it would be considered to constitute at least an indication that the biological material in question was known and accessible to those who desire to obtain at least a sample of the subject biological material. It would have been evidence of distribution in commerce, consistent with the idea that it was known and readily available.

Comment: With respect to biological material that is known and readily available, the initial guidelines indicated that the written description in the specification should contain information on the biological material to the extent available. This, according to the comment, could be construed as requiring an enormous amount of information.

Response: This comment is well taken. Accordingly, new rule 1.201(b) would be proposed to require that the written description of the biological material should be sufficient to allow one of ordinary skill in the art to identify and obtain the publicly available material.

Comment: The initial guidelines stated that material would be considered to be known and readily available if the biological material was known and accessible to those who would desire a sample to practice the invention. The comment indicated that the word "practice" implies a right to utilize the deposited materials and thus the invention. This right does not exist absent a license if the material is protected by a patent. Experimental use is not a right but rather an exception to a finding of infringement and thus subject to different burdens of proof. It was suggested that the word "test" be substituted for practice.

Response: This suggestion would be adopted in new rule 1.201(b) since the concept of whether a biological material is known and readily available to the public is not determined on the basis of whether or not its manufacture, use or sale would infringe an existing patent.

Comment: There is no statutory basis in U.S. law for supporting the position that availability of the biological material must extend beyond the enforceable life of a patent. To require otherwise is to inequitably place a patentee in a position that amounts to guaranteeing a supply of the "manufacturing facilities" to competitors at little or no cost and at a time when the competitors are free to use the deposited material without an accompanying benefit to the ex-patentee.

Response: This provision finds specific basis in the decision of *Ex Parte Lundak*, and is based on one of the basic principles of the patent system—i.e. that a patent is an exclusionary right granted for a "limited" time and that the public is not excluded from practicing the invention once the patent expires. This does not mean that the patentee must be a perpetual supplier of the biological materials that may be necessary to practice the invention. However, it does mean that the patentee should not be permitted to place a limitation on the accessibility of the necessary biological material once the patent expires. As noted by the Court in *In re Metcalfe*, 410 F2d. 1378, 161 USPQ 789 (CCPA 1969) it is always possible that the practice of a given patented invention may become impossible because an essential material becomes unavailable due to a lack of raw materials, public disaster, or other occurrence not within the control of the patentee. The proposed regulations contemplate that the patentee would not control the availability of the biological material once the patent has expired.

Comment: The phrase "known and readily available" should be in the disjunctive. There is no case regarding regular chemical inventions that chemicals used by an applicant need to be both known and readily available.

Response: The phrase "known and readily available" was selected to indicate public accessibility to those wishing to test the biological material. A material may be known in the sense that its existence has been published, but is not available to those who wish to test that particular known biological material. In addition, a biological material may be available in the sense that those having possession of it would make it available upon request, but no one has been informed of its existence. Consequently, the concept of known and readily available is considered to accurately define the level of public accessibility to the biological material intended.

Comment: An examination of the PTO policy statement on the deposit of biological materials suggests that the only safe procedure for satisfying the requirements of 35 U.S.C. 112 would be to require a deposit or to establish that the biological material is readily available in nature or can be obtained by some type of screening procedure. The other criteria set forth pertaining to "known and readily available to the public" did not appear to have sufficient safeguards for access during the term of the patent and after its expiration date.

Response: While there is clearly an element of risk involved in trying to preserve living matter over an extended period of time even with a deposit, the Office believes that where there is a sufficient indication that the biological material has reached a sufficient level of accessibility and availability for distribution which is intended to be captured by the concept of "known and readily available" the public interest has been served as necessary to support a patent grant. The incentives provided by the patent system should not be constrained by the possibility that a disclosure that was once enabling would become non-enabling over a period of time through no fault of the patentee. *In re Metcalfe.*

Comment: Several people made comments relative to the commercial availability of the biological material being an indicator that the material was known and readily available.

Suggestions were made to substitute "applicant or applicant's assignee" for those relying on the availability of the biological material and to clarify the "patent holder's agent".

Response: The PTO does not want to guess or be constrained by any particular business relationship that may be created to control accessibility of the biological material to the public. The concept was intended to embrace the situation where an applicant or a patentee before the Patent and Trademark Office relying on the public availability of the biological material through a commercial supplier is not likely to restrict access once the patent is granted.

Comment: While some characterize the PTO's concern for commercial suppliers under the control of those relying on the availability of the biological material as almost insulting, others indicated that they could appreciate the PTO's concern when the patent holder controls commercial availability. One person suggested that a patent owner who tried to restrict access after a decision was made not to enforce the patent would run the risk that a disgruntled requester would seek treble damages anti-trust action based on patent misuse, or a requester might file a complaint with the FTC or the anti-trust division of the U.S. Department of Justice. Moreover, it was suggested that a disappointed requester could certainly notify the PTO of the incident which might result in a disciplinary proceeding against the patent counsel, and would certainly discredit subsequent attempts by the same patent owner to rely on an allegation of commercial availability. It was also suggested that it would be appropriate for the PTO to suggest one or more means by which a patent owner could provide acceptable assurance that the biological materials would remain available such as by deposit of a performance bond which would be forfeited if the biological material is not provided to a lawful customer upon tender of payment.

Response: The PTO does not have the resources or expertise to engage in the type of enforcement procedures suggested in these comments. Further, there is clearly no evidence at this point in time to provide for the mere possibility that a commercial supplier may be motivated to eliminate or otherwise restrict access to the biological material once the patent is no longer enforceable or a decision is made not to enforce the patent.

The PTO will accept commercial availability as evidence that a biological material is known and readily available only when the evidence is clear and convincing that the public has unrestricted access to the material. A product could be commercially available but only at a price which effectively eliminates its accessibility to those desiring to obtain a sample. The relationship between an applicant relying on a biological material and the commercial supplier relied upon is simply one factor that would be considered in determining whether the biological material was known and readily available. However, the mere fact that the biological material is commercially available only through the patent holder or the patent holder's agents or assigns shall not by itself justify a finding of non-availability, absent reason to believe that access to the biological material would later be improperly restricted.

Comment: Several comments were received directed to the use of printed publications providing evidence that the biological material is known and available to the public. It was suggested that the probative value of this type of evidence should depend not only on the number of publications but also the character and institutional affiliation of the publications. It was also suggested that foreign applicants would rightfully object to consideration of whether the publications are domestic or foreign. One comment stated that the concept of peer review should be eliminated and that inquiry be made into whether the publication policy of the journal makes references to the availability of cited material, and whether that policy is in fact enforced. Finally, it was indicated that it was impractical to expect an applicant to provide a tally or comprehensive search of technical journals and patent literature to establish availability of biological materials.

Response: The PTO does not believe that it is possible to list all the possible factors that might be considered relevant or how they would be weighed under any particular factual circumstances to determine whether a biological material is known and readily available to the public. However, it is considered appropriate to list exemplary factors that might be considered in determining the probative value of this type of evidence. There was no intent to discriminate between domestic and/or foreign applicants or publications, but the reference to domestic and foreign publications could be an indication of the scope of distribution of the biological material in question. Thus, publications in a single country, whether it be domestic or foreign to the United States, would suggest more limited distribution than references and publications of both domestic and foreign origin. Finally, there is no requirement to demonstrate that a biological material is known and readily available by any particular set of facts, but the PTO has provided some guidance in proposed rule 1.201(b) and associated text as to the variety of circumstances that an applicant may use to establish that a biological material is known and readily available to the public.

Comment: The language pertaining to declarations of accessibility which indicate a preference for those who are not members of the same organization as applicants in the application should be deleted because it suggests a higher level of credibility attaches to the declaration of such an individual.

Response: While it is recognized that the declaration executed by any declarant is subject to the same penalties under § 1001 of Title 18 of United States Code, it can be agreed that the evaluation of declarations should be based solely on their merit and not the organizational relationship between the inventor and the declarant. However, the preference was directed not to the credibility of the declarant, but whether accessibility was known beyond the confines of the organization of which both the applicant and the declarant were members. The knowledge might be compared to an uncataloged manuscript in a library that was distributed among the staff of an organization which included that library but was unknown to people outside that organization. Again, the mere fact that applicant and declarant were members of the same organization should not by itself justify a finding that the biological material in question is not known and readily available. Other factors such as the nature of the organization, distribution of the biological material, and procedures or mechanisms for access would also be considered.

Comment: The meaning of the term "abundantly" as modifying the availability in nature of the biological material was not understood. It was pointed out that a rare microorganism might be readily obtained if a good screening procedure was available. It was also pointed out that it was not understood what is meant by evidence of being available in nature since a description in the patent of a precise geographic location should be sufficient because this is an instance when a deposit is not required.

Response: These suggestions have been essentially adopted. As noted in one of the comments, the decision by the

PTO Board of Patent Appeals and Interferences (Reinhardt, US Patent 4,548,814) held that a description of the precise geographic location of Marine Tunicates used in the patent was adequate to satisfy the enablement requirement. However, use of the term "readily" to define availability is considered appropriate to define that degree of availability which would be reasonable under the circumstances. For example, when an applicant tried to rely on patent applications which had been opened for public inspection in Rhodesia, Panama and Luxembourg to fulfill the enabling requirement, the Court held that when no guide at all has been given in the application, an applicant must show that anyone skilled in the art would actually possess the requisite knowledge or would reasonably be expected to check the source which the applicant relies upon to complete his disclosure and would be able to locate the information with no more than reasonable diligence. In re *Howarth*, 210 USPQ 689 (CCPA 1981).

Comment: It was suggested that there is no good reason why a previous deposit can be relied upon only when it is referred to in a United States patent or statutory invention registration as opposed to a foreign patent. One person went so far as to suggest that any reference to a microorganism deposited in one of the recognized depositories should be sufficient in and of itself.

Response: Since the arrangement made with the depository is one between the depository and the depositor, the simple deposit of a biological material in a recognized depository is not sufficient in and of itself to satisfy the requirement of the biological material to be known and readily available. However, if the deposit has been accepted under the Budapest Treaty and made under conditions that all restrictions on its accessibility will be irrevocably removed upon the granting of the patent, whether the deposit is referenced in a United States or foreign patent document would not make any difference. However, there may be limitations on release of the biological materials that are permitted in other countries but which are not within the scope of the conditions accepted in the United States once the patent has been granted. Consequently, the mere reference in any document, be it a United States patent or a patent in a country foreign to the United States is not in and of itself sufficient to establish that it is known and readily available unless the deposit has been made under conditions which are consistent with those specified in these proposed rules.

Comment: It would be very helpful if you included a statement to the effect that if a deposit meets the requirement of the Budapest Treaty, the Office will accept the deposit.

Response: An explicit provision to this affect would be included in new rule 1.208(a). It would state that a deposit accepted in any depository under the Budapest Treaty shall be accepted for patent purposes if made under the conditions complying with 1.207(b)—that all restrictions on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent. The additional requirement of 1.207(b) must be stated since the Budapest Treaty leaves to the national laws the specific provisions to obtain access to a sample after the patent has issued. The requirement to maintain a viable deposit of the biological material (1.204a) recognizes the public interest in the availability of the information and materials to make and use the claimed invention.

Comment: The inventor of a biological invention should not be hostilely discriminated against by satisfying a higher burden to prove enablement but should instead be treated on the same basis as are all other applicants. The proposed guidelines should allow for and recognize that in many instances a deposit simply is not required.

Response: There was no intent in the proposed guidelines nor in the proposed rules to alter in any way the standard of enablement required by 35 U.S.C. 112, first paragraph. The rules being considered by the PTO specifically indicate that a biological material need not be deposited if the written description is sufficient to meet the requirements of 35 U.S.C. 112 or if the biological material is known and readily available to the public or can be made or isolated in a reproducible manner from known and readily available materials. See new rules 1.202 (a) and (b) being considered for proposal. In addition, it is specifically stated that the mere reference to a specific organism or other biological material in a specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit is required to be made. See new rule 1.201(c) being considered for proposal.

Comment: Requiring that the deposits be made in an IDA is excessively burdensome, particularly to a small inventor and those academic institutions which generate in the course of a typical research program dozens or even hundreds of hybridomas which must then be deposited if the institution is to comply with PTO deposit guidelines. Depositing of biological materials (when required) at any location should be sufficient providing that the averments for appropriate access and supply of viable material can be made. The patentee has the most at stake in insuring that the deposit is maintained and available during the life of the patent. If the deposit is permanently lost, the patent will be lost also. The entire rationale for requiring an independent depositor is to remove the responsibility from the patentee and place it in the hands of an independent third party. If the depository is required to replace a strain if it becomes non-viable, it would appear that double depositing is necessary. The logical thing, according to one comment, is either to have the third party depository entirely responsible for the culture or to permit the depositor to maintain his own cultures.

Response: The concept of an independent depository or an IDA as an acceptable depository is based on the need and desire to ensure the safe and reliable storage of a deposited biological material under circumstances that are free of the opportunity for intentional or negligent handling of the deposited material. The use of an independent depository or an internationally recognized depository will tend to preserve the integrity of the deposit process against those that may accidently alter the deposited material, may wish to tamper with the deposited material or may wish to resume control of its availability when the patent is no longer enforceable, and to preserve the interest of the public in the free access to the biological material for any purpose once the term of the patent expires. Further, while the PTO is constrained to approve independent depositories other than an IDA, the PTO has neither the resources nor capability to assess the individual capability of any party that wishes to act as its own depository. The rules under consideration are intended to minimize depositories that will be found acceptable.

The concept of having an independent depository in addition to the requirement of the depositor to replace a culture which is no longer viable is based on the premise that the patent owner has an interest in maintaining the accessibility of the deposit during the enforceable life of the patent for its own protection, and has an obligation to the public to ensure access to that deposit

during the period of enforceability so that a third party could test the biological material, and availability to the public after the patent expires. A patentee should not be able to intentionally convert a patented biological material to a trade secret merely because it was no longer interested or able to enforce the patent.

Comment: A depository does not normally notify the depositor when his strains are supplied to third parties except under the Budapest Treaty. Does this mean we must now change our policy.

Response: No.

Comment: Several comments were received to the effect that due to the nature of deposits, and the ease with which harmful infringing acts can be practiced following access to deposited material, it is reasonable to require that minimum restrictions be made before a request for access to a deposit is satisfied. Such minimum restrictions should include (1) identification of the ultimate recipient and (2) an averment that the ultimate recipient will not use the deposited materials for any uses which would infringe a valid claim and (3) a prohibition against transfer to third parties. The thrust of these arguments is that a patentee has a definite interest in knowing to whom the deposited material is being released and such restrictions would provide the patentee with some measure of protection against those who would unfairly profit from the required deposit. It was concluded that these provisions would not in any substantive way interfere with the purpose of a deposit under 35 U.S.C. 112 or the public disclosure function served by the patent system.

Response: While the unique nature of a deposit in satisfying the enabling or other requirements of 35 U.S.C. 112 is recognized, every patent is required to place in the hands of those skilled in the art to which the invention pertains the information required to make and use the invention without undue experimentation. The PTO does not restrict or otherwise monitor the sale of other patent documents containing an enabling disclosure nor place any limits on the further disposition of patents that it sells. Consequently, there is no basis in the law for treating a patent directed to an invention requiring the use of a deposited biological material in any manner different from a patent which does not require a deposit. Patents not requiring a deposit may involve subject matter which is just as difficult to detect infringement as it may be where no deposit is required.

The PTO recognizes the unique nature of an invention which requires the deposit of a sample of a biological material as part of the disclosure, particularly as it relates to the attendant risks that the sample may be used in a way or location that would avoid infringement of the patent. The PTO, however, solicits comments on the advisability of and rationale for seeking a provision in the law that would permit the type of restrictions on access to a deposit after the patent issues that are recommended in the April 8, 1987 WIPO report on the Industrial Property Protection of Biotechnological Inventions. These recommendations, on which we are seeking comment, were as follows:

Samples shall be furnished only if the requesting party has undertaken vis-a-vis the owner of the patent on which the request is based, for the period during which the patent is in force:

(i) Not to make the deposited biological material or any biological material derived therefrom available to any third party;

(ii) To use the deposited biological material or any biological material derived therefrom only for experimental purposes concerning the invention;

(iii) Not to export the deposited biological material or any biological material derived therefrom to any other country or, if the sample was obtained in the country where the depository institution is located and that country is not the country in or for which the patent on which the request was based has been granted, to any other country than the country in or for which the relevant patent has been granted;

(iv) The requesting party shall have the burden of proof concerning compliance with the undertakings referred to in subparagraphs (i–iii); and

(v) For the purposes above, any biological material shall be deemed to be derived from the deposited biological material if it is derived therefrom by culturing or in any other way of replication, provided that the derived matter still exhibits those characteristics of the deposited biological which are essential for the carrying out of the invention.

Comment: The guidelines appear to ignore that the identification of ultimate recipient and limitations on further transfer are required in many cases under the export control laws administered by the Commerce Department. Depositories such as the ATCC regularly apply for licenses before releasing strains. It would appear entirely consistent, therefore, to allow depositors to require that requesters comply with the export control laws since the depository must do so in any event.

Response: The rules being considered by the PTO require only that the depositor make the deposit under such conditions that all restrictions made by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent. This condition does not affect laws or regulations that restrict access for public health or safety reasons.

Comment: The requirement for the patentee to notify the depository promptly after issuance of the patent is unwise and unnecessary. One comment suggested that the use of the word "promptly" is vague and presents the opportunity for problems to arise. The provision was considered unnecessary because the depository releases the deposit when the requester provides the depository with a copy of the issued patent.

Response: This provision has been removed from the rules being considered by the PTO. However, it should be noted (new rule 1.201(c) being considered for proposal) that the mere reference to a specific biological material in the specification disclosure does not create any presumption that the specific material is necessary to satisfy one or more requirements of 35 U.S.C. 112 or that a deposit in accordance with Office policy has been made. A procedure is defined in new rule 1.207(c) being considered for proposal whereby the Office would certify whether a deposit has been made under conditions which make it available to the public as of the issue date of the patent grant.

Comment: Some of the comments received on the requirement for a viability statement provide an adequate response to other comments received. For example, some comments indicated that there should be a presumption that the microorganism is alive and that such testing should not be required. On the other hand, one comment was received to the effect that we should be aware of the problem that material shipped to depositories which, presumably, was viable when shipped, is received and when tested is not viable. This is not uncommon at the ATCC. Another comment indicated that if a viability statement is required it should be done by the depository if the biological material is deposited in a public depository. Another comment indicated that this person was pleased that we have included the third party competent to test for viability option. In some cases tests for viability can require expertise which might not be available at a depository. This option could be very helpful.

Response: Based on the evidence and comments received to date, the PTO is convinced that the requirement for a viability test is appropriate.

Comment: A deposit for either the enforceable life of the patent or for the 30/5 years of the Budapest Treaty should be considered acceptable. While the Budapest Treaty is an executive agreement, and therefor cannot override any clear dictate of 35 U.S.C. 112, it seems presumptuous for an office of an executive department to adopt a policy which is contrary to that embodied in an executive agreement.

Response: The period literally defined in the Budapest Treaty is considered acceptable for a deposit made under that Treaty. However, it is not difficult to imagine a situation where the period defined in the Budapest Treaty would not necessarily extend beyond the enforceable life of the patent. In the Board's decision in Ex Parte *Lundak*, it was noted that one of the basic principles of the patent system was that the public would not be prohibited from practicing the invention after the enforceable life of the patent. Implicit in that basic principle is the logic that a depositor should not be able to make a deposit under conditions that do not provide for storage beyond the enforceable life of the patent. Nor do we believe that the Budapest Treaty contemplated that the deposit would not be available while the patent is in force. The patentee need not be a guarantor of the availability of the deposited material after the enforceable life of the patent, but neither should the patentee be permitted to provide for storage only up to the date the patent expires.

Comment: The requirement for corroboration goes beyond the holding in *Lundak*. The requirement is unprecedented in ex parte prosecution. The PTO has regularly accepted Rule 131 declarations without corroboration, and to require it in the deposit situation would be completely inconsistent. The guidelines also fail to address what would be sufficient corroboration.

Response: The degree of corroboration required would depend on circumstances in the individual application. For a situation such as *Lundak* where a mistake was made relative to the presence of a deposit at the time of filing followed by a deposit within a week to ten days, a verified statement tracing the steps undertaken to deposit the biological material from the point of time of the filing date of the application to the actual deposit would be sufficient. It is the function of the description requirement to ensure that the subject matter that is later claimed in the patent was described in the application as originally filed. Consequently, an applicant who waits to make the deposit until sometime after the filing date of the application has the burden of showing that which is later deposited was the same biological material as existed and was described in the application as originally filed. Corroboration can take any form which is suitable to establish the fact, as opposed to a bare statement made on information and belief, that the deposited material is the same as that which existed as of the filing date of the application. If the material was viable and capable of reproduction as of the time of deposit, the verified statement should indicate that the material was viable and capable of reproduction as of the filing date.

Comment: It would seem that the two month formalities notice under Ex Parte *Quayle* would be appropriately used in instances where an application is allowable but assurance of public accessibility has not yet been made. There is no statutory authority for setting a three month period for response which would not be extendable upon payment of the appropriate fee.

Response: The PTO believes that once the issue of deposits has been either resolved or is in dispute, no additional time should be necessary. The basic concern is an adverse impact on pendency and disclosure to the public for no apparent reason. If an applicant is going to dispute the necessity of a deposit or the conditions under which it is made, then an appropriate appeal can be taken on that issue. If applicant agrees that a deposit is necessary, the three month period to pay the issue fee is considered adequate to get that job done. Nevertheless, provision has been made in new rule 1.208(c) being considered for proposal for an extension of time under 37 CFR 1.136.

Comment: There should be more specific guidelines as to the form of assurances that will be accepted for making an appropriate deposit. An averment by the applicant, assignee or attorney, in papers submitted during pendency of the application should be acceptable to the PTO. Deceit by such applicant, attorney or assignee should be dealt with in the same manner as deceit in conventional chemical cases.

Response: The Office will accept any assurance made in the record with the intent that the PTO rely on applicant to fulfill the deposit requirement as set forth in these proposed rules. The PTO will ensure that applicants have filed a statement that all conditions have been satisfied before the application is allowed to become a patent.

Comment: The PTO policy and guidelines should not make statements or predictions as to burden of proof during enforcement or other actions in a court of law. The indication that the burden of proof to establish an identity between the replaced sample and the original deposit may be on those seeking to enforce the patent outside the PTO goes against a statutory presumption of validity.

Response: The rules being considered by the PTO are limited to the presumption that the PTO will make in any proceeding involving the patent before the PTO.

Comment: It has been suggested that the procedure to be followed when biological material becomes unavailable be separate from the rest of the paragraph dealing with replacement deposits so that these separate situations are not viewed as one. For example, cessation of availability of biological material not previously deposited can result from, for example, the bankruptcy of the sole commercial supplier of the material. Under such circumstance, a deposit of no longer readily available material would be required.

Response: Since the necessity or desirability of replacing a deposit may arise from a number of circumstances, the PTO does not consider it appropriate to define separate rules or procedures for making a replacement under each circumstance. The rules being considered by the PTO are limited to a replacement right only for the original depositor. As one comment observed, the law on property rights in biological materials is somewhat unclear at this time and redeposit by a party other than the original depositor might be considered an act of conversion, depending on the precise circumstances. Moreover, the PTO has indicated an intention of applying a rebuttable presumption that once a biological material has been deposited for the term and under conditions specified in these rules under consideration by the PTO, the biological material deposited would be considered to be known and readily available to the public.

Comment: The guidelines are unclear as to the ability to obtain the benefit of a foreign priority date. Apparently, the PTO is aware that *Lundak* held that 35 U.S.C. 112 requires that a deposit be made and a reference added to the specification before the U.S. patent issues. Thus, 35 U.S.C. 119 affords the benefit of the priority date even if the priority document fails to mention a deposit and even if a deposit had not been made.

Response: The PTO will follow the same procedures for handling a claim for foreign priority in all applications. The examiner will acknowledge a claim for foreign priority when all formal requirements are met and will not consider the merits of an applicant's claim of priority unless a reference is found with an effective date between the date of foreign filing and the date of filing in the United States or when an interference situation is under consideration. Where the merits of a claim for priority need to be determined, the examiner will follow the guidelines in § 201.15 of the Manual of Patent Examining Procedure in making that determination. It must also be emphasized that applicants may not be granted priority in applications filed in countries foreign to the United States if they fail to make a deposit in a permanent depository acceptable to that foreign country before the filing date of the application in the United States.

Comment: If a deposit is found to be contaminated, what option does a depositor have? Can the deposit be replaced and the original deposit date be retained?

Response: If a deposit can still be considered to be viable, even though contaminated, the rules being considered by the PTO would not permit replacement of the original deposit. While there may be an appropriate mechanism for substitution of a deposit number in an existing application, the original deposit, even though contaminated, would provide the best evidence of whatever it was that was originally deposited and should be preserved.

Comment: If a deposit does not produce the product for which it was deposited (antibiotic, for instance), what option does a depositor have? Can the deposit be replaced and the original date retained?

Response: Any deposit which is made in accordance with the rules being considered by the PTO would have only a viability statement associated with it. There is absolutely no proof that the material originally deposited was capable of producing the product for which it was deposited. While it's clearly in the interest of the public to have a deposit available to it which is capable of making the product for which it was deposited, the destruction or replacement of the best evidence of what was originally deposited should not be lost if made in association with an existing patent. Perhaps the depositories should consider preservation of samples of the original deposit in conjunction with a deposit which is neither contaminated nor incapable of producing the product for which it was deposited.

Dated: June 19, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 87-20528 Filed 9-8-87; 8:45 am]

BILLING CODE 3510-16-M

federal register

Wednesday
September 9, 1987

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 45, and 91

Aircraft Identification and Retention of Fuel System Modification Records; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 45, and 91

[Docket No. 25033; Amendment Nos. 43-29, 45-17, and 91-206]

Aircraft Identification and Retention of Fuel System Modification Records

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations to require: (1) that 12-inch high nationality and registration marks be displayed on all aircraft that penetrate an Air Defense Identification Zone or a Defense Early Warning Identification Zone; (2) that a civil aircraft identification data plate be displayed on the exterior surface of each U.S.-registered aircraft; and (3) that a copy of the form which authorizes the alteration of an aircraft with fuel tanks within the passenger or a baggage compartment be kept on board the modified aircraft.

These amendments are necessary because of the increased dangers to civil aviation resulting from the major increase in illegal drug importations into the United States by air. They are intended to expand the effectiveness of narcotic interdiction and, thereby, provide for improvement in safety of civil aviation operations, while at the same time reducing the flow of drugs by air into the United States.

EFFECTIVE DATE: December 8, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph J. Gwiazdowski, Aircraft Manufacturing Division (AWS-200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9541.

SUPPLEMENTARY INFORMATION:

Background

Although the Federal Aviation Airworthiness (FAA) does not enforce the anti-drug smuggling and related criminal statutes, it is concerned with the hazards to air commerce in the United States arising from the use of aircraft to escape detection while importing illegal, contraband substances (narcotic drugs, marijuana, and depressant or stimulant drugs) into the United States. The hazards to air commerce have increased consistent with the growing number of pilots who are willing to risk the carriage of these illegal goods despite escalating law enforcement activities. The U.S. Customs Service (Customs) reports that the vast majority of illegal drug trafficking by air into the United States passes through an Air Defense Identification Zone (ADIZ) or Defense Early Warning Identification Zone (DEWIZ). The means for detection of these aircraft include low altitude radar, law enforcement pursuit aircraft, and advanced police techniques. Those pilots committed to evading detection by pursuit aircraft may engage in extremely dangerous flight techniques, such as very low flight to avoid radar; landing and taking off from unprepared landing areas; operation without lights; and operation in weather conditions beyond the capability and/or qualifications of the aircraft or pilot. These flight techniques create a safety hazard for all other aircraft in the area and for persons and property on the ground. Additionally, many of the aircraft used for such operations have been equipped with extended-range fuel tanks which are not installed in accordance with the Federal Aviation Regulations (FAR), posing an additional safety hazard. Thus, while other agencies are responsible for criminal law enforcement concerning illegal substances (narcotic drugs, marijuana, and depressant or stimulant drugs), the hazardous aeronautical activities of pilots engaged in smuggling and the potential increase in volume of these substances into the United States pose a direct threat to air commerce. This threat was a basis for the FAA adopting § 91.12 of the FAR, which provides that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs are carried in the aircraft, unless authorized under Federal or State law. During several meetings, the FAA and Customs representatives focused on actions required to develop more effective means to reconcile specific drug enforcement problems involving aircraft. In a July 11, 1985, letter to the FAA, the Assistant Secretary of the Department of Treasury outlined and proposed the specific regulatory amendments which Customs considered to be necessary to assist it in curbing use of aircraft carrying illegal substances and to identify those aircraft which may be used for drug smuggling. Customs believes that their proposed amendments represent a significant step toward curbing the use of aircraft for drug smuggling. The proposed amendments are based on the increase of illegal drug importation by aircraft and on the value to law enforcement officials of positive identification of all aircraft including those aircraft which may be involved in such activities. The problems identified by Customs include:

1. Positive air-to-air identification of aircraft penetrating an ADIZ or DEWIZ is hindered by the difficult-to-read 3-inch identification marks displayed on some of these aircraft;

2. Aircraft with identification (I.D.) plates which cannot readily be seen hamper the prompt identification of stolen or falsely numbered aircraft; and

3. Inability to readily verify unapproved aircraft modifications involving unauthorized fuel tanks in the passenger compartment or a baggage compartment because the records for approved aircraft modifications are not required to be kept aboard the aircraft.

On July 3, 1986, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 86-9 (51 FR 25174; July 10, 1986) proposing responses to these three problems raised by Customs.

Registration Numbers

As discussed in the notice, Customs and other law enforcement groups, in combating drug trafficking by air, frequently must attempt to identify, from a high-performance aircraft, a small low-performance aircraft including aircraft suspected of being used in the illegal activity. Often these operations must be performed at night using special devices and capabilities to enhance identification and to apprehend smugglers. Many of the suspected aircraft have small, 3-inch nationality and registration marks (N-numbers) which are difficult to see or detect when attempting air-to-air identification. This requires maneuvering relatively close to these aircraft so that positive identification can be made. The use of larger registration marks makes identification easier and results in safer operation by maintaining a larger (up to six times greater) separation between the aircraft.

Customs has found that many aircraft flying into the United States display the small, 3-inch marks, making it difficult to identify aircraft, including suspect aircraft. The vast majority of the suspected aircraft, which are not limited to a particular type of aircraft, pass through an ADIZ or DEWIZ prior to entering the United States. It is these aircraft for which Customs, or other law enforcement or military organizations, are likely to attempt air-to-air identification.

Identification Plates

The FAA has adopted several related amendments concerning I.D. plates based on the needs and comments of the aviation community. Section 45.11 of the

FAR was changed by Amendment 45–3 (52 FR 187; January 10, 1967) to require the I.D. plate to be in an accessible location "near an entrance," not necessarily an *external* location, to allow for maximum I.D. plate protection and to facilitate normal aircraft inspection. Based on information presented by small aircraft manufacturers, the FAA again changed § 45.11 of the FAR by adopting Amendment 45–7 (33 FR 14402; September 25, 1968) to provide an optional location for an aircraft I.D. plate. Under this option, the I.D. plate may be affixed permanently on the exterior of the fuselage near the tail surfaces, if it is legible to an observer on the ground. Additionally, FAA Advisory Circular AC 45–2, Identification and Registration Markings, which provides guidance and information concerning the identification and marking requirements for aircraft, includes a provision that, if under certain conditions the I.D. plate had to be covered or enclosed in any manner, its accessibility is considered acceptable if it can be revealed without the use of tools.

The Customs Service indicates that when investigating aircraft, including those suspected of being used for smuggling, it is difficult to determine quickly whether the FAA assigned N-number is displayed appropriately on the aircarft. Furthermore, false numbers may be used on stolen aircraft, which frequently are used for smuggling. Cross-checking the N-number with the I.D. plate data, which is an integral part of identification for the aircraft, assists in determining whether the N-number is false. The I.D. plates for many aircraft, however, are located in the aircraft interior so that they cannot be read from outside the aircraft, making it difficult for investigators to make an on-the-spot check of a suspected aircraft. Customs contends that the repositioning of existing I.D. plates, or placement of another I.D. plate on the exterior of the aircraft near the main entrance, would enable investigators to compare quickly the serial number with the N-number to help determine whether suspect aircraft have been stolen or the N-numbers falsified.

Additional Fuel Tank Installation

The FARs prescribe requirements for the approval of major alterations to aircraft type designs, which include such installations as additional fuel tanks in an aircraft. The FARs also prescribe recordkeeping requirements for such approvals. Most fuel tank installations performed on aircraft operating under Part 91 require an appropriate approval for the type design change and recording of the completion of the modification on FAA Form 337. Those aircraft operated under Part 121, 127, and 135 of the FARs may have additional fuel tanks installed in accordance with applicable requirements, of the particular continuous airworthiness program and prepare the documentation for the alteration other than an FAA Form 337, in accordance with the continuous airworthiness program.

Customs reports that aircraft used to smuggle drugs are often modified with fuel tanks which are installed in the passenger or a baggage compartment and which are not authorized by the FAA. These fuel tanks are installed to permit the aircraft to make long unrefueled flights, such as from the United States to South America. This long-range unrefueled capability adds to the difficulty in pursuing suspected aircraft. These unauthorized, usually haphazard, fuel tank installations create a safety hazard because there is no assurance that they meet the safety standards established by the FAA.

One problem with attempting to identify the unauthorized extended-range fuel tank installation is that it is difficult to check, on the spot, whether the tanks have been installed in accordance with FAA requirements. The FAR type certification procedures require FAA approval for any changes to type design of a U.S. civil aircraft, such as modifications to install extended-range fuel tanks. Documentation evidencing such approval may vary depending upon the nature of the change to the aircraft's type design.

One way that approval can be evidenced is for an authorized person performing the work to execute an FAA Form 337 in accordance with Appendix B of Part 43 of the FAR. However, there is currently no requirement for records of such authorization to be on board the aircraft. Customs contends that a regulation requiring an FAA Form 337 to be aboard the aircraft when extended-range fuel tanks are installed within the passenger or a baggage compartment would assist Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have such installations. Customs investigators can make an on-the-spot check of the suspected aircraft's FAA Form 337. In addition, this action would assist the FAA in identifying aircraft with unauthorized fuel tanks, and thus avoid a potential hazard to the aviation community and the public.

Participation in Rulemaking

Notice No. 86–9 gave interested persons an opportunity to participate in amending these rules. Due consideration was given to all information submitted by the commenters. Except as discussed in this preamble, the revisions adopted by these amendments and the reasons for them are the same as those in Notice No. 86–9.

Discussion of Amendments

The FAA has determined that the amendments proposed in Notice No. 86–9 should be adopted. The comments received in response to the notice are discussed below.

A. Improve Indentification of Aircraft Penetrating the ADIZ and DEWIZ—§§ 45.21 and 45.29

This amendment requires that all aircraft penetrating the ADIZ or DEWIZ display 12-inch markings. However, if any surface authorized to be marked is not large enough for full-size marks, marks as large as practicable shall be placed on the largest of the authorized surfaces in accordance with § 45.29(f).

To ease the burden on owners of affected aircraft which penetrate the defense zones, under the provision of § 45.21(d), this amendment permits the 12-inch markings to be temporary on those "grandfathered" aircraft and certain aircraft which are currently authorized to operate with small markings as specified in § 45.29(b). Moroever, to avoid any burden due to downtime, ferrying, or loss of revenue associated with marking the affected aircraft, a 90-day period is allowed for compliance.

Adoption of this amendment provides for the improvement in safety associated with air-to-air identification of *all aircraft* which penetrate the ADIZ or DEWIZ. It has no impact on the majority of other aircraft operators since most aircraft currently displaying marks less than 12 inches high under Part 45 do not penetrate these zones and thus pose no problem at this time. Those aircraft with smaller marks operating solely within one of these zones, e.g., the Alaska DEWIZ or ADIZ, also will not be affected if they do not depart and reenter (penetrate) the zone.

B. Change I.D. Plate Location—§ 45.11

This amendment requires that all aircraft display an I.D. plate, as specified by § 45.11(a), on the aircraft fuselage exterior surface, in a location legible to an observer on the ground. It must be located adjacent to and aft of the rear-most entrance door or on the exterior surface near the tail. An aircraft

I.D. plate affixed in an easily accessible area, legible to an observer on the ground, facilitates verification of aircraft identification by FAA inspectors, Customs investigators, and other law enforcement officials. The amendment provides for ready access to the I.D. plate data without having to enter the aircraft. It makes the I.D. plate information and N-number available simultaneously to provide a cross reference to help determine whether the aircraft may have been stolen or to determine if the registration number has been falsified. It also facilitates FAA inspectors' identification of aircraft for verification of maintenance, modification, and other airworthiness requirements to assure safe aircraft operation.

This amendment is not retroactive since this could result in a major change which would pose an undue burden on many aircraft owners. For example, if the I.D. plates currently affixed to aircraft, as required, were to be removed (i.e., repositioned) from the existing locations, this could result in damage to the aircraft and I.D. plate, and might require burdensome engineering and manufacturing changes such as structural, interior or exterior repair, or repainting.

As a cost-saving alternative for aircraft manufactured prior to 90 days after the effective date of this amendment, this final rule allows the display of just the model designation and builder's serial number on the fuselage exterior, adjacent to and aft of the rear-most entrance. This may be done if the identification plate is secured at an accessible exterior or interior location near an entrance. The model designation and serial number are required to be affixed in such a manner that they are not likely to be defaced or removed during normal service. Unlike the required fireproof I.D. plate, this "supplemental" identification does not have to be affixed in a manner such that it is not likely to be lost or destroyed in an accident. Thus, the data may be affixed in a relatively low-cost manner, such as by painting or decal.

C. Illegal Fuel Tank Installation—Part 43, Appendix B(a) and (d); § 91.27(c); and § 91.173(a) and (d)

This amendment requires that all affected aircraft modified with additional fuel tanks in the passenger or a baggage compartment, under Part 43 of the FAR, physically have on board the aircraft a copy of the required FAA Form 337. This includes aircraft previously not required to have an FAA Form 337 for fuel tank installations when operating with a special flight permit for the purpose of delivery or export. This amendment also requires that the owner or operator of an aircraft with such fuel tanks present the FAA Form 337 for inspection by any law enforcement officer.

This amendment provides one means for FAA, Customs, and other investigators to quickly obtain evidence as to whether the additional tanks in the aircraft are authorized or possibly illegally installed. Enforcement action can then be taken by the FAA and the appropriate agency against persons operating such aircraft. Action can also be taken to prevent the aircraft from being flown. This rule makes it possible for Customs to concentrate interdiction efforts on those aircraft modified with unathorized fuel tank installations and which are possibly being used for illegal drug trafficking. By limiting this rule to aircraft modified with fuel tanks in the passenger or baggage compartments, which requires an FAA Form 337 under Part 43, operators of aircraft with FAA-approved extended-range fuel tanks located elsewhere in the aircraft (e.g., wing tip tanks) would not be required to keep that authorization on board the aircraft.

Discussion of Comments

General

Eighty commenters, representing the views of the aviation community, participated in this rulemaking. Comments were submitted by individual pilots and owners and operators of aircraft including representatives of some aviation and aircraft manufacturers associations. Generally, the commenters support Customs' objective to stop the flow of illegal drugs into the United States by air. However, most commenters disagree as to what amendments should be adopted and who should comply with them. Some commenters disagree with all the amendments or recommend proposals which are outside the scope of the NPRM. The majority of the commenters address the proposed amendments separately and give reasons which oppose a particular issue and either concur in or withhold comments on the other issues.

The comments from aviation association representatives on the amendments also range from full support as noted by the Airline Pilots Association (ALPA) to "no merit" as the Aircraft Owners and Pilots Association (AOPA) contends. Many commenters contend that the FAA action will not stop drug trafficking and question the value of these amendments. They contend that there are more effective ways to stop drug smugglers such as direct legislation against smugglers. The commenters, however, fail to recognize or acknowledge that the FAA action proposed in Notice No. 86-9 is only a part of the total U.S. Government on-going effort to actively suppress drug smuggling, which includes law enforcement agencies efforts of other Departments such as the Treasury, Justice, and Defense. These initiatives carry out the mandates of Congress, such as the Anti-Drug Abuse Act (Pub. L. 99-570, October 27, 1986).

The pertinent comments and commenters' recommendations concerning each amendment are discussed in the following paragraphs. In addition, comments concerning the time and cost of compliance are discussed separately.

Registration Numbers

The majority of commenters object to the requirement for displaying 12-inch N-numbers on certain aircraft that penetrate an ADIZ or DEWIZ. The commenters contend that the amendment imposes unnecessary costs on owners and operators of aircraft allowed to display smaller N-numbers under § 45.29(b), with no benefit to legitimate operators who must pay for an ineffective law which drug smugglers can easily circumvent with temporary and false markings. Also, operators of some aircraft such as experimental amateur-built, rotorcraft, gliders, airships, and balloons feel that this amendment should be limited to twin-engine, fixed-wing aircraft.

The FAA disagrees because, as stated in the notice, there is an urgent need for positive identification of *all aircraft* that penetrate the defense zones, regardless of size and configuration. However, it should be noted that this amendment only affects those aircraft that display the ineffective small N-numbers and penetrate the ADIZ or DEWIZ. Additionally, to avoid unnecessary costs to operators of the affected aircraft, a 90-day time period is provided for compliance. This provides for sufficient time in which the temporary or permanent 12-inch N-numbers can be affixed to aircraft affected.

A few commenters questioned why all aircraft operating in Alaska must display 12-inch marks since Alaska lies entirely within an ADIZ while aircraft in the contiguous United States may display small N-numbers. However, the rule applies to those aircraft that *penetrate* the ADIZ or DEWIZ. Accordingly, aircraft allowed to display small N-numbers in accordance with

regulations, whether in the United States or elsewhere, must affix 12-inch N-numbers only if they are going to penetrate an ADIZ or DEWIZ. Thus, aircraft operating solely within the State of Alaska will not be required to display 12 inch N-numbers unless they depart on and reenter the ADIZ.

Some commenters contend that the amendment penalizes legitimate aircraft operators while drug smugglers can easily circumvent or violate the regulation. The FAA disagrees because most aircraft operators are required to display 12-inch N-numbers under Part 45. Further, the FAA, in conjunction with other law enforcement agencies, aggressively investigates and takes appropriate action on incidents involving violations of the FAR. Furthermore, under the new Anti-Drug Abuse Act, increased civil and criminal penalties may be imposed on aircraft operators involved in drug smuggling. These penalties range up to $250,000 and 20 years in prison and include the seizure and forfeiture of the aircraft. The amendments to §§ 45.21 and 45.29 have been adopted as proposed.

Identification Data Plates

With regard to the exterior location of I.D. plates and/or data, most commenters contend generally that this amendment is ineffective, impractical, or redundant. A majority of the commenters contend that the amendments would be ineffective because the rule can be easily circumvented by falsifying the data on the exterior surface of the aircraft. The FAA does not agree since the FAA penalties and the more recent legislation, cited previously, are expected to deter such violations.

Some commenters maintain that the rule is impractical because repositioning the existing I.D. plates or affixing a second I.D. plate could damage the aircraft, especially those covered with fabric. The FAA does not agree since the rule does not require repositioning of the original I.D. plates, which conceivably could result in damage to the aircraft. Also, both old and new aircraft can have I.D. plates affixed on the exterior surface, as required, without damaging even fabric-covered aircraft.

Some commenters claim that I.D. plates affixed to the exterior surface of large aircraft would be too high to read by an observer on the ground. Others argue that there is no need to change the I.D. plate location on some rotor-craft, open cockpit aircraft, and balloons where the required I.D. plate can be viewed by an observer outside the aircraft.

However, although I.D. plates can be viewed from the outside of some aircraft, the FAA has determined that I.D. plates in a *standard* location on the exterior surface adjacent to and aft of the rear-most entrance door of an aircraft provides for quick access to the I.D. information, in addition to precluding the need to gain access to the inside of an aircraft.

With regard to the redundant data, commenters contend that there is no need to affix the same data in two places on the same aircraft, therefore, the status quo should be maintained or the NPRM withdrawn.

The FAA disagrees because the I.D. information which is secured inside an aircraft cannot be obtained readily, as some contend, without gaining access to the aircraft. The FAA has determined that the standard exterior location is the most effective location for I.D. plates and/or data. A standard location provides quick access to the identification data with the least impact on the aviation community since most aircraft owners and operators already comply with that requirement, while others can mark their aircraft inexpensively as discussed in Notice No. 86-9.

Additional Fuel Tank Installations

The majority of commenters responding to this amendment agreed with the requirement to have the completed FAA Form 337 aboard an aircraft modified in accordance with Part 43 with fuel tanks in the passenger or baggage compartments. Those opposed contend that the amendment imposes an unnecessary burden on operators of aircraft that may be modified with fuel tanks in accordance with regulations which do not require the use of an FAA Form 337 for documenting major alternations. Accordingly, they maintain that the rule should exempt operators under Parts 121, 127, or 135, as applicable.

The FAA considered the regulations governing aircraft modified under other applicable provisions. However, approved documentation under a continuous airworthiness maintenance program may not be as suitable for carriage on an aircraft as the FAA Form 337. For that reason, the proposed amendment applied only to aircraft modified pursuant to part 43 with fuel tanks installed in the passenger or baggage compartments. This amendment adopts that proposal. The new rule does not require documentation for aircraft modified under other provisions of the FAR.

Some commenters state that the FAA Form 337 can be easily falsified or that an approved installation could be used by a smuggler and that, either way, the amendment has little value. The FAA does not agree since violations of the applicable regulations, such as unapproved equipment installations, are vigorously pursued and enforced by the FAA to maintain safety in air operations. In addition, Customs considers this amendment to be a significant step toward curbing the use of aircraft for drug smuggling.

Time for Compliance

Some commenters object that the proposal does not provide sufficient time for compliance and that this creates an undue burden on owners and operators because of the requirements for ferrying and downtime. The FAA agrees with these commenters. It was planned to allow a period of 90 days after the effective date for compliance with the requirements for the display of 12-inch N-numbers and for the affixing of I.D. plate and/or data. In the NPRM, however, the "October 8, 1986" date was published in error apparently by using the published date of July 10, 1986, as the start of the 90-day period. A correction is made to allow sufficient time for compliance.

To preclude an undue burden on aircraft owners and operators, the 90-day period provides time for appropriate N-numbers and the I.D. plate and/or data to be affixed. The delayed compliance time only applies to the requirements for the display of 12-inch N-numbers and the I.D. plate and/or data. The display of temporary 12-inch markings is permitted for N-numbers, as appropriate, and the method for affixing data plate information on the exterior surface of an aircraft is purposely undefined to allow for economic alternatives, such as painting or decals.

Cost of Compliance

The majority of commenters object to the cost that would be imposed by the proposed 12-inch N-numbers and I.D. plate amendments. They contend that the cost of compliance estimates are too low. In addition, the commenters indicate that the FAA cost estimates do not reflect a loss of revenue caused by ferrying and downtime.

The FAA disagrees with the commenters that its cost estimates are too low. The FAA believes its cost estimates to be a good indicator of what aircraft operators/owners impacted would, on the average, incur. Moreover, after careful examination of the comments received on NPRM No. 86-9, it has become apparent to the FAA that the majority of the commenters

apparently failed to consider the FAA assumptions noted in the NPRM or as detailed in the draft regulatory evaluation in the docket. This evaluation fully explains how the cost of compliance estimates, which range between $100 and $215, were derived and contains a number of assumptions on which these cost estimates are based. Briefly, some of these assumptions are based on the fact that only those aircraft displaying small N-numbers under § 45.29, which includes aircraft "grandfathered" by Amendments 45–13 and 45–15, would be impacted by the 12-inch N-numbers requirement when penetrating the ADIZ or DEWIZ. It is further assumed that all operators of those "grandfathered" aircraft will be required to display 12-inch N-numbers only 1 or 2 years sooner than they otherwise would be required because of repainting, restoring, or changing the marks. Therefore, the FAA evaluation accurately reflects only that small portion of the estimated $550 cost of displaying 12-inch N-numbers. The net result is that this rule will impact very few aircraft since most aircraft would switch to permanent 12-inch N-numbers in that period.

The cost of compliance for the I.D. plate amendment assumes that this data information would be painted on the designated exterior of all existing impacted aircraft for about $100 based on conversations between FAA and fixed base operators.

With regard to downtime and ferrying, the FAA allows impacted aircraft operators and owners a period of 90 days after the effective date of the final rule to come into compliance. This period of 90 days provides sufficient time for impacted operators and owners to comply with the rule without incurring additional costs attributed to downtime and ferrying. The intent of the FAA has always been to allow a reasonable period of time for impacted parties to comply with the rule. It has always been the policy of the FAA *not* to impose undue cost burdens on parties impacted by its regulatory efforts.

Summary of Comments

Most commenters oppose the adoption of the amendments; however, they have neither provided sufficient justification for their positions nor shown that withdrawing Notice No. 86–9 is in the public interest. It appears that many commenters failed to consider the reasons for adopting the amendments provided in the NPRM. Many comments objected that they must comply with the amendments when, in fact, they are not affected. For example, their aircraft will not penetrate an ADIZ or DEWIZ, or the I.D. plates are already affixed as required. The new requirement for the appropriate FAA Form 337 to be aboard aircraft modified with certain fuel tanks under Part 43 is favored by the majority of the commenters and poses no problem.

The FAA agrees with comments requesting that it clarify and correct errors. Therefore, the comments that the FAA is accepting, and which the final rule reflects, include an appropriate compliance date and editorial changes suggested to clarify the amendments as proposed. Also, in response to comments, the FAA has also reevaluated and clarified the cost impact where necessary.

Regulatory Evaluation Summary

The regulatory evaluation prepared for this rule examines the benefit and cost aspects of the establishment of identification, registration marking and recording of major repair requirements that impact general aviation aircraft. The rule includes amendments to Parts 43, 45, and 91 of the FAR, which respond to the Department or Treasury's request for the following:

1. That, 90 days after the effective date of this rule, 12-inch high nationality and registration marks (N-numbers) must be displayed on aircraft that penetrate an ADIZ or a DEWIZ;
2. That, 90 days after the effective date of this rule, a civil aircraft identification (I.D.) plate or its information must be displayed in a legible area on the fuselage exterior of an aircraft either adjacent to and aft of the rear-most entrance, or on the fuselage near the tail surfaces; and
3. That, after the effective date of this rule, a copy of the FAA Form 337 completed upon installation of fuel tanks installed within the passenger compartment or a baggage compartment under Part 43 of the FAR be kept in the aircraft by the owner or operator.

Costs

Estimates of the cost of compliance with the amendments to Parts 43, 45, and 91 have been developed by the FAA. Cost estimates were obtained primarily from civil aircraft manufacturers and fixed based operators.

This evaluation estimates that the one-time cost of compliance associated with the amendments to § 45.11 (I.D. plate amendment) and § 45.29 (12-inch N-number amendment) are expected to range between $7 million and $8 million (present discounted value of cost at 10 percent, 1987). The amendment to § 45.11 will impact an estimated 79,300 to 82,000 fixed-wing aircraft, rotorcraft, and other types of affected civil aircraft (blimps, balloons, and gliders) at a cost of $100 each. Moreover, the amendment to § 45.29 will affect an estimated 3,900 to 13,500 fixed-wing aircraft and rotorcraft at a cost of $55 to $115 each, respectively. Collectively, the cost of compliance will range between $100 and $215 per aircraft (1985 dollars). Conversely, the amendments to Appendix B of Part 43 (Recording of Major Repairs and Major Alterations), § 91.27 (Civil Aircraft: Certifications Required), and § 91.173 (Maintenance Records) are estimated to impose no additional cost. Under this amendment, this form is filled out in triplicate, rather than duplicate, to provide for a copy to be kept on board an aircraft modified with a fuel tank in the passenger compartment or a baggage compartment. In addition, the amendment to § 45.21 (General) is estimated to impose no additional cost to owners and operators of aircraft which may penetrate a defense zone because it merely provides for the option of using temporary or permanent 12-inch markings rather than an additional requirement.

Benefits

The anticipated benefits of the amendments include the following: (1) improved positive identification of those aircraft previously allowed to display small N-numbers when penetrating the ADIZ or DEWIZ; (2) improved verification of aircraft identification and enhanced ability of inspectors to determine noncompliance, such as whether a suspect aircraft had been stolen or the N-numbers falsified; and (3) increased effectiveness of Customs in concentrating interdiction efforts on suspicious aircraft not authorized to operate with fuel tanks installed in the passenger compartment or a baggage compartment. The FAA has been unable to quantitatively determine the extent to which Customs' drug interdiction efforts will be enhanced by this rule and resulting benefits. This difficulty is largely attributed to the fact that benefits of Customs' drug enforcement efforts represent a public good. This good does not subject itself to market evaluation. Thus, it is extremely difficult to evaluate these benefits in monetary terms. An indication of the potential benefits that could accrue from reduced drug abuse activity, due to enhanced drug interdiction, is shown in a 1984 report by the Research Triangle Institute. The report revealed that the economic cost to society of drug abuse amounts to approximately $64 billion annually.

Safety benefits are also expected to accrue from this rule. These benefits are related to the lowering of fatalities and serious injuries associated with operation of civil aircraft in active drug trafficking areas. A review of the National Transportation Safety Board's data base for drug-related accidents revealed that 127 fatalities and 33 serious injuries occurred between 1975 and 1984. During this period, these statistics equated to an annual average of 13 fatalities and 3 serious injuries related to drug trafficking activity. The rule is expected to have a positive impact on these grim statistics, though to what extent is not known by the FAA.

The regulatory evaluation that has been placed in the docket contains information in more detail related to costs and benefits that are expected to accrue from the implementation of this rule.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, the amendments contained in this rule are not expected to have a significant economic impact on a substantial number of small entities. The responsibility for marking or providing I.D. plate information on existing aircraft is placed directly on the owner or operator of the aircraft. However, for new aircraft, the I.D. plate responsibility is placed on the applicant for airworthiness certificate, usually the manufacturer. This amendment will impose no additional cost on manufacturers since it only requires that the I.D. plate be located on the exterior rather than interior of the aircraft. The majority of small entities impacted by this rule represent operators of unscheduled aircraft for hire. These operators are expected to incur a one-time compliance cost ranging between $155 and $215. These costs are far below the annualized threshold of significant regulatory cost of $3,540. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

All foreign and domestic manufactured aircraft sold in the United States need to be identified in accordance with the provisions of this rule. The cost of marking the aircraft is borne by individual domestic owners or operators only. This rule will not have an impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Conclusion

The amendments contained in this FAA document involve only the cost of affixing N-numbers or data to aircraft belonging to a minor part of the aviation community. The benefits are unquantifiable in that the amendment will enhance safety as well as assist Customs in its drug interdiction efforts as requested. The cost imposed on small entities are below the annualized threshold of significant regulatory costs. Therefore, I certify that under the criteria of the Regulatory Flexibility Act, these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the amendments do not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 43

Aircraft.

14 CFR Part 45

Nationality.

14 CFR Part 91

Aircraft, Airworthiness directives and standards.

Adoption of the Amendments

In consideration of the foregoing, Parts 43, 45, and 91 of the Federal Aviation Regulations (14 CFR Parts 43, 45, and 91) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Appendix B is amended by revising the introductory text of paragraph (a) and adding a new paragraph (d) to read as follows:

Appendix B—Recording of Major Repairs and Major Alterations

(a) Except as provided in paragraphs (b), (c), and (d) of this appendix, each person performing a major repair or major alteration shall—

* * * * *

(d) For extended-range fuel tanks installed within the passenger compartment or a baggage compartment, the person who performs the work and the person authorized to approve the work by § 43.7 of this part shall execute an FAA Form 337 in at least triplicate. One (1) copy of the FAA Form 337 shall be placed on board the aircraft as specified in § 91.173 of this chapter. The remaining forms shall be distributed as required by paragraph (a) (2) and (3) or (c) (1) and (2) of this paragraph as appropriate.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

3. The authority citation for Part 45 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, and 1522; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. Section 45.11 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 45.11 General.

(a) *Aircraft and aircraft engines.* Aircraft covered under § 21.182 of this chapter must be identified, and each person who manufacturers an aircraft engine under a type or production certificate shall identify that engine, by means of a fireproof plate that has the information specified in § 45.13 of this part marked on it by etching, stamping, engraving, or other approved method of fireproof marking. The identification plate for aircraft must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident. Except as provided in paragraphs (c) and (d) of this section, the aircraft identification plate must be secured to the aircraft fuselage exterior so that it is legible to a person on the ground, and must be either adjacent to and aft of the rear-most entrance door or on the fuselage surface near the tail surfaces. For aircraft engines, the identification plate must be affixed to the engine at an accessible location in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident.

* * * * *

(d) On aircraft manufactured before December 8, 1987, the identification plate required by paragraph (a) of this section may be secured at an accessible exterior or interior location near an entrance, if the model designation and builder's serial number are also displayed on the aircraft fuselage exterior. The model designation and

builder's serial number must be legible to a person on the ground and must be located either adjacent to and aft of the rear-most entrance door or on the fuselage near the tail surfaces. The model designation and builder's serial number must be displayed in such a manner that they are not likely to be defaced or removed during normal service.

5. Section 45.21 is amended by revising paragraph (d)(3) to read as follows:

§ 45.21 General.

* * * * *

(d) * * *

(3) It is marked temporarily to meet the requirements of § 45.22(c)(1) or § 45.29(h) of this part, or both.

6. Section 45.29 is amended by revising the introductory text of paragraph (b) and adding a new paragraph (h) to read as follows:

§ 45.29 Size of Marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h) of this part, the nationality and registration marks must be of equal height and on—

* * * * *

(h) After December 8, 1987, each operator of an aircraft penetrating an ADIZ or DEWIZ shall display on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 S A . 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

8. Section 91.27 is amended by adding a new paragraph (c) to read as follows:

§ 91.27 Civil aircraft: Certifications required.

* * * * *

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to Part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

9. Section 91.173 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 91.173 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present the Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to Part 43, a copy of the FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

Issued in Washington, D.C., on September 1, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87–20606 Filed 9–8–87; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
September 9, 1987

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons; Notice of Proposed Annual Funding Priority and Grant Availability

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priority.

SUMMARY: The Secretary proposes an annual funding priority for the Postsecondary Education Program for Handicapped Persons-Demonstration Projects component. This priority will support projects that provide development or refinement of employment-related skills to youths with mild and moderate handicaps in community colleges, vocational-technical institutes, and other postsecondary educational settings.

DATE: Comments must be received on or before October 9, 1987.

ADDRESS: Comments should be addressed to Dr. Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4092), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein. Telephone: (202) 732-1176.

SUPPLEMENTARY INFORMATION: The Postsecondary Education Program for Handicapped Persons is authorized by Section 625 of Part C of the Education of the Handicapped Act (20 U.S.C. 1424a) to develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Consideration is given, under a separate competition, to four regional centers for individuals who are deaf. This notice concerns support for model projects for individuals with handicapping conditions other than deafness, for the purpose of developing and adapting educational programs that meet the special needs of these individuals. These projects are to coordinate, facilitate, and encourage education of persons with handicaps with their nonhandicapped peers. Under this program, the Secretary makes awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Proposed Priority

(a) In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3) and with 34 CFR 338.30 (b) and (c) and 338.10(a)(2)(i), the Secretary proposes to give an absolute preference to applications submitted under this priority for model projects of supportive services to individuals with mild or moderate handicapping conditions other than deafness that (a) focus on specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers, and (2) are targeted to vocational outcomes for youth who have recently completed or left secondary educational programs. Applicants must develop strategies for locating and serving young adults with handicaps who are in need of continued educational services to secure and maintain competitive employment. Applicants must establish or make use of existing formal cooperative relationships between secondary schools and potential employers, and must assure that these young adults will have individualized educational plans that detail the goals and objectives for obtaining the skills requisite for employment. Job placements and follow-along activities are expected as basic components of proposed activities. This priority is focused on short-term educational interventions necessary to assist youth to secure competitive employment. In addition to entry-level employment, interventions may include training in aspects of adjustment to the community as well as to the workplace. Applications for multi-year awards will have graduates entering the work force; these applications may reflect follow-up and follow-along data from worker-graduates in their evaluation plans.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination review of proposed Federal financial assistance.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to the priority will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Educational Programs for Handicapped Persons)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-20642 Filed 9-8-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.078]

Notice Inviting Applications for New Awards Under the Postsecondary Education Program for Handicapped Persons—Demonstration Projects for Fiscal Year 1988

Purpose: To develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for persons with handicapping conditions other than deafness.

Deadline for Transmittal of Applications: December 18, 1987.

Deadline for Intergovernmental Review: February 16, 1988.

Applications Available: November 2, 1987.

Estimated Range of Awards: $1,000,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 10.

Project Period: From 1 to 3 years.

Applicable Regulations: (a) The Postsecondary Education Program for Handicapped Persons Regulations, 34 CFR Part 338, (b) the Education Department General Administrative Regulations, 34 CFR 74, 75, 77, 78, and 79, and (c) when adopted in final form, the annual funding priority for this program. A notice of proposed annual funding priority is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priority. If there are any changes made when the final annual funding priority is published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Joseph Rosenstein, Telephone: (202) 732-1176, Office of Special Education Programs,

Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202.

Program Authority: 20 U.S.C. 1424a.

Dated: September 3, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-20643 Filed 9-8-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
September 9, 1987

Part VII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 215, 236, 813, 882, 912 and 913

Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs; Definition of Income Final Rule and Federally Mandated Exclusions From Income Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, 882, 912 and 913

[Docket No. R-87-1345; FR-2184]

Definition of Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes a few adjustments in the definition of income used in HUD's assisted housing programs. Exclusions from income are made in response to enactment of the Higher Education Amendments of 1986 and in response to inquiries about the interaction of various State and Federal programs with HUD's income and rent provisions. The exclusions involve scholarships—in the case of the Higher Education Amendments, training program grants, and, in the case of the public housing rule, a conforming exclusion for the income of a live-in aide. In addition, there are minor changes to conform definitions in the public housing rule to those made in the Section 8 program as part of a rule that permits shared housing in one of the Section 8 programs, to clarify the treatment of assets, to remove from the public housing rule the obsolete definition of "nonimmigrant student-alien", to clarify a provision of the Section 8 Certificate rule that has appeared to conflict with income restrictions, and to reorganize all exclusions by combining two paragraphs concerning exclusions from income. (The preamble also notes in passing the decision that shared housing in public housing will not be covered by a regulation.)

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881, 883–886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 426–3944.

For Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate Rehabilitation and the Housing Voucher programs) and for Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 426–0744. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

Comprehensive final rules for the definition of income were published for the Section 8 programs on May 10, 1984 (49 FR 19925); for the Public and Indian Housing programs on May 21, 1984 (49 FR 21475); and for the Rent Supplement and Section 236 programs on July 23, 1984 (49 FR 29580—an interim rule; see also final rule published June 16, 1986, 51 FR 21850). The definitions of income in these various rules are nearly identical.

The rules are structured so that the definition of "Annual Income" includes income from all sources except those specifically excluded. Therefore, when it has come to our attention that a new provision of Federal law requires that a particular source of income must be disregarded or a particular deduction from income must be allowed, we have amended our income rules accordingly. In addition to our rules' recognition of exclusions from income required by other Federal statutes and mandatory deductions from income, the rules also contain exclusions of certain other sources of income—as an exercise of the Secretary's discretion. In the category of discretionary exclusions, the rules exclude certain portions of scholarships. This rulemaking is being initiated to simplify the method of notice of the exclusions required by Federal statute, to modify a few of the discretionary exclusions, and to make minor clarifying changes.

Justification for Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, despite the exemption for these rules contained in 5 U.S.C. 553 from the requirement to solicit public comment. However, under 24 CFR Part 10, in a particular case, the Department may omit solicitation of public comment before publishing a final rule if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, the amendments being made to the income definition rules are minor changes to clarify existing policy or to extend existing policy to income sources that have come to our attention since the issuance of the rule in 1984, or to clarify the applicability of a new Federal statute (the Higher Education Amendments of 1986) to our programs. To the extent the amendments constitute substantive changes, they are favorable to the program beneficiaries. They are supportive of the self-sufficiency of disabled persons and unemployed persons. We also note that, because of the limited applicability of the changes that are not statutorily required, e.g., to beneficiaries of programs targeted to disabled persons or unemployed persons receiving training, the changes will not have a significant effect on program cost. Therefore, the Department has concluded that solicitation of comment is unnecessary and that the delay in effectiveness that would be caused by the process would be contrary to the public interest.

Specific Changes

1. Reorganization of Definitions

In each of the definition sections—§§ 215.21, 236.3, 813.106 and 913.106—there is a paragraph (c) of enumerated exclusions that are described as "temporary, nonrecurring or sporadic income" and a paragraph (d) of enumerated exclusions that are not given a unifying description. This rule reorganizes the exclusions so that they are all contained in one paragraph (c), which does not attempt a unified descriptive title. However, the category of "temporary, nonrecurring or sporadic income" is retained and the existing subcategory of "casual, sporadic or irregular gifts" is eliminated as duplicative. Cross-references in the definition of "live-in-aide" to the paragraph that excludes the live-in-aide's income are corrected to conform to the reorganized paragraph numbering.

2. Scholarships

Under paragraph (c)(4) of the current definition of income, there is an exclusion for "[a]mounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books and equipment." However the exclusion is limited to the amount used for those purposes, and any amount not so used that is available for subsistence is specifically directed to be included in income.

Section 479B of the Higher Education Amendments of 1986, Pub. L. 99–498, approved October 17, 1986, (Education Amendments) requires that no portion of a college scholarship provided under Title IV of the Higher Education Act of

1965 used to cover the cost of attendance at the educational institution can be considered as "income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds." The Education Amendments define "cost of attendance" very broadly, to cover not only tuition, fees, books and equipment (items for which scholarship amounts are excluded under paragraph (c)(4) of our rules) but also amounts used for "supplies, transportation, and miscellaneous personal expenses" and for materials.

Thus, paragraph (c)(4) as currently written would not exclude scholarship amounts, (or veteran's benefits) used to cover the cost of materials, supplies, transportation and miscellaneous personal expenses, while paragraph (d)(3)—as applied since the Education Amendments—would appear to exclude scholarship amounts used to cover these items, but only for scholarships funded under Title IV of the Higher Education Act of 1965. Examples of Title IV programs are Basic Educational Opportunity Grants (Pell Grants), Supplemental Opportunity Grants, State Student Incentive Grants, College Work-Study, and Byrd Scholarships.

Although the Education Amendments only require exclusion from income of Title IV scholarships (in amounts as described above), HUD has decided that, for ease of administration, the income rules for these programs will exclude scholarships funded from any source to the extent they are used to cover the expenses described above.

Amounts of scholarships intended as a subsistence allowance to cover the costs of room and board are not excluded from income by the Education Amendments. Therefore, the language of paragraph (c)(4), specifically including amounts available for subsistence, is being retained.

The Education Amendments exclude sholarships from "income or resources in determining eligibility for assistance under any other [federally funded] program." Historically in the Section 8 Housing Assistance Payments program, HUD applied separate income and resources tests for dertermining eligibility than it did for determining the level of benefits. The Education Amendments could have been construed to apply only to initial eligibility when there were two different standards for determining income. However, since 1984 the Department has had just one definition of income for both purposes for the Section 8 program, as well as for other subsidized housing programs covered by this rule. Therefore, the exclusion is being applied under this rule to calculations of tenants' required rental payments as well as to initial eligibility.

Since the revision of paragraph (c)(4) encompasses the entire exclusion required by the Education Amendments, a revision to paragraph (d)(3) (on statutory exclusions) to include the substance of section 479B of the Education Amendments would have no practical effect. However, revision of that paragraph is needed for other reasons.

The current rule's language in paragraph (d)(3) could be interpreted either (1) to contain an all-inclusive list of the programs under which benefits are to be excluded from income, or (2) to contain a list of examples of such programs. The problem with the first interpretation is that no exclusion will be recognized without an amendment to the rule, which can be a time-consuming process. The problem with the second interpretation is that housing managers and PHAs appear to be on their own in keeping abreast of enactment of Federal statutes that might excluse a benefit from income for the purpose of HUD programs.

The Department has decided that the best method of implementing changes in Federal law concerning benefits that must not be considered in determining income for purposes of HUD programs, is for the Department to publish periodically in the **Federal Register** a notice of the programs that qualify for exclusion under paragraph (d)(3) and to distribute the notice to PHAs and housing managers in the same way as the Department distributes other program instructions. This method will assure adequate public notice and adequate actual notice to affected parties.

Consequently, paragraph (d)(3) is being revised to acknowledge the exclusion required under other Federal statutes, to remove the listing of excluded programs, and to state that the list of programs qualifying for the exclusion is to be published and distributed periodically, as described above. A companion Notice containing the current list of qualifying programs is published elsewhere in today's issue of the **Federal Register**, and it will take effect on the effective date of this rule. We expect that PHAs and housing owners will implement the provisions of future notices beginning with income determinations effective 60 days following the date of publication of the notice in the **Federal Register**.

3. Training Programs

Payments to trainees under the Job Training Partnership Act (JTPA) are required by that Act to be disregarded for purposes of income determinations under other Federal benefit programs. Our rules (Parts 215, 236, 813, and 913) currently provide (in paragraph (d)(3)(vii)) for exclusion of payments *received from* (813 and 913) or *made under* (215 and 236) the Job Training Partnership Act. The JTPA itself contemplates exclusion of all payments to trainees participating in programs funded by that Act. Since training payments are often funded jointly by JTPA and other sources, it is important to clarify that all such payments are to be treated the same way—excluded from income for purposes of these HUD programs.

Another training program to which the Department has decided to give similar treatment is tenant training funded by HUD. An example of such a training program is the one in the Public Housing Program, funded under the Comprehensive Improvement Assistance Program (CIAP). Tenant trainees need the amounts they are paid to cover the added costs associated with participation in the training, such as day care, transportation and clothing. For a public housing agency to pay tenant trainees with CIAP funds and then increase the family's rent by 30 percent of that payment would be likely to cause many potential trainees to reconsider participating in the program. In the case of youths 18 years old and older who live with their parents, the disincentive to the family would be particularly strong if the increased rent came from the parents' resources. When this training ends and the trainee obtains new employment, that income would be treated as other employment income—included in the family's annual income.

A third type of training program given recognition under this rule is one encouraged by the Supplemental Security Income (SSI) program, administered by the U.S. Department of Health and Human Services (HHS) under 42 U.S.C. 1381 through 1383c. The SSI program provides support for certain aged, blind and disabled individuals. For persons pursuing a Plan for Achieving Self-Support (PASS) that has been approved by the Secretary of HHS, income necessary to fulfill the plan is disregarded by HHS. (See paragraphs (b)(4)(A)(iii) and (b)(4)(B)(iv) of section 1382a.)

Under HHS regulations (20 CFR 416.1112(c)(8) and 416.1180–416.1182), while a qualified SSI recipient (*i.e.*, blind or disabled person) participates in a training or educational program, income that is set aside under an approved PASS to help the person attain a specific

occupational goal is disregarded for purposes of SSI eligibility and benefits. The period of time during which this income may be disregarded is initially no more than 18 months. However, if the person pursues a program that takes longer, the period may be extended up to three years or, in some cases, up to four years.

The goals of the PASS program are similar to the other training programs, in which a source of income is being disregarded for a limited period of time. The Department believes that this income related to pursuit of training—disregarded for purposes of SSI eligibility and benefits—should also be excluded for purposes of housing assistance eligibility and benefits. (See § 215.21(c)(8)(i) and comparable provisions.)

4. Reimbursements for Program-Related Expenses

Reimbursements are provided by various publicly assisted programs to cover a person's out-of-pocket expenses incurred in connection with participation in the program. Where these payments are made solely to allow participation in the program, we believe the payments should be excluded. In fact, under the rule in effect before July 1, 1984 in the Public and Indian Housing programs, these reimbursements were excluded. (See § 960.403(n)(7) (1984 ed.).) Examples of such reimbursements are payments made to cover transportation, child care and other work-related expenses when a welfare recipient, as a condition of continuing to receive welfare benefits, works in a nonprofit agency to acquire job skills (Community Work Experience Program) or, if skilled, looks for a job (Employment Search Program). Another example would be payments to cover the transportation of a volunteer firefighter. A change to the new paragraph (c) restores the old Public and Indian Housing provision (See § 215.21(c)(8)(ii) and comparable provisions in other parts).

5. Clarification of Treatment of Assets, Child Care Expenses and Military Pay

The definition of "Net family assets" is found in §§ 215.1, 236.2, 813.102 and 913.102. That definition currently includes property such as equity in a home, except for § 913.102, which excludes equity in HUD homeownership programs. HUD is specifically authorized by statute to provide housing assistance to buyers of cooperative units, and to buyers of manufactured homes who must pay rental for the land that the home occupies. (See 12 U.S.C. 1701s(c), 12 U.S.C. 1715z-1(k), and 42 U.S.C. 1437f(f)(2), 1437f(j).) To avoid frustrating these statutory objectives, the rules for the Rent Supplement, Section 236 and Section 8 programs (Parts 215, 236 and 813) are being revised to exclude the value of the family's equity in the cooperative unit in which it resides. The Section 8 rule, which deals with manufactured homes, is also being changed to exclude the value of the manufactured home in which the family resides. The public housing rule is being clarified by adding the limiting words "in which the family resides" to the exclusion from assets, to conform to the other rules.

In addition, the question has arisen whether the costs that would be incurred in disposing of an asset should be deducted in the determination of its value. The answer is yes, and we are clarifying this by revising the definition of "Net Family Assets" in all the rules. "Value of" the assets is being changed to the "Value of the assets after deducting cost that would be incurred in disposing of the asset" (such as real estate or stock broker's commissions or penalty for early withdrawal of a time deposit).

Although the deduction for medical expenses contains language limiting it to unreimbursed expenses, the deduction for "child care expenses" has not contained such limiting language. Now that a category of reimbursement is being added (for out-of-pocket expenses associated with participation in a publicly assisted program—see item 4) which may cover child care expenses, the definition of "child care expenses" is being revised to clarify that the deduction applies only to unreimbursed expenses.

Paragraph (b) of the income definition section for each program deals with specific types of income that *do* constitute income under the rule. Unlike the other subparagraphs in the paragraph, subparagraph (8)—dealing with military pay—contains a characterization of the type of person receiving this pay: "a member of the Armed Forces (whether or not living in the unit) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit".

Paragraph (a) already describes the persons whose income is to be included. The language in paragraph (b)(8) appears to be broader in reach than that of paragraph (a), which applies to all other sources of income listed in paragraph (b). To eliminate this disparity and improve the organization of the section, the language describing the relationship of the service member to other family members is being deleted.

6. Clarification of Certificate Program Rule.

The Section 8 program rule that generally restricts the income level of persons admitted to the program to those qualifying as very low-income, § 813.105, has a specific provision dealing with the Certificate program. Section 813.105(c)(1) requires that a PHA obtain HUD approval before issuing a new Certificate to a participating family that wishes to move to a new unit with continued assistance (except for families continuously assisted since before July 1, 1984). On the other hand, the rule dealing with continued participation in the Certificate program, § 882.209(m), provides that a PHA must issue a participating family a new Certificate when the family wants to move to a new unit if the PHA has sufficient funding and is legally able to enter into contracts for units in the area where the family wants to move, unless the family is ineligible for continued assistance (under § 882.210 because if its own "action or inaction." Section 882.209(m) is silent with respect to the effect of the participating family's income level at the time of the request for issuance of a new certificate. An amendment to § 882.209(m) that would have clarified the relationship to § 813.105(c) was included in the "Alien rule" published on April 1, 1986 (51 FR 11198, 11226), but has not yet been made effective because of litigation and Congressional action directed at the primary effect of that rule—to restrict housing assistance to citizens and eligible aliens.

There is not any actual conflict between §§ 813.105(c) and 882.209(m). The income restriction under § 813.105 is a limitation on the family's right to a Certificate under § 882.209(m)(1). Except with advance HUD approval in accordance with § 813.105(c), the PHA has *no duty* under § 882.209(m) to issue a Certificate to a non-very low income family. Indeed, unless HUD has granted approval, the PHA *may not* issue a Certificate to a non very low income family who wants to move with assistance. The PHA may not issue a Certificate to the family, even if the PHA would otherwise be required to issue a Certificate under § 882.209(m)(1).

To clarify this issue, this rule includes an amendment to § 882.209(m) to refer to the limitation on a PHA's authority to issue a Certificate to a family whose income is above the limit for very low-income families. (This amendment is the same as the amendment attempted for the same purpose in the April 1, 1986 Alien rule.)

7. Conforming Changes

In a prior rulemaking, the "definitions" and "annual income" sections of Parts 812 and 813 were amended, in the context of a rule dealing primarily with shared living arrangements among assisted families in the Section 8 Certificate program, to add a definition of "live-in aide" and to exclude the income of the live-in aide, to remove the definition of "nonimmigrant student-alien", and to make minor word changes to the definitions of "disabled person", "displaced person", "elderly family", "elderly person", "family", "handicapped person", and "single person" (51 FR 21300, June 11, 1986). That rule's effective date is expected to be announced soon. Since the existing policy and practice in the Public Housing program has been to permit shared housing, no regulatory barriers prevent shared housing in that program, and no statute requires that regulations be issued on the topic, the Department has determined that regulations are unnecessary. (A handbook giving suggestions about operating shared housing in this program is to be issued soon.) Since no shared housing rule will make the conforming changes to Parts 912 and 913, applicable to Public Housing, this rule is making changes parallel to those made earlier in Parts 812 and 813, by the shared housing rule for the Section 8 program.

The definition of nonimmigrant student-alien is now being removed from Part 912 (as it has been for Parts 215 and 236) and the restriction against a nonimmigrant student-alien being a member of a "family" eligible for assistance is being removed from Part 912, because the law restricting admission of such persons, section 214 of the Housing and Community Development Act of 1980, has been amended to delete that restriction. The statutory restriction against admission of nonimmigrant student-aliens was replaced by the broader restriction against assistance to ineligible aliens in the amendment to section 214 found in section 329(a) of the Housing and Community Development Amendments of 1981. Regulations enforcing the 1981 changes have not been implemented because of various impediments, including statutory constraints included in HUD's 1987 appropriation, and because of enactment of a new statute, the Immigration Reform and Control Act of 1986. (See Alien Rule Notice published on November 21, 1986 (51 FR 42088).)

In this final rule, a live-in aide is defined as a person essential to the care and well-being of an elderly, disabled or handicapped person, whether or not the elderly, disabled or handicapped person is a member of an "elderly family". The addition of this definition and the addition of an exclusion of the aide's income comport with current policy of permitting a live-in aide to reside in the unit with an elderly family, or with a nonelderly family which includes a handicapped member who needs assistance.

In response to public comments on the proposed rule to add this definition to Part 913, 49 FR 48006 (December 7, 1984), the final rule does not automatically exclude a relative from serving as a live-in aide, but in addition to bring essential to the care and well-being and not being obligated for support of a family member, the final rule requires (in § 913.102) that a person be one who would not be living in the unit except to provide the necessary supportive services in order to qualify as a "live-in aide". Thus, a relative or other individual may be classified as a live-in aide if he or she would not be living in the unit except in that capacity. However, a live-in aide qualifies for occupancy only so long as the person for whom the aide provides supportive services resides in the unit, and the aide does not qualify for continued occupancy in his or her own right as a "remaining member of a tenant family". The Department believes that this approach strikes a reasonable balance between permitting relatives and others to act as live-in aides and ensuring that this privilege is not subject to abuse.

8. Inapplicability of 10 Percent Cap (On Increases in Rental Payment)

The changes to the United States Housing Act of 1937 made by the Housing and Community Development Amendments of 1981 included a ceiling of ten percent per year on rental increases resulting from changes in Federal law. "Changes in Federal law" includes both statutory and regulatory changes. Whenever there is reason to believe that such changes would produce an increase in tenant rental payments, additional calculations must be performed.

However, in the case of this rule, all the changes to the definition of income have the effect of decreasing rather than increasing income, and thereby decreasing, not increasing, rental payments. Therefore, the cap on rent increases would have no effect and no additional calculations are necessary.

Effectiveness of Changes

This rule is being published as a final rule with a specified effective date. However, with respect to any particular family participating in the programs covered by this rulemaking, the rule will be effective at the next reexamination of income after the effective date of this rule, whether it is the annual one or an interim one based on a change in family circumstances.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981 (E.O. 12291). Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it consists of technical refinements to existing rules defining income for various assisted housing programs.

Regulatory Agenda

This rule was listed as sequence number 892 in the Department's Semiannual Regulatory Agenda published on April 27, 1987 (52 FR 14362, 14374), under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection requirements, as described in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Intergovernmental Consultation

The Department has consulted the Secretary of Agriculture concerning these changes to the definition of income, as required by 42 U.S.C. 1437a(b)(4).

Catalog

The Catalog of Federal Domestic Assistance Program Numbers are 14.103, 14.146, 14.149, and 14.156.

CFR Parts Affected

List of Subjects

24 CFR Part 215

Grant programs, Housing and community development, Rent subsidies.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 813

Lower income housing, Loan programs, Housing and community development, Utilities.

24 CFR Part 882

Grant programs, Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 912

Public housing.

24 CFR Part 913

Public housing.

Accordingly, HUD amends 24 CFR Parts 215, 236, 813, 882, 912 and 913 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 215.1 [Amended]

2. Section 215.1 is amended: (a) By adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the words "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit in which the family resides"; and (d) by removing from the definition of "*Live-in Aide*" the reference to "§ 215.21(d)" and substituting for it a reference to "§ 215.21(c)".

3. Section 215.21 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 215.21 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 215.1;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 101 of the Housing and Urban Development Act of 1965. A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

4. The authority citation for Part 236 continues to read as follows:

Authority: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 236.2 [Amended]

5. Section 236.2 is amended: (a) By adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the words "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit in which the family resides"; and (d) by removing from the definition of "*Live-in Aide*" the reference to "§ 236.3(d)" and substituting for it a reference to "§ 236.3(c)".

6. Section 236.3 is amended by removing paragraph (d) and

redesignating paragraph (e) as paragraph (d); by the removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 236.3 Annual income.

(a) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 236.2;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 236 of the National Housing Act. A notice will be published in the **Federal Register** and distributed to housing owners identifying benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS

7. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 813.102 [Amended]

8. Section 813.102 is amended: (a) by adding before the period in the first sentence of the definition of "*Child Care Expenses*", the words, "and only to the extent such amounts are not reimbursed"; (b) by removing the word "Value of equity in" at the beginning of the definition of "*Net Family Assets*" and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; (c) by adding before the period in the first sentence of the definition of "*Net Family Assets*" the words, "and the equity in a housing cooperative unit or in a manufactured home in which the family resides".

9. Section 813.106 is amended: by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 813.106 Annual income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any Family member;

(5) Income of a live-in aide, as defined in § 813.102;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.)

and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

10. The authority citation for part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

11. Section 882.209(m)(1) is revised to read as follows:

§ 882.209 Selection and participation.

* * * * *

(m) * * *

(1) If a participant in the PHA's Section 8 Housing Certificate Program notifies the PHA that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family or is unable to get HUD approval if needed under § 813.105(c) to issue a Certificate to a Family that is not a Very Low-income Family) either—

(i) Issue another Certificate, or

(ii) Deny issuance of a Certificate in accordance with § 882.210.

* * * * *

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

12. The authority citation for Part 912 is amended to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 912.2 is revised to read as follows:

§ 912.2 Definitions.

Disabled person. A person under a disability, as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*1*)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.

Elderly family. A family whose head or spouse (or sole member) is an elderly, disabled, or handicapped person. It may include two or more Elderly, Disabled, or Handicapped persons living together, or one or more of these persons living with one or more Live-in Aides.

Elderly person. A person who is at least 62 years of age.

Family. "Family" includes but is not limited to (a) an elderly family or single person as defined in this part, (b) the remaining member of a tenant family, and (c) a displaced person.

Handicapped person. A person having a physical or mental impairment that—

(a) Is expected to be of long-continued and indefinite duration,

(b) Substantially impedes the person's ability to live independently, and

(c) Is of such a nature that such ability could be improved by more suitable housing conditions.

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped person or persons and who (a) is determined by the PHA to be essential to the care and well-being of the person(s); (b) is not obligated for support of the person(s); and (c) would not be living in the unit except to provide necessary supportive services. (See § 913.106(c) for treatment of a Live-in Aide's income.)

Single person. A person who lives alone or intends to live alone, and who does not qualify as an elderly family or displaced person or as the remaining member of a tenant Family.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC AND INDIAN HOUSING PROGRAMS

14. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 913.102 is amended: by adding before the period in the first sentence of the definition of *"Child care expenses"*, the words, "and only to the extent such amounts are not reimbursed"; by removing the words "Value of equity in" at the beginning of the definition of *"Net Family Assets"* and substituting the words "Net cash value after deducting reasonable costs that would be incurred in disposing of"; by adding a definition of *"Live-in Aide"*, and by revising the definitions of *Disabled person* and *Elderly family*, to read as follows:

§ 913.102 Definitions.

* * * * *

Disabled person. A person under a disability, as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 (42 U.S.C. 2691(*1*)).

Elderly family. A family whose head or spouse (or sole member) is an Elderly, Disabled, or Handicapped person. It may include two or more Elderly, Disabled, or Handicaped persons living together, or one or more of these persons living with one or more Live-in Aides.

* * * * *

Live-in Aide. A person who resides with an Elderly, Disabled, or Handicapped person or persons and who (a) is determined by the PHA to be essential to the care and well-being of the person(s); (b) is not obligated for support of the person(s); and (c) would not be living in the unit except to provide necessary supportive services. (See § 913.106(c) for treatment of a Live-in Aide's income.)

* * * * *

16. Section 913.106 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d); by removing from paragraph (b)(8) the phrase "(whether or not living in the dwelling) who is head of the Family, spouse, or other Family member whose dependents are residing in the unit"; by removing the reference in paragraph (b)(8) to "paragraph (c)(5)" and substituting for it "paragraph (c)(7)"; and by revising paragraphs (a) and (c) to read as follows:

§ 913.106 Annual income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of the initial determination or reexamination of income, exclusive of certain types of

income as provided in paragraph (c) of this section.

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 913.102;

(6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(9) Temporary, nonrecurring or sporadic income (including gifts); or

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Dated: August 4, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-20465 Filed 9-8-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1715; FR-2184]

Federally Mandated Exclusions From Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Elsewhere in this issue of the **Federal Register**, a final rule concerning the definition of income used in HUD's Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs is published. That rule provides that, for each of these programs, income does not include amounts of other benefits precluded by Federal law from being considered in HUD assistance programs. This notice provides a current list of program benefits excluded under that provision.

EFFECTIVE DATE: November 1, 1987.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881, 883–886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 426–3944.

For Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate Rehabilitation and the Housing Voucher programs) and for Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 426–0744. (These are not toll-free numbers).

Any member of the public who becomes aware of any other benefit believed to be excluded from consideration as income in these programs should submit information about the other benefit program to one of the persons listed as a contact or to the Rules Docket Clerk, Attention R–87–1345, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION: Excluded from the definition of "annual income" under 24 CFR 215.21(c)(9), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10) are "amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility or benefits under a category of assistance programs that includes [these HUD programs]." The following is a list of types of benefits that qualify for that exclusion:

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4636);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(iii) Payment to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vii) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504);

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117); and

(x) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 that are used to cover the cost of attendance at an educational institution (See 24 CFR 215.1(c)(6), 236.3(c)(6), 813.106(c)(6), and 913.106(c)(6)).

Dated: August 4, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–20505 Filed 9–8–87; 8:45 am]

BILLING CODE 4210–32–M

federal register

Wednesday
September 9, 1987

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-87-1719; FR-2384]

Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice updating Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments Programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs.

EFFECTIVE DATE: November 8, 1987.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Existing Housing Division, Office of Elderly and Assisted Housing (202) 755-6887; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 426-3970; for technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (202) 755-5577. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the Section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents prevailing in particular market areas or be based on a reasonable formula.

This notice establishes revised Annual Adjustment Factors (AAFs), based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS) (formerly called Annual Housing Survey). The revised AAFs are to be used to adjust Contract Rents under the Section 8 Housing Assistance Payments Programs. HUD regulations (see 24 CFR 888.202) provide that the AAFs will be published annually in the **Federal Register.** The annual anniversary date for publication of the Factors is November 8. These revised AAF's apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1987.

Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this notice are used to adjust Contract Rents for Section 8 units. The following provides a general description as to how AAFs apply under the several Section 8 Housing Assistance Payments Programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, however, AAFs are not used to adjust Contract Rents. AAFs are not used for Section 8 Certificate Program units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to Section 8 Certificate Program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units placed under HAP contract in recent years under the Section 202/Section 8 Program. Instead, rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR Part 886, Subpart A, and for projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR Part 886, Subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19 (e)(2) and (e)(4).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the Section 8 Moderate Rehabilitation Program, the Public Housing Agency should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to a particular geographical area, as indicated in the Tables at the end of this document. However, application of a Factor to the prior Contract Rent for a unit may not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Secretary. (See 42 U.S.C. 1437f(c)(2)(C), and applicable program regulations in 24 CFR Chapter VIII.) Thus, an AAF for an entire PMSA may not be uniformly applicable to all rental housing within the geographical area, if the rent comparability test cannot be met.

In certain cases, however, the AAF established for a particular area may result in rents that are substantially lower than rents charged for comparable units not receiving assistance under the Section 8 Program. If this occurs, a PHA or private owner may apply to the field office for consideration by HUD of a revised Adjustment Factor for the area, as provided for in 24 CFR 888.204.

Calculation of Adjustment Factors

Different AAFs are provided for the four Census Regions, the States of Alaska and Hawaii, and 72 metropolitan areas. A list of the counties (and cities and towns in New England) that are included in each metropolitan area is being published as part of this Notice.

Except for rent adjustments for manufactured home space rents under the Section 8 Certificate Program, the formula for calculating the Adjustment Factors for each area was developed as follows: (1) The increases in the residential rent component and the fuel and utilities component of the CPI were based on the most recent available average annual changes; (2) a shelter rent increase factor was calculated by eliminating the effect of heating costs on the CPI residential rent component as determined by Bureau of Labor Statistics data; (3) a gross rent factor for each of the metropolitan areas covered by the CPI and for each of the four Census Regions was calculated by weighting the shelter rent and the fuel and utility increases in accordance with updated 1980 Census State weights of these component parts of rent, as derived from 1983 AHS data; (4) Adjustment Factors for Contract Rents including the highest cost utility were calculated by adjusting the gross rent factors to reflect variations by rent

range in each area, based on variations developed from 1983 national AHS data as applied to the local FMR levels; and (5) Adjustment Factors for Contract Rents excluding the highest cost utility were calculated by developing updated shelter rents from the updated gross rents, by rent ranges, and then dividing the updated shelter rents by that of the previous year.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

This notice (as did the notice published on March 25, 1987) contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

Other Matters

An Environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(l).

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (Section 8) is 14.156.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); sec. 8(c)(2)(A), U.S. Housing Act (U.S.C. 1437f(c)(2)(A)).

Dated: August 28, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following Tables:

BILLING CODE 4210-27-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

NORTH EAST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.083	1.098
$ 230 TO 279	1.060	1.090
$ 280 TO 339	1.056	1.087
$ 340 TO 399	1.054	1.084
$ 400 TO 449	1.052	1.082
$ 450 TO 509	1.050	1.071
$ 510 TO 569	1.049	1.063
$ 570 TO 619	1.043	1.063
$ 620 TO 679	1.040	1.063
$ 680 PLUS	1.035	1.063

MIDWEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.051	1.065
$ 180 TO 229	1.037	1.054
$ 230 TO 269	1.034	1.052
$ 270 TO 319	1.033	1.051
$ 320 TO 359	1.032	1.044
$ 360 TO 409	1.031	1.036
$ 410 TO 449	1.030	1.035
$ 450 TO 499	1.026	1.035
$ 500 TO 539	1.024	1.035
$ 540 PLUS	1.021	1.035

SOUTH CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.048
$ 170 TO 219	1.038	1.041
$ 220 TO 259	1.035	1.041
$ 260 TO 299	1.034	1.039
$ 300 TO 349	1.033	1.034
$ 350 TO 389	1.032	1.032
$ 390 TO 429	1.031	1.029
$ 430 TO 479	1.027	1.029
$ 480 TO 519	1.025	1.028
$ 520 PLUS	1.022	1.028

WEST CENSUS REGION

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.081	1.076
$ 240 TO 299	1.059	1.070
$ 300 TO 359	1.055	1.067
$ 360 TO 419	1.053	1.064
$ 420 TO 479	1.051	1.060
$ 480 TO 539	1.049	1.053
$ 540 TO 609	1.048	1.049
$ 610 TO 669	1.042	1.042
$ 670 TO 729	1.039	1.042
$ 730 PLUS	1.034	1.042

STATE ALASKA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.000	1.000
$ 270 TO 339	1.000	1.000
$ 340 TO 399	1.000	1.000
$ 400 TO 469	1.000	1.000
$ 470 TO 539	1.000	1.000
$ 540 TO 599	1.000	1.000
$ 600 TO 669	1.000	1.000
$ 670 TO 739	1.000	1.000
$ 740 TO 799	1.000	1.000
$ 800 PLUS	1.000	1.000

STATE HAWAII

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.052	1.061
$ 260 TO 319	1.038	1.055
$ 320 TO 379	1.035	1.054
$ 380 TO 449	1.034	1.053
$ 450 TO 509	1.033	1.052
$ 510 TO 569	1.032	1.052
$ 570 TO 639	1.031	1.046
$ 640 TO 699	1.027	1.040
$ 700 TO 769	1.025	1.040
$ 770 PLUS	1.022	1.040

PMSA AKRON, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.054	1.056
$ 180 TO 219	1.039	1.055
$ 220 TO 259	1.036	1.050
$ 260 TO 309	1.035	1.050
$ 310 TO 349	1.034	1.045
$ 350 TO 399	1.033	1.037
$ 400 TO 439	1.032	1.037
$ 440 TO 489	1.028	1.037
$ 490 TO 529	1.026	1.037
$ 530 PLUS	1.023	1.037

PMSA ANAHEIM-SANTA ANA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.110	1.091
$ 320 TO 409	1.080	1.082
$ 410 TO 489	1.074	1.080
$ 490 TO 569	1.071	1.077
$ 570 TO 649	1.069	1.072
$ 650 TO 729	1.067	1.062
$ 730 TO 809	1.064	1.057
$ 810 TO 889	1.057	1.049
$ 890 TO 969	1.053	1.049
$ 970 PLUS	1.046	1.049

PMSA ANN ARBOR, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.073	1.085
$ 230 TO 289	1.053	1.081
$ 290 TO 349	1.049	1.078
$ 350 TO 409	1.047	1.074
$ 410 TO 469	1.046	1.068
$ 470 TO 529	1.044	1.056
$ 530 TO 589	1.043	1.055
$ 590 TO 649	1.038	1.055
$ 650 TO 699	1.035	1.055
$ 700 PLUS	1.031	1.055

MSA ATLANTA, GA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.096	1.087
$ 220 TO 269	1.070	1.078
$ 270 TO 319	1.065	1.075
$ 320 TO 379	1.063	1.071
$ 380 TO 429	1.060	1.062
$ 430 TO 489	1.059	1.057
$ 490 TO 539	1.056	1.047
$ 540 TO 589	1.050	1.047
$ 590 TO 649	1.046	1.047
$ 650 PLUS	1.040	1.047

PMSA AURORA-ELGIN, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.056	1.059
$ 250 TO 309	1.041	1.057
$ 310 TO 369	1.038	1.056
$ 370 TO 429	1.036	1.052
$ 430 TO 489	1.035	1.043
$ 490 TO 549	1.034	1.038
$ 550 TO 609	1.033	1.038
$ 610 TO 679	1.029	1.038
$ 680 TO 739	1.027	1.038
$ 740 PLUS	1.023	1.038

MSA BALTIMORE, MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.071	1.072
$ 210 TO 269	1.052	1.071
$ 270 TO 319	1.048	1.068
$ 320 TO 369	1.046	1.067
$ 370 TO 429	1.045	1.065
$ 430 TO 479	1.043	1.059
$ 480 TO 529	1.042	1.050
$ 530 TO 589	1.037	1.050
$ 590 TO 639	1.034	1.049
$ 640 PLUS	1.030	1.049

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA BEAVER COUNTY, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.064	1.069
$ 180 TO 219	1.047	1.065
$ 220 TO 259	1.043	1.058
$ 260 TO 309	1.042	1.058
$ 310 TO 349	1.040	1.048
$ 350 TO 389	1.039	1.043
$ 390 TO 439	1.038	1.043
$ 440 TO 479	1.033	1.043
$ 480 TO 529	1.031	1.043
$ 530 PLUS	1.027	1.043

PMSA BERGEN-PASSAIC, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.108	1.111
$ 310 TO 389	1.079	1.106
$ 390 TO 469	1.073	1.102
$ 470 TO 549	1.070	1.096
$ 550 TO 619	1.068	1.092
$ 620 TO 699	1.066	1.083
$ 700 TO 779	1.063	1.078
$ 780 TO 859	1.056	1.070
$ 860 TO 939	1.052	1.070
$ 940 PLUS	1.045	1.070

PMSA BOSTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 330	1.076	1.097
$ 330 TO 409	1.055	1.095
$ 410 TO 489	1.051	1.089
$ 490 TO 569	1.049	1.087
$ 570 TO 649	1.048	1.085
$ 650 TO 729	1.046	1.078
$ 730 TO 809	1.045	1.069
$ 810 TO 899	1.040	1.069
$ 900 TO 979	1.036	1.068
$ 980 PLUS	1.032	1.068

PMSA BOULDER-LONGMONT, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.025	1.015
$ 230 TO 289	1.018	1.015
$ 290 TO 349	1.017	1.015
$ 350 TO 409	1.016	1.013
$ 410 TO 459	1.016	1.013
$ 460 TO 519	1.015	1.012
$ 520 TO 579	1.015	1.011
$ 580 TO 639	1.013	1.008
$ 640 TO 699	1.012	1.008
$ 700 PLUS	1.011	1.008

PMSA BRAZORIA, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.000	1.000
$ 190 TO 239	1.000	1.000
$ 240 TO 279	1.000	1.000
$ 280 TO 329	1.000	1.000
$ 330 TO 379	1.000	1.000
$ 380 TO 419	1.000	1.000
$ 420 TO 469	1.000	1.000
$ 470 TO 519	1.000	1.000
$ 520 TO 569	1.000	1.000
$ 570 PLUS	1.000	1.000

PMSA BRIDGEPORT-MILFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.101	1.114
$ 250 TO 309	1.074	1.111
$ 310 TO 369	1.068	1.106
$ 370 TO 429	1.066	1.102
$ 430 TO 499	1.064	1.090
$ 500 TO 559	1.062	1.083
$ 560 TO 619	1.059	1.076
$ 620 TO 679	1.053	1.075
$ 680 TO 739	1.049	1.075
$ 740 PLUS	1.043	1.075

PMSA BROCKTON, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.076	1.100
$ 260 TO 319	1.055	1.093
$ 320 TO 389	1.051	1.087
$ 390 TO 449	1.049	1.087
$ 450 TO 509	1.048	1.085
$ 510 TO 579	1.046	1.079
$ 580 TO 639	1.045	1.069
$ 640 TO 709	1.040	1.068
$ 710 TO 769	1.036	1.068
$ 770 PLUS	1.032	1.068

PMSA BUFFALO, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.055
$ 170 TO 219	1.038	1.051
$ 220 TO 259	1.035	1.050
$ 260 TO 299	1.034	1.046
$ 300 TO 349	1.033	1.043
$ 350 TO 389	1.032	1.041
$ 390 TO 429	1.031	1.037
$ 430 TO 479	1.027	1.037
$ 480 TO 519	1.025	1.036
$ 520 PLUS	1.022	1.035

PMSA CHICAGO, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.063	1.062
$ 240 TO 299	1.046	1.056
$ 300 TO 359	1.042	1.055
$ 360 TO 419	1.041	1.054
$ 420 TO 479	1.039	1.047
$ 480 TO 539	1.038	1.043
$ 540 TO 599	1.037	1.039
$ 600 TO 659	1.033	1.038
$ 660 TO 719	1.030	1.038
$ 720 PLUS	1.026	1.037

PMSA CINCINNATI, OH-KY-IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 160	1.044	1.050
$ 160 TO 199	1.032	1.050
$ 200 TO 239	1.030	1.050
$ 240 TO 279	1.029	1.050
$ 280 TO 319	1.028	1.043
$ 320 TO 359	1.027	1.041
$ 360 TO 399	1.026	1.039
$ 400 TO 439	1.023	1.039
$ 440 TO 479	1.021	1.039
$ 480 PLUS	1.018	1.039

PMSA CLEVELAND, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.054	1.058
$ 180 TO 229	1.039	1.054
$ 230 TO 279	1.036	1.051
$ 280 TO 319	1.035	1.050
$ 320 TO 369	1.034	1.043
$ 370 TO 409	1.033	1.038
$ 410 TO 459	1.032	1.037
$ 460 TO 499	1.028	1.037
$ 500 TO 549	1.026	1.036
$ 550 PLUS	1.023	1.036

PMSA DALLAS, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.045
$ 180 TO 229	1.030	1.044
$ 230 TO 269	1.027	1.040
$ 270 TO 319	1.026	1.040
$ 320 TO 369	1.025	1.038
$ 370 TO 409	1.025	1.031
$ 410 TO 459	1.024	1.030
$ 460 TO 499	1.021	1.029
$ 500 TO 549	1.019	1.029
$ 550 PLUS	1.017	1.029

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA DANBURY, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.101	1.119
$ 270 TO 339	1.074	1.108
$ 340 TO 399	1.068	1.103
$ 400 TO 469	1.066	1.101
$ 470 TO 539	1.064	1.091
$ 540 TO 599	1.062	1.084
$ 600 TO 669	1.059	1.076
$ 670 TO 739	1.053	1.075
$ 740 TO 799	1.049	1.075
$ 800 PLUS	1.043	1.075

PMSA DENVER, CO

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.025	1.015
$ 220 TO 269	1.018	1.015
$ 270 TO 319	1.017	1.015
$ 320 TO 379	1.016	1.014
$ 380 TO 429	1.016	1.012
$ 430 TO 479	1.015	1.011
$ 480 TO 539	1.015	1.010
$ 540 TO 589	1.013	1.007
$ 590 TO 649	1.012	1.007
$ 650 PLUS	1.011	1.007

PMSA DETROIT, MI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.072	1.089
$ 210 TO 269	1.053	1.079
$ 270 TO 319	1.049	1.078
$ 320 TO 369	1.047	1.075
$ 370 TO 429	1.046	1.065
$ 430 TO 479	1.044	1.057
$ 480 TO 529	1.043	1.055
$ 530 TO 589	1.038	1.055
$ 590 TO 639	1.035	1.055
$ 640 PLUS	1.031	1.055

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.019	1.024
$ 230 TO 279	1.014	1.024
$ 280 TO 339	1.013	1.023
$ 340 TO 399	1.012	1.022
$ 400 TO 449	1.012	1.019
$ 450 TO 509	1.011	1.019
$ 510 TO 559	1.011	1.017
$ 560 TO 619	1.010	1.015
$ 620 TO 679	1.009	1.015
$ 680 PLUS	1.008	1.015

PMSA FORT WORTH-ARLINGTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.045
$ 180 TO 229	1.030	1.044
$ 230 TO 269	1.027	1.040
$ 270 TO 319	1.026	1.040
$ 320 TO 369	1.025	1.038
$ 370 TO 409	1.025	1.031
$ 410 TO 459	1.024	1.030
$ 460 TO 499	1.021	1.029
$ 500 TO 549	1.019	1.029
$ 550 PLUS	1.017	1.029

PMSA GALVESTON-TEXAS CITY, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.000	1.000
$ 180 TO 219	1.000	1.000
$ 220 TO 259	1.000	1.000
$ 260 TO 309	1.000	1.000
$ 310 TO 349	1.000	1.000
$ 350 TO 399	1.000	1.000
$ 400 TO 439	1.000	1.000
$ 440 TO 479	1.000	1.000
$ 480 TO 529	1.000	1.000
$ 530 PLUS	1.000	1.000

PMSA GARY-HAMMOND, IN

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.056	1.061
$ 200 TO 239	1.041	1.055
$ 240 TO 289	1.038	1.053
$ 290 TO 339	1.036	1.053
$ 340 TO 389	1.035	1.044
$ 390 TO 439	1.034	1.039
$ 440 TO 489	1.033	1.039
$ 490 TO 539	1.029	1.037
$ 540 TO 589	1.027	1.037
$ 590 PLUS	1.023	1.037

PMSA HAMILTON-MIDDLETOWN, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.044	1.056
$ 180 TO 219	1.032	1.055
$ 220 TO 269	1.030	1.053
$ 270 TO 309	1.029	1.048
$ 310 TO 359	1.028	1.048
$ 360 TO 399	1.027	1.039
$ 400 TO 449	1.026	1.039
$ 450 TO 489	1.023	1.039
$ 490 TO 539	1.021	1.039
$ 540 PLUS	1.018	1.039

PMSA HOUSTON, TX

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.000	1.000
$ 170 TO 209	1.000	1.000
$ 210 TO 249	1.000	1.000
$ 250 TO 289	1.000	1.000
$ 290 TO 339	1.000	1.000
$ 340 TO 379	1.000	1.000
$ 380 TO 419	1.000	1.000
$ 420 TO 459	1.000	1.000
$ 460 TO 499	1.000	1.000
$ 500 PLUS	1.000	1.000

PMSA JERSEY CITY, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.106	1.111
$ 210 TO 269	1.077	1.108
$ 270 TO 319	1.072	1.105
$ 320 TO 379	1.069	1.100
$ 380 TO 429	1.067	1.094
$ 430 TO 479	1.065	1.086
$ 480 TO 539	1.062	1.073
$ 540 TO 589	1.055	1.073
$ 590 TO 639	1.051	1.072
$ 640 PLUS	1.045	1.072

PMSA JOLIET, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.063	1.064
$ 250 TO 309	1.046	1.057
$ 310 TO 369	1.042	1.056
$ 370 TO 429	1.041	1.052
$ 430 TO 489	1.039	1.048
$ 490 TO 559	1.038	1.044
$ 560 TO 619	1.037	1.037
$ 620 TO 679	1.033	1.037
$ 680 TO 739	1.030	1.037
$ 740 PLUS	1.026	1.037

PMSA KANSAS CITY, MO-KS

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.035	1.044
$ 180 TO 219	1.026	1.040
$ 220 TO 269	1.024	1.037
$ 270 TO 309	1.023	1.037
$ 310 TO 359	1.022	1.033
$ 360 TO 399	1.022	1.029
$ 400 TO 449	1.021	1.029
$ 450 TO 489	1.018	1.029
$ 490 TO 539	1.017	1.029
$ 540 PLUS	1.015	1.029

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA KENOSHA, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.061	1.067
$ 190 TO 239	1.044	1.056
$ 240 TO 289	1.041	1.056
$ 290 TO 329	1.040	1.052
$ 330 TO 379	1.038	1.045
$ 380 TO 429	1.037	1.044
$ 430 TO 479	1.036	1.040
$ 480 TO 519	1.032	1.038
$ 520 TO 569	1.029	1.038
$ 570 PLUS	1.026	1.038

PMSA LAKE COUNTY, IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.063	1.064
$ 250 TO 309	1.046	1.057
$ 310 TO 379	1.042	1.055
$ 380 TO 439	1.041	1.055
$ 440 TO 499	1.039	1.047
$ 500 TO 569	1.038	1.043
$ 570 TO 629	1.037	1.038
$ 630 TO 689	1.033	1.038
$ 690 TO 749	1.030	1.037
$ 750 PLUS	1.026	1.037

PMSA LAWRENCE-HAVERHILL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.076	1.102
$ 260 TO 329	1.055	1.095
$ 330 TO 399	1.051	1.090
$ 400 TO 459	1.049	1.086
$ 460 TO 529	1.048	1.085
$ 530 TO 599	1.046	1.078
$ 600 TO 659	1.045	1.068
$ 660 TO 729	1.040	1.068
$ 730 TO 789	1.036	1.068
$ 790 PLUS	1.032	1.068

PMSA LORAIN-ELYRIA, OH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.054	1.062
$ 170 TO 219	1.039	1.056
$ 220 TO 259	1.036	1.050
$ 260 TO 299	1.035	1.050
$ 300 TO 349	1.034	1.046
$ 350 TO 389	1.033	1.038
$ 390 TO 429	1.032	1.037
$ 430 TO 479	1.028	1.037
$ 480 TO 519	1.026	1.036
$ 520 PLUS	1.023	1.036

PMSA LOS ANGELES-LONG BEACH, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.110	1.090
$ 280 TO 349	1.080	1.086
$ 350 TO 419	1.074	1.081
$ 420 TO 489	1.071	1.077
$ 490 TO 559	1.069	1.070
$ 560 TO 629	1.067	1.064
$ 630 TO 699	1.064	1.057
$ 700 TO 769	1.057	1.049
$ 770 TO 839	1.053	1.049
$ 840 PLUS	1.046	1.049

PMSA LOWELL, MA-NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.076	1.095
$ 250 TO 309	1.055	1.093
$ 310 TO 369	1.051	1.088
$ 370 TO 429	1.049	1.087
$ 430 TO 499	1.048	1.084
$ 500 TO 559	1.046	1.074
$ 560 TO 619	1.045	1.069
$ 620 TO 679	1.040	1.068
$ 680 TO 739	1.036	1.068
$ 740 PLUS	1.032	1.068

PMSA MIAMI-HIALEAH, FL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.019	1.024
$ 230 TO 279	1.014	1.024
$ 280 TO 339	1.013	1.023
$ 340 TO 389	1.012	1.022
$ 390 TO 449	1.012	1.019
$ 450 TO 509	1.011	1.019
$ 510 TO 559	1.011	1.017
$ 560 TO 619	1.010	1.015
$ 620 TO 679	1.009	1.015
$ 680 PLUS	1.008	1.015

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.106	1.114
$ 290 TO 359	1.077	1.105
$ 360 TO 429	1.072	1.099
$ 430 TO 499	1.069	1.097
$ 500 TO 569	1.067	1.093
$ 570 TO 649	1.065	1.085
$ 650 TO 719	1.062	1.072
$ 720 TO 789	1.055	1.072
$ 790 TO 859	1.051	1.072
$ 860 PLUS	1.045	1.072

PMSA MILWAUKEE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.025	1.047
$ 190 TO 229	1.018	1.047
$ 230 TO 279	1.017	1.047
$ 280 TO 329	1.016	1.046
$ 330 TO 379	1.016	1.042
$ 380 TO 419	1.015	1.040
$ 420 TO 469	1.015	1.038
$ 470 TO 519	1.013	1.038
$ 520 TO 559	1.012	1.038
$ 560 PLUS	1.011	1.038

MSA MINNEAPOLIS-ST. PAUL, MN-WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.047	1.058
$ 220 TO 279	1.034	1.056
$ 280 TO 329	1.032	1.049
$ 330 TO 389	1.031	1.049
$ 390 TO 439	1.030	1.048
$ 440 TO 499	1.029	1.040
$ 500 TO 549	1.028	1.038
$ 550 TO 609	1.025	1.038
$ 610 TO 659	1.023	1.038
$ 660 PLUS	1.020	1.038

PMSA MONMOUTH-OCEAN, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.106	1.113
$ 260 TO 319	1.077	1.107
$ 320 TO 389	1.072	1.101
$ 390 TO 449	1.069	1.098
$ 450 TO 519	1.067	1.093
$ 520 TO 579	1.065	1.085
$ 580 TO 649	1.062	1.072
$ 650 TO 709	1.055	1.072
$ 710 TO 769	1.051	1.072
$ 770 PLUS	1.045	1.072

PMSA NASHUA, NH

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 260	1.074	1.098
$ 260 TO 329	1.054	1.095
$ 330 TO 389	1.050	1.089
$ 390 TO 459	1.048	1.089
$ 460 TO 519	1.047	1.086
$ 520 TO 589	1.045	1.076
$ 590 TO 649	1.044	1.071
$ 650 TO 719	1.039	1.069
$ 720 TO 779	1.036	1.069
$ 780 PLUS	1.031	1.069

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA NASSAU-SUFFOLK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.108	1.113
$ 310 TO 379	1.079	1.104
$ 380 TO 459	1.073	1.102
$ 460 TO 529	1.070	1.097
$ 530 TO 609	1.068	1.093
$ 610 TO 689	1.066	1.085
$ 690 TO 759	1.063	1.079
$ 760 TO 839	1.056	1.070
$ 840 TO 919	1.052	1.070
$ 920 PLUS	1.045	1.070

PMSA NEW YORK, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.108	1.110
$ 230 TO 289	1.079	1.104
$ 290 TO 339	1.073	1.102
$ 340 TO 399	1.070	1.095
$ 400 TO 459	1.068	1.093
$ 460 TO 519	1.066	1.084
$ 520 TO 569	1.063	1.079
$ 570 TO 629	1.056	1.070
$ 630 TO 689	1.052	1.070
$ 690 PLUS	1.045	1.070

PMSA NEWARK, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.106	1.114
$ 240 TO 299	1.077	1.104
$ 300 TO 359	1.072	1.100
$ 360 TO 419	1.069	1.097
$ 420 TO 479	1.067	1.093
$ 480 TO 539	1.065	1.086
$ 540 TO 599	1.062	1.072
$ 600 TO 659	1.055	1.072
$ 660 TO 719	1.051	1.071
$ 720 PLUS	1.045	1.071

PMSA NIAGARA FALLS, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.052	1.060
$ 170 TO 209	1.038	1.053
$ 210 TO 249	1.035	1.052
$ 250 TO 289	1.034	1.048
$ 290 TO 329	1.033	1.045
$ 330 TO 369	1.032	1.040
$ 370 TO 409	1.031	1.036
$ 410 TO 459	1.027	1.034
$ 460 TO 499	1.025	1.034
$ 500 PLUS	1.022	1.034

PMSA NORWALK, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.101	1.117
$ 280 TO 359	1.074	1.106
$ 360 TO 429	1.068	1.106
$ 430 TO 499	1.066	1.101
$ 500 TO 569	1.064	1.090
$ 570 TO 639	1.062	1.083
$ 640 TO 709	1.059	1.076
$ 710 TO 779	1.053	1.075
$ 780 TO 849	1.049	1.075
$ 850 PLUS	1.043	1.075

PMSA OAKLAND, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.117	1.104
$ 320 TO 399	1.085	1.094
$ 400 TO 479	1.079	1.091
$ 480 TO 559	1.076	1.088
$ 560 TO 639	1.073	1.087
$ 640 TO 719	1.071	1.074
$ 720 TO 799	1.068	1.067
$ 800 TO 879	1.061	1.060
$ 880 TO 959	1.056	1.059
$ 960 PLUS	1.049	1.059

PMSA ORANGE COUNTY, NY

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.108	1.110
$ 230 TO 289	1.079	1.104
$ 290 TO 339	1.073	1.102
$ 340 TO 399	1.070	1.095
$ 400 TO 459	1.068	1.093
$ 460 TO 509	1.066	1.085
$ 510 TO 569	1.063	1.080
$ 570 TO 629	1.056	1.070
$ 630 TO 679	1.052	1.070
$ 680 PLUS	1.045	1.070

PMSA OXNARD-VENTURA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 280	1.110	1.090
$ 280 TO 349	1.080	1.086
$ 350 TO 419	1.074	1.081
$ 420 TO 489	1.071	1.077
$ 490 TO 559	1.069	1.070
$ 560 TO 619	1.067	1.063
$ 620 TO 689	1.064	1.056
$ 690 TO 759	1.057	1.050
$ 760 TO 829	1.053	1.050
$ 830 PLUS	1.046	1.050

PMSA PHILADELPHIA, PA-NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.066	1.081
$ 210 TO 259	1.048	1.077
$ 260 TO 319	1.044	1.069
$ 320 TO 369	1.043	1.067
$ 370 TO 419	1.041	1.061
$ 420 TO 479	1.040	1.058
$ 480 TO 529	1.039	1.051
$ 530 TO 579	1.034	1.051
$ 580 TO 629	1.032	1.051
$ 630 PLUS	1.028	1.051

PMSA PITTSBURGH, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.064	1.065
$ 190 TO 229	1.047	1.062
$ 230 TO 279	1.043	1.062
$ 280 TO 319	1.042	1.060
$ 320 TO 369	1.040	1.052
$ 370 TO 419	1.039	1.043
$ 420 TO 459	1.038	1.043
$ 460 TO 509	1.033	1.043
$ 510 TO 559	1.031	1.043
$ 560 PLUS	1.027	1.043

PMSA PORTLAND, OR

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.032	1.042
$ 190 TO 239	1.023	1.037
$ 240 TO 279	1.022	1.037
$ 280 TO 329	1.021	1.037
$ 330 TO 379	1.020	1.037
$ 380 TO 429	1.020	1.035
$ 430 TO 469	1.019	1.031
$ 470 TO 519	1.017	1.030
$ 520 TO 569	1.015	1.030
$ 570 PLUS	1.013	1.029

PMSA RACINE, WI

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.025	1.050
$ 180 TO 219	1.018	1.045
$ 220 TO 269	1.017	1.045
$ 270 TO 309	1.016	1.045
$ 310 TO 359	1.016	1.045
$ 360 TO 399	1.015	1.042
$ 400 TO 439	1.015	1.040
$ 440 TO 489	1.013	1.039
$ 490 TO 529	1.012	1.039
$ 530 PLUS	1.011	1.039

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA RIVERSIDE-SAN BERNARDINO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 230	1.110	1.088
$ 230 TO 279	1.080	1.082
$ 280 TO 339	1.074	1.081
$ 340 TO 399	1.071	1.076
$ 400 TO 449	1.069	1.071
$ 450 TO 509	1.067	1.065
$ 510 TO 569	1.064	1.057
$ 570 TO 619	1.057	1.050
$ 620 TO 679	1.053	1.049
$ 680 PLUS	1.046	1.049

PMSA ST. LOUIS, MO-IL

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 190	1.066	1.059
$ 190 TO 229	1.048	1.057
$ 230 TO 279	1.044	1.055
$ 280 TO 329	1.043	1.052
$ 330 TO 369	1.041	1.046
$ 370 TO 419	1.040	1.043
$ 420 TO 469	1.039	1.036
$ 470 TO 509	1.034	1.036
$ 510 TO 559	1.032	1.036
$ 560 PLUS	1.028	1.036

PMSA SALEM-GLOUCESTER, MA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 290	1.076	1.102
$ 290 TO 359	1.055	1.092
$ 360 TO 429	1.051	1.091
$ 430 TO 509	1.049	1.087
$ 510 TO 579	1.048	1.086
$ 580 TO 649	1.046	1.073
$ 650 TO 719	1.045	1.069
$ 720 TO 789	1.040	1.069
$ 790 TO 869	1.036	1.069
$ 870 PLUS	1.032	1.069

MSA SAN DIEGO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.108	1.094
$ 270 TO 339	1.079	1.092
$ 340 TO 399	1.073	1.086
$ 400 TO 469	1.070	1.085
$ 470 TO 539	1.068	1.081
$ 540 TO 599	1.066	1.072
$ 600 TO 669	1.063	1.066
$ 670 TO 739	1.056	1.058
$ 740 TO 809	1.052	1.057
$ 810 PLUS	1.045	1.057

PMSA SAN FRANCISCO, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 350	1.117	1.102
$ 350 TO 439	1.085	1.096
$ 440 TO 529	1.079	1.093
$ 530 TO 609	1.076	1.088
$ 610 TO 699	1.073	1.085
$ 700 TO 789	1.071	1.074
$ 790 TO 879	1.068	1.067
$ 880 TO 959	1.061	1.059
$ 960 TO 1049	1.056	1.059
$1050 PLUS	1.049	1.059

PMSA SAN JOSE, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 320	1.117	1.104
$ 320 TO 399	1.085	1.094
$ 400 TO 479	1.079	1.091
$ 480 TO 549	1.076	1.089
$ 550 TO 629	1.073	1.086
$ 630 TO 709	1.071	1.073
$ 710 TO 789	1.068	1.068
$ 790 TO 869	1.061	1.059
$ 870 TO 949	1.056	1.059
$ 950 PLUS	1.049	1.059

PMSA SANTA CRUZ, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 310	1.117	1.104
$ 310 TO 389	1.085	1.094
$ 390 TO 469	1.079	1.093
$ 470 TO 549	1.076	1.088
$ 550 TO 629	1.073	1.083
$ 630 TO 699	1.071	1.074
$ 700 TO 779	1.068	1.068
$ 780 TO 859	1.061	1.060
$ 860 TO 939	1.056	1.059
$ 940 PLUS	1.049	1.059

PMSA SANTA ROSA-PETALUMA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.117	1.102
$ 270 TO 339	1.085	1.095
$ 340 TO 409	1.079	1.093
$ 410 TO 479	1.076	1.088
$ 480 TO 549	1.073	1.085
$ 550 TO 619	1.071	1.074
$ 620 TO 689	1.068	1.067
$ 690 TO 759	1.061	1.059
$ 760 TO 819	1.056	1.059
$ 820 PLUS	1.049	1.059

MSA SCRANTON--WILKES-BARRE, PA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 150	1.025	1.038
$ 150 TO 189	1.018	1.038
$ 190 TO 229	1.017	1.038
$ 230 TO 269	1.016	1.036
$ 270 TO 299	1.016	1.035
$ 300 TO 339	1.015	1.028
$ 340 TO 379	1.015	1.028
$ 380 TO 419	1.013	1.028
$ 420 TO 449	1.012	1.028
$ 450 PLUS	1.011	1.028

PMSA SEATTLE, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 200	1.041	1.053
$ 200 TO 259	1.030	1.048
$ 260 TO 309	1.027	1.048
$ 310 TO 359	1.026	1.048
$ 360 TO 409	1.025	1.047
$ 410 TO 459	1.025	1.041
$ 460 TO 509	1.024	1.039
$ 510 TO 559	1.021	1.037
$ 560 TO 609	1.019	1.037
$ 610 PLUS	1.017	1.036

PMSA STAMFORD, CT

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 300	1.101	1.117
$ 300 TO 369	1.074	1.107
$ 370 TO 449	1.068	1.105
$ 450 TO 519	1.066	1.101
$ 520 TO 599	1.064	1.091
$ 600 TO 669	1.062	1.083
$ 670 TO 749	1.059	1.075
$ 750 TO 819	1.053	1.075
$ 820 TO 889	1.049	1.075
$ 890 PLUS	1.043	1.075

PMSA TACOMA, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 180	1.041	1.050
$ 180 TO 219	1.030	1.050
$ 220 TO 269	1.027	1.049
$ 270 TO 309	1.026	1.045
$ 310 TO 349	1.025	1.045
$ 350 TO 399	1.025	1.040
$ 400 TO 439	1.024	1.040
$ 440 TO 489	1.021	1.037
$ 490 TO 529	1.019	1.037
$ 530 PLUS	1.017	1.036

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 062987

PMSA TRENTON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 270	1.071	1.079
$ 270 TO 329	1.052	1.073
$ 330 TO 399	1.048	1.071
$ 400 TO 469	1.046	1.069
$ 470 TO 529	1.045	1.066
$ 530 TO 599	1.043	1.057
$ 600 TO 669	1.042	1.052
$ 670 TO 729	1.037	1.051
$ 730 TO 799	1.034	1.051
$ 800 PLUS	1.030	1.051

PMSA VALLEJO-FAIRFIELD-NAPA, CA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 240	1.117	1.105
$ 240 TO 299	1.085	1.096
$ 300 TO 359	1.079	1.091
$ 360 TO 419	1.076	1.090
$ 420 TO 479	1.073	1.087
$ 480 TO 539	1.071	1.075
$ 540 TO 599	1.068	1.068
$ 600 TO 659	1.061	1.059
$ 660 TO 719	1.056	1.059
$ 720 PLUS	1.049	1.059

PMSA VANCOUVER, WA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 170	1.034	1.040
$ 170 TO 209	1.025	1.040
$ 210 TO 249	1.023	1.039
$ 250 TO 289	1.022	1.037
$ 290 TO 339	1.021	1.035
$ 340 TO 379	1.021	1.033
$ 380 TO 419	1.020	1.032
$ 420 TO 459	1.018	1.030
$ 460 TO 499	1.016	1.030
$ 500 PLUS	1.014	1.030

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 210	1.071	1.083
$ 210 TO 269	1.052	1.071
$ 270 TO 319	1.048	1.071
$ 320 TO 379	1.046	1.071
$ 380 TO 429	1.045	1.062
$ 430 TO 479	1.043	1.057
$ 480 TO 539	1.042	1.051
$ 540 TO 589	1.037	1.051
$ 590 TO 639	1.034	1.051
$ 640 PLUS	1.030	1.051

MSA WASHINGTON, DC-MD-VA

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 250	1.083	1.084
$ 250 TO 319	1.060	1.077
$ 320 TO 379	1.056	1.074
$ 380 TO 439	1.054	1.071
$ 440 TO 509	1.052	1.069
$ 510 TO 569	1.050	1.063
$ 570 TO 629	1.049	1.058
$ 630 TO 699	1.043	1.051
$ 700 TO 759	1.040	1.051
$ 760 PLUS	1.035	1.051

PMSA WILMINGTON, DE-NJ-MD

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
UNDER $ 220	1.059	1.079
$ 220 TO 279	1.043	1.076
$ 280 TO 339	1.040	1.071
$ 340 TO 389	1.038	1.068
$ 390 TO 449	1.037	1.060
$ 450 TO 499	1.036	1.055
$ 500 TO 559	1.035	1.053
$ 560 TO 619	1.031	1.053
$ 620 TO 669	1.028	1.053
$ 670 PLUS	1.025	1.053

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE

PREPARED ON 062987

AREA	FACTOR
NORTH EAST CENSUS REGION	1.086
SOUTH CENSUS REGION	1.042
STATE ALASKA	1.000
PMSA AKRON, OH	1.051
PMSA ANN ARBOR, MI	1.078
PMSA AURORA-ELGIN, IL	1.053
PMSA BEAVER COUNTY, PA	1.061
PMSA BOSTON, MA	1.095
PMSA BRAZORIA, TX	1.000
PMSA BROCKTON, MA	1.095
PMSA CHICAGO, IL	1.053
PMSA CLEVELAND, OH	1.051
PMSA DANBURY, CT	1.106
PMSA DETROIT, MI	1.078
PMSA FORT WORTH-ARLINGTON, TX	1.040
PMSA GARY-HAMMOND, IN	1.053
PMSA HOUSTON, TX	1.000
PMSA JOLIET, IL	1.053
PMSA KENOSHA, WI	1.053
PMSA LAWRENCE-HAVERHILL, MA-NH	1.095
PMSA LOS ANGELES-LONG BEACH, CA	1.072
PMSA MIAMI-HIALEAH, FL	1.021
PMSA MILWAUKEE, WI	1.049
PMSA MONMOUTH-OCEAN, NJ	1.100
PMSA NASSAU-SUFFOLK, NY	1.098
PMSA NEWARK, NJ	1.100
PMSA NORWALK, CT	1.106
PMSA ORANGE COUNTY, NY	1.098
PMSA PHILADELPHIA, PA-NJ	1.071
PMSA PORTLAND, OR	1.039
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.072
PMSA SALEM-GLOUCESTER, MA	1.095
PMSA SAN FRANCISCO, CA	1.085
PMSA SANTA CRUZ, CA	1.085
MSA SCRANTON--WILKES-BARRE, PA	1.039
PMSA STAMFORD, CT	1.106
PMSA TRENTON, NJ	1.070
PMSA VANCOUVER, WA	1.039
MSA WASHINGTON, DC-MD-VA	1.072

AREA	FACTOR
MIDWEST CENSUS REGION	1.051
WEST CENSUS REGION	1.060
STATE HAWAII	1.055
PMSA ANAHEIM-SANTA ANA, CA	1.072
MSA ATLANTA, GA	1.070
MSA BALTIMORE, MD	1.068
PMSA BERGEN-PASSAIC, NJ	1.098
PMSA BOULDER-LONGMONT, CO	1.013
PMSA BRIDGEPORT-MILFORD, CT	1.106
PMSA BUFFALO, NY	1.050
PMSA CINCINNATI, OH-KY-IN	1.052
PMSA DALLAS, TX	1.040
PMSA DENVER, CO	1.013
PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC	1.021
PMSA GALVESTON-TEXAS CITY, TX	1.000
PMSA HAMILTON-MIDDLETOWN, OH	1.052
PMSA JERSEY CITY, NJ	1.100
PMSA KANSAS CITY, MO-KS	1.039
PMSA LAKE COUNTY, IL	1.053
PMSA LORAIN-ELYRIA, OH	1.051
PMSA LOWELL, MA-NH	1.095
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.100
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.050
PMSA NASHUA, NH	1.096
PMSA NEW YORK, NY	1.098
PMSA NIAGARA FALLS, NY	1.050
PMSA OAKLAND, CA	1.085
PMSA OXNARD-VENTURA, CA	1.072
PMSA PITTSBURGH, PA	1.061
PMSA RACINE, WI	1.049
PMSA ST. LOUIS, MO-IL	1.052
MSA SAN DIEGO, CA	1.081
PMSA SAN JOSE, CA	1.085
PMSA SANTA ROSA-PETALUMA, CA	1.085
PMSA SEATTLE, WA	1.049
PMSA TACOMA, WA	1.049
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.085
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.070
PMSA WILMINGTON, DE-NJ-MD	1.073

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF REGIONS

AREA TITLE	DEFINITION
NORTHEAST CENSUS REGION	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST CENSUS REGION	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
SOUTH CENSUS REGION	Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia
WEST CENSUS REGION	Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming
OUTLYING AREAS	Puerto Rico and Virgin Islands use the south census region factors Guam and Trust Territories use the west census region factors

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Akron, Oh	COUNTY(IES) Portage, Summit Oh
Anaheim-Santa Ana, Ca	COUNTY(IES) Orange Ca
Ann Arbor, Mi	COUNTY(IES) Washtenaw Mi
Atlanta, Ga	COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga
Aurora-Elgin, Il	COUNTY(IES) Kane, Kendall Il
Baltimore, Md	COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md
Beaver County, Pa	COUNTY(IES) Beaver Pa
Bergen-Passaic, Nj	COUNTY(IES) Bergen, Passaic Nj
Boston, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Boulder-Longmont, Co	COUNTY(IES) Boulder Co
Brazoria, Tx	COUNTY(IES) Brazoria Tx
Bridgeport-Milford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
Brockton, Ma	COUNTY Bristol, Ma (PART): TOWNS OF Easton COUNTY Norfolk, Ma (PART): TOWNS OF Avon COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman
Buffalo, Ny	COUNTY(IES) Erie Ny
Chicago, Il	COUNTY(IES) Cook, Du Page, Mchenry Il
Cincinnati, Oh-Ky-In	COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh
Cleveland, Oh	COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh
Dallas, Tx	COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx
Danbury, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford
Denver, Co	COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co
Detroit, Mi	COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi
Fort Lauderdale-Hollywood-Pompano Beach, Fl	COUNTY(IES) Broward Fl
Fort Worth-Arlington, Tx	COUNTY(IES) Johnson, Parker, Tarrant Tx
Galveston-Texas City, Tx	COUNTY(IES) Galveston Tx
Gary-Hammond, In	COUNTY(IES) Lake, Porter In
Hamilton-Middletown, Oh	COUNTY(IES) Butler Oh
Houston, Tx	COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx
Jersey City, Nj	COUNTY(IES) Hudson Nj
Joliet, Il	COUNTY(IES) Grundy, Will Il
Kansas City, Mo-Ks	COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo
Kenosha, Wi	COUNTY(IES) Kenosha Wi
Lake County, Il	COUNTY(IES) Lake Il

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Lawrence-Haverhill, Ma-Nh	COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham
Lorain-Elyria, Oh	COUNTY(IES) Lorain Oh
Los Angeles-Long Beach, Ca	COUNTY(IES) Los Angeles Ca
Lowell, Ma-Nh	COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham
Miami-Hialeah, Fl	COUNTY(IES) Dade Fl
Middlesex-Somerset-Hunterdon, Nj	COUNTY(IES) Hunterdon, Middlesex, Somerset Nj
Milwaukee, Wi	COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi
Minneapolis-St. Paul, Mn-Wi	COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi
Monmouth-Ocean, Nj	COUNTY(IES) Monmouth, Ocean Nj
Nashua, Nh	COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry
Nassau-Suffolk, Ny	COUNTY(IES) Nassau, Suffolk Ny
New York, Ny	COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester Ny
Newark, Nj	COUNTY(IES) Essex, Morris, Sussex, Union Nj
Niagara Falls, Ny	COUNTY(IES) Niagara Ny
Norwalk, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton
Oakland, Ca	COUNTY(IES) Alameda, Contra Costa Ca
Orange County, Ny	COUNTY(IES) Orange Ny
Oxnard-Ventura, Ca	COUNTY(IES) Ventura Ca
Philadelphia, Pa-Nj	COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa
Pittsburgh, Pa	COUNTY(IES) Alleghany, Fayette, Washington, Westmoreland Pa
Portland, Or	COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or
Racine, Wi	COUNTY(IES) Racine Wi

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

MSA/PMSA	DEFINITION
Riverside-San Bernardino, Ca	COUNTY(IES) Riverside, San Bernadin Ca
St. Louis, Mo-Il	COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo
Salem-Gloucester, Ma	COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham
San Diego, Ca	COUNTY(IES) San Diego Ca
San Francisco, Ca	COUNTY(IES) Marin, San Francisc, San Mateo Ca
San Jose, Ca	COUNTY(IES) Santa Clara Ca
Santa Cruz, Ca	COUNTY(IES) Santa Cruz Ca
Santa Rosa-Petaluma, Ca	COUNTY(IES) Sonoma Ca
Scranton--wilkes-Barre, Pa	COUNTY(IES) Columbia, Lackawanna, Luzerne, Monroe, Wyoming Pa
Seattle, Wa	COUNTY(IES) King, Snohomish Wa
Stamford, Ct	COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford
Tacoma, Wa	COUNTY(IES) Pierce Wa
Trenton, Nj	COUNTY(IES) Mercer Nj
Vallejo-Fairfield-Napa, Ca	COUNTY(IES) Napa, Solano Ca
Vancouver, Wa	COUNTY(IES) Clark Wa
Vineland-Millville-Bridgeton, Nj	COUNTY(IES) Cumberland Nj
Washington, Dc-Md-Va	COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va
Wilmington, De-Nj-Md	COUNTY(IES) New Castle De; Cecil Md; Salem Nj

[FR Doc. 87-20639 Filed 9-8-87; 8:45 am]
BILLING CODE 4210-27-C

federal register

Wednesday
September 9, 1987

Part IX

National Archives and Records Administration

36 CFR Parts 1220 and 1228
Records Disposition; Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220 and 1228

Records Disposition

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is revising the regulations for the disposition of Federal records to simplify the procedures followed by Federal agencies to propose immediate transfer of records to the National Archives. Previously, agencies scheduled recurring records and nonrecurring disposable records by submission of an SF 115, Request for Records Disposition Authority. However, to offer nonrecurring records for immediate transfer, agencies submitted an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States. Agencies will now schedule all records, recurring and nonrecurring, permanent and temporary, by submission of an SF 115. The SF 258 will be executed only to document the actual physical and legal transfer of records accepted by the National Archives.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1220 and 1228

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for Part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and Chapter 29.

2. Section 1220.14 is amended by adding the following definitions of "Records schedule" and "Unscheduled records" in alphabetical order:

§ 1220.14 General definitions.

* * * * *

"Records schedule" or "Schedule" means an SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the final disposition of Federal records, or a printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on an SF 115. A comprehensive records schedule means a schedule covering all documentary materials of an agency or major component of a department, including records, the disposition of which must be approved by NARA on an SF 115, and nonrecord materials whose disposition is determined by the agency.

* * * * *

"Unscheduled records" means records whose final disposition has not been approved by NARA. Unscheduled records are those that either have never been described on an SF 115 approved by NARA; those included on an SF 115 approved prior to May 14, 1973, for which no final disposition was established, i.e., the disposition instruction was "permanent," "retain," "disposal not authorized," or the like; and those described on an SF 115 but not approved by NARA (withdrawn, cancelled, or disapproved).

PART 1228—DISPOSITION OF FEDERAL RECORDS

3. The authority citation for Part 1228 is revised to read as follows:

Authority: 44 U.S.C. 2101-2111, 2901-2909, 3101-3107, 3301-3314.

4. Section 1228.32 is revised to read as follows:

§ 1228.32 Agency recommendations for the permanent retention of records.

(a) Federal agencies recommend the permanent retention of records by submitting Standard Form 115, Request for Records Disposition Authority, to the National Archives and Records Administration (NIR). An SF 115 is used for requesting authority to schedule permanent records, either on a recurring or one-time basis.

(b) Each item proposed for permanent retention shall include an arrangement statement; statement on any restrictions on access which NARA should impose in conformity with the Freedom of Information Act, if the records are proposed for immediate transfer; and an estimate of the volume of records accumulated annually if the records series is current and continuing, as well as the total volume to date.

(c) If the records series is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives of the United States.

(d) If the series is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives of the United States in the disposition instruction.

5. Section 1228.34 is revised to read as follows:

§ 1228.34 Determination of permanent retention of records.

(a) The National Archives and Records Administration will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(b) If NARA determines that records are not of permanent value, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(c) If NARA determines that records are permanent, but that the transfer instructions are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(d) NARA may determine that a records series proposed for disposal merits permanent retention and transfer to the National Archives. In such cases, NARA negotiates with the agency to change the disposition instruction prior to approval of the SF 115.

(e) All records series found to be permanent should be transferred to the National Archives of the United States after the period specified on the SF 155 in accordance with procedures specified under Subpart I.

§ 1228.36 [Removed]

6. Section 1228.36 is removed.

7. Section 1228.190 is revised to read as follows:

§ 1228.190 Transfer of records.

(a) *Policy.* Federal records will be transferred to the National Archives of the United States only if they are listed as permanent on an SF 115, Request for Records Disposition Authority approved by NARA since May 14, 1973, or if they are accretions (continuations of series already accessioned) to holdings of the National Archives. Transfers are initiated by submission of an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States.

(b) *Initiation of request to transfer*—(1) *Nonrecurring series scheduled for immediate transfer.* NARA will provide the SF 258 for records scheduled for

immediate transfer on an SF 115 approved after September 30, 1987. NARA will send the SF 258 to the agency with the approved SF 115. The agency will sign and return the SF 258 to the Office of the National Archives (NN), National Archives and Records Administration, Washington DC 20408, or to the appropriate National Archives Field Branch if so provided on the SF 115.

(2) *Future transfers of series in agency space.* Sixty days before the scheduled date of transfer to the National Archives of the United States, the transferring agency shall submit an SF 258 to the Office of the National Archives (NN) or to the appropriate National Archives Field Branch if so provided on the SF 115. NARA will determine whether specified restrictions are acceptable and whether adequate space and equipment are available.

(3) *Future transfers of series in Federal Records Centers.* NARA will initiate the SF 258 and send it to the agency 90 days before the scheduled transfer date. The agency shall approve or disapprove the SF 258 and send it to the address indicated on the form 60 days before the scheduled transfer date.

(c) *Physical and legal transfer.* The Office of the National Archives will provide shipping or delivery instructions to the agency or Federal Records Center. Legal custody of the records passes to NARA when the NARA official signs the SF 258 acknowledging receipt of the records.

§ 1228.192 [Removed]

8. Section 1228.192 is removed.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 87-20674 Filed 9-8-87; 8:45 am]

BILLING CODE 7515-01-M

federal register

Wednesday
September 9, 1987

Part X

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

Residential Energy Conservation Program and Commercial and Apartment Conservation Program; Notice of Final Rulemaking

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Parts 456 and 458

[Docket No. CAS-RM-81-130-A-B]

Residential Energy Conservation Program and Commercial and Apartment Conservation Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy (DOE) is today issuing final amendments to the regulations of the Residential Conservation Service (RCS) program (10 CFR Part 456). These amendments are under the authority of the National Energy Conservation Policy Act, (NECPA), as amended by Title I of the Conservation Service Reform Act (CSRA) (Pub. L. 99-412).

The RCS program requires large natural gas and electric utilities to perform energy audits of their customers' homes upon request and to provide other related information to their residential customers. These final amendments to 10 CFR part 456 affect the regulations covering the regular RCS program and the RCS Federal Standby Plan (FSP). The primary regulatory changes required by the new legislation include the deletion of some program services, the official termination of the program on June 30, 1989, and the addition of flexibility for States and utilities in designing their residential energy conservation programs.

In addition, DOE is issuing final amendments to the regulations of the RCS program which apply to alternative State plans under Section 226 of NECPA, as amended by Title I of CSRA. Subpart K recognizes the new flexibility States have to design residential energy conservation plans suitable to their needs and sets forth procedures under which eligible customers may apply to the Secretary to review the adequacy of State implementation of alternative State plans in operation for at least one year.

DOE is also issuing final rules to implement Title II of CSRA which repeals Title VII of NECPA - the statutory basis for the Commercial Apartment Conservation Service (CACS) - except for CACS State plans approved prior to August 1, 1984, which may continue in effect until January 1, 1990. The final rule complies with the repeal of Title VII of NECPA by removing 10 CFR Part 458 and takes into account the CACS State plans falling under the exemption from repeal by adding a new Subpart M to 10 CFR Part 456 which, among other things, provides for reporting on any CACS State plan which continues in effect.

10 CFR Part 456 has been retitled the Energy Conservation Service Program.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT:

Edna M. Jones, CE-222, U.S. Department of Energy, Residential and Commercial Conservation Program, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Room 6B-113, Washington, DC 20585 (202) 586-8224.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments, Technical Changes, and Clarifications
III. Regulatory Impact Analysis
IV. Regulatory Flexibility Act
V. Environmental Impacts
VI. Paperwork Reduction Act

I. Introduction

The Residential Conservation Service (RCS) program was established by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), Pub. L. No. 95-619, November 9, 1978, as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. No. 96-294, June 30, 1980, 42 U.S.C. 8211 et seq. Implementation of the program was begun November 7, 1979, with the issuance of a final rule (44 FR 64602, November 7, 1979), and continued under a revised final rule (47 FR 27752, June 25, 1982). The RCS program, as mandated by statute, requires large electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable resource measures, and to offer their customers energy audits of their homes. The legislation provides for substantial and detailed State involvement, under State plans approved by the Department of Energy (Department or DOE). Furthermore, the legislation requires implementation of a Federal Standby Plan where States are unwilling or unable to carry out their role under the law.

The Energy Security Act of 1980 also amended NECPA by adding a new Title VII which created the Commercial and Apartment Conservation Service (CACS). The CACS was designed to provide RCS-type services for all multi-family and small commercial buildings. DOE implemented the CACS by rules codified at 10 CFR Part 458.

The Conservation Service Reform Act of 1986 (CSRA) also amended NECPA. Title I of CSRA provided for changes to Title II of NECPA, as amended. Title II of CSRA repealed Title VII of NECPA, the statutory basis for CACS, except for CACS State plans approved prior to August 1, 1984, which may continue in effect until January 1, 1990. To conform to the repeal of Title VII of NECPA, 10 CFR Part 458 is being deleted.

Title I of CSRA made significant alterations to the NECPA provisions applicable to the RCS. With respect to standard RCS plans, CSRA provides for issuance of one more program announcement before Federal program termination on June 30, 1989, eliminates the requirements to arrange for installation and financing of conservation measures and to provide a list of suppliers, contractors, and financial institutions, continues present State plans with certification, requires that the Department provide technical assistance, and requires States, utilities, and the Department to prepare more extensive reports. CSRA also permits exemption from standard RCS requirements for utilities granted waivers and for States which certify alternative State plans.

Title II of CSRA repealed Title VII of NECPA, effective immediately, with one significant exception. States with CACS plans approved under 10 CFR Part 458 prior to August 1, 1984, were authorized to continue those plans in effect until January 1, 1990. To conform to the repeal of Title VII of NECPA, DOE is removing 10 CFR Part 458. To provide for those plans which CSRA permits to remain in effect, DOE today has amended 10 CFR Part 456 by adding a new Subpart M containing the rules which may be needed for those plans actually continued in effect.

On March 4, 1987, the Department issued a notice of interim final amendments and a notice of proposed rulemaking on the Residential Energy Conservation program and Commercial and Apartment Conservation Service program, 52 FR 6710, 6754. Today the Department is issuing a notice of final rulemaking responding to comments received relative to the March 4, 1987 notices, and setting forth the final regulations to implement Titles I and II of the Conservation Service Reform Act of 1986 (CSRA), Pub. L. 99-412.

The final rule reflects the Department's ongoing effort to meet its legislative responsibilities without imposing unnecessary burdens on affected parties. There are two objectives: (1) To provide a regulatory framework within which States and, to a lesser degree, DOE may carry out their responsibilities under NECPA and CSRA; and (2) to allow States and utilities the maximum flexibility to

design an effective residential conservation program consistent with legislative intent.

DOE has reserved all deleted Sections so that all portions of the rule which continue in force under CSRA can be found in the same Section number as in the previous rule.

II. Discussion of Comments, Technical Changes, and Clarifications

DOE received 40 written comments on the notice of interim final amendments and the notice of proposed rulemaking published on March 4, 1987. No one appeared to present oral comments at the public hearing held in Washington, D.C., on April 21, 1987. During the comment period DOE inserted into the public file a memorandum of an oral communication from a staff attorney in the Small Business Administration (SBA) which raised a significant issue not previously addressed in any comments. After the close of the comment period, SBA transmitted official comments. A staff member of the SBA Office of the Chief Counsel for Advocacy submitted unofficial staff comments which were treated in the same manner as other late-filed comments by members of the public.

DOE chose to consider and respond to relevant late-filed comments. Suggestions for change in the interim final amendments and the proposed rule, which might have led to reopening the comment period, were advanced. However, since DOE was not inclined to accept these suggestions, it was not necessary to reopen the comment period and delay issuing today's final rule.

Twenty-five of the 40 comments received dealt, in whole or in part, with the reporting requirements for the RCS program which are set forth in Section 456.316 and for the alternative State plans (ASP) which are set forth in Section 456.1106. Most of the comments objected to items of information, such as low and moderate income households served, which DOE indicated might be required as a matter of discretion. As a result of the number of comments addressed to reporting issues, DOE has elected to deal with those issues first.

A. Subpart C—Content of State Plans and Subpart K—Alternative State Plans

1. The cause of most concern to commenters (primarily utilities) was the indication that DOE would require reporting on low and moderate income households. Commenters taking issue with the desirability of such reporting argued that they did not maintain income information on their customers; that such information would be costly and burdensome to collect; and that customers would consider it an invasion of privacy to be asked for the information. Also, utilities stated that they would have no way to verify the accuracy of such information.

To avoid imposing significant, new information collection burdens when possible, DOE has decided not to seek reports on low and moderate income households served as a reporting requirement for a standard RCS program. However, under Section 226(e)(2)(C) of the NECPA, as amended by the CSRA, States which adopt an ASP are required as a matter of law to report information on the percentage of individuals with low and moderate incomes who receive benefits under the ASP.

The second issue raised by commenters concerned the portion of DOE's preamble interpreting "low income" to include those households having less than $15,000 annual income and "moderate income" to include those households having an annual income between $15,000 and $30,000. Some commenters suggested that since these definitions were inconsistent with established guidelines which are used for the Weatherization Assistance Program for Low-Income Persons (10 CFR Part 440), the RCS program should adopt the Weatherization Program guidelines for the ASP program in order to minimize confusion. Still other commenters suggested that the RCS lead agency in each State collect income level information from surveys. A uniform definition of the terms "low income" and "moderate income" would be useful but not absolutely necessary for meaningful reporting on households served by income level. DOE indicated its intent to seek reporting on the percentage of "low income" and "moderate income" households served to facilitate aggregation of data and reporting by the Secretary to the Congress. The comments have persuaded DOE that no single definition of these terms is completely satisfactory. To ease the reporting burden as much as possible, DOE has elected to permit those States which adopt an ASP to develop their own definition of the terms "low income" and "moderate income" and the methodology for establishing the percentages of households served (including estimates based on voluntary responses to surveys.) Under provisions of Section 456.1106(d), DOE intends to ask States to include a description of the income level definition they are using and how they will collect the information on the number of households in the low and moderate income groups that are being served by the utility.

2. A number of commenters expressed concern about the possible expansion of reporting responsibilities for the States. Specifically, there were a number of comments about the probable cost of collecting information about estimated actual and predicted energy savings resulting from any standard RCS plan or ASP. Respondents appeared to be concerned that they would be required to engage in extensive field examinations of quantified energy use before and after an audit. In its reporting guidance to States, DOE is providing simple methodologies for use in determining estimated actual and predicted energy savings. Respondents may also use other suitable methodologies, so long as they provide DOE with a description of the methodology they use. DOE must require reporting this minimum information in order to meet its reporting obligations to Congress, under Section 225 of the NECPA, as amended by the CSRA.

3. A third concern expressed by commenters was about reporting the number of buildings and occupants receiving benefits. The commenters, primarily utilities, stated they had no information base on the number of buildings in which individual units had requested program services. Additionally, utilities state they do not know how many residents reside in individual dwelling units. Again, under CSRA, States that adopt an ASP are required to report this information. States continuing a standard RCS plan are not required to report on number of buildings and occupants receiving benefits and States have not been asked to provide that information in the annual reports.

4. The fourth major concern of commenters was reporting on energy savings of additional residential conservation measures. Commenters felt this would be difficult because so many factors have to be taken into account, such as weather, use of alternative fuels and customer lifestyles. Commenters suggested that data be collected on a few important energy measures or that a random survey be made among residential customers. Section 225 of NECPA, as amended by CSRA, requires that "an analysis, based on completed audits, and other relevant data of the energy saving potential of additional residential conservation measures" be reported by DOE in its annual report to Congress. In its annual reporting guidance, DOE has asked, but not required, States to share information on the energy-saving potential of residential conservation measures with

DOE, to the extent that qualitative or quantitative information is available. There is no intent to require States or utilities to perform onerous studies in order to address this subject.

5. One comment suggested drastically expanding the reporting requirements applicable to an ASP under proposed Section 456.1106 and to a utility waiver under Subpart L by altering those provisions to require a utility to report to DOE and the State the same detailed information about costs that is required under a Federal Standby Plan pursuant to Section 456.1020(b). The rationale for this suggestion seems to be that the information would be useful to DOE and the State in ascertaining whether a utility is engaging in unfair or anti-competitive activities such as cross-subsidization which provides an advantage in competing with small business. (This comment was not supported by any small business concerns or by the official SBA comments.)

The reporting requirements applicable under Federal Standby Plans pursuant to Section 456.1020(b) are far more demanding in terms of specific details than those which apply to utility activities under standard RCS State plans, CSRA alternative State plans, and CSRA utility waivers. Compare 10 CFR Section 456.1020(b) with 10 CFR Section 456.316, proposed Section 456.1106 and Section 456.1204. The requirements under Section 456.1020(b) are so much more demanding because, for Federal Standby Plans, DOE is directly regulating in a role usually played by State authorities. Although DOE does intend to request reports regarding the nature of and complaints about direct financing activities, or exempted or waived supply and installation activities, it is not appropriate to be as demanding as Section 456.1020(b), with regard to Subpart K alternative State plans or Subpart L utility waivers because Congress intended for the States to play the primary role in establishing adequate requirements to assure that utilities do not engage in unfair, deceptive, or anti-competitive acts. See 10 CFR Section 456.1103 and 456.1203. In addition, given the more circumscribed enforcement role against such acts assigned to DOE by CSRA, it is also not appropriate to impose significant reporting burdens when there is limited regulatory need for the information by DOE.

6. General comments about the reporting requirements were that only information which was already available and/or readily collectible be supplied; that expanded reporting requirements were well beyond normal data collection capabilities of utilities; and that it would be costly to collect additional information. DOE did examine several alternatives to be used in obtaining this information, and chose those which were deemed to be the least burdensome while still allowing DOE to fulfill the Congressional reporting requirements imposed by CSRA.

B. Subpart A—General Provisions and Definitions and Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

Section 215(g) of NECPA now provides: "The provisions of this Section shall not apply to any building which has five or more dwelling units and which does not contain individual meters for the dwelling units therein." Two comments were received concerning the program coverage for the multi-family buildings containing five or more units. Both commenters pointed out that the definition contained in Section 456.105(e)(2) states that buildings with five or more units are not included unless they contain an individual meter for heating or cooling, while Section 456.208(c) states that the dwellings are covered when the dwelling units are individually metered for all energy sources. One commenter stated that the provisions of Section 456.105(e)(2) requiring meters for heating or cooling should be the definitive language, while the other commenter felt that Section 456.208(c) with its provision for meters for all energy sources should be retained. Under Section 215(g) of NECPA, as amended by CSRA, if a dwelling unit in a building with five or more dwelling units is individually metered for either heating or cooling, then the occupant has the right to have an audit performed on his unit. Accordingly the language from Section 456.105(e)(2) has been retained and Section 456.208(c) has been amended to make the definitions consistent.

C. Subpart E—Supply, Installation, and Financing by Utilities

With respect to the provisions contained in Section 456.505(c) regarding the status of requests for recertification of an exemption which has been received, but not acted upon, by the Secretary by the July 1, 1987, deadline, one commenter suggested that the exemption be suspended until a determination is made by the Secretary. Under provisions of the CSRA, an exemption which has not been acted upon by the July 1, 1987, deadline is automatically suspended until such time as the Secretary makes a determination.

One commenter recommended that notice of a utility's request for recertification from the general prohibition against supplying and installing energy conservation or renewable resource measures be published in the **Federal Register** to enable interested parties to comment to the Secretary.

The recertification determination under Section 456.505(c) is subject to the procedures set forth in Section 456.509. Subsection (b) of that Section requires a utility applicant to give notice to the Governor, State Energy Office, and State Regulatory Authority of the State in which the recertified exemption would be applicable, informing them that they may submit comments to DOE within 10 days. Subsection (b) also provides that, as a matter of discretion, opportunity to comment may be provided by DOE to other interested persons.

The procedures under Section 456.509 have proved adequate over a long period of time to insure that assertions made by utility applicants are brought to the attention of those in the best position to check their veracity. It will be a rare case where an interested person from the general public could provide additional useful information which would have a significant bearing on a recertification determination. Altering Section 456.509(b) to provide for mandatory, rather than discretionary, notice and opportunity for general public comments would produce delay without much likelihood of benefit to compensate for real losses sustained by utilities waiting for a decision.

One other late-filed comment on Subpart E was received which dealt with the "supporting documentation" required under Section 456.505(c) for establishing entitlement to recertification. Although the preamble to the notice of interim final rulemaking gave examples of what might be included in "supporting documentation", the comment argued in favor of requirement in the rule that a utility must submit a copy of a contract to establish its claim. While a copy of an appropriate contract would tend to show that the installation and supply activities in question were taking place during the 12-month time period specified in Section 456.505(c), other documentary information may be just as satisfactory. In some instances, DOE may require submission of a copy of a contract, but there is no adequate reason to require such a submission by rule in every case. It is preferable to interpret the phrase "supporting documentation" on a case-by-case basis.

D. Subpart J—Residential Conservation Service Federal Standby Plan

1. Supply, installation and financing by utilities. One commenter suggested that since the word "financing" was referred to only once in Section 456.1017(b)(2)(iii) that it should be removed from the Section title. As "financing" is one of the subjects covered by this Subpart, it is appropriate to leave it in the title.

2. Complaints processing procedures. One commenter suggested that the langauge in Section 456.1018(a)(1) should be modified to clarify that program measures are installed or supplied as part of an RCS program. The CSRA requires inclusion of procedures for resolving complaints against persons who sell or install measures under an RCS program. The language of Section 456.1018(a)(1) provides that information about complaint processing procedures must be supplied regarding "program measures." To clarify the phrase "program measures", DOE has added to the end of the sentence in paragraph (a)(1) the words "under the RCS program."

E. Subpart K—Alternative State Plans

1. One commenter urged the inclusion in proposed Section 456.1102 of a prohibition against fuel switching in the implementation of an ASP. The definitions contained in Section 456.105 are, by reference, applicable to Subpart K - Alternative State Plan. The definition of program measures for replacement furnaces and boilers contained in Section 456.105(f)(3)(i) and for replacement central air conditioners contained in Section 456.105(4) exclude fuel switching.

2. With respect to utilities operating under a Subpart L utility waiver, one commenter raised the following question: if a State certified an ASP (which would include all regulated, covered utilities), would those utilities which had been granted a waiver under Subpart L be required to comply with the ASP or could they continue their programs under their previously granted waivers. The commenter did not present enough information to make a determination, and the answer may vary from case to case. This question will be handled on a case-by-case basis upon presentation of the facts.

3. One commenter expressed support of the DOE suggested guidance in determining the 2 percent residential energy savings goal consistent with proposed Section 456.1103(a). DOE is, therefore, restating the language from the preamble of the March 4, 1987, Notice of Proposed Rulemaking which suggests the 2 percent energy savings requirement be interpreted, at a minimum, as 2 percent of the energy used in a State's eligible customer's residences, reduced by the energy used in residences already served under the RCS plan. However, States are permitted to determine if another interpretation of the 2 percent residential energy savings goal would best suit their individual circumstances.

4. Three comments were received with respect to treatment of utility waivers in proposed Section 456.1103(c). One of them was a request that DOE relax its procedure for applying for a utility waiver by treating an alternative State plan as a utility waiver request from individual utilities when the alternative State plan requires installation and supply activities. Under the provisions of the CSRA, the DOE cannot accept this recommendation because utility waiver requests must be submitted by a utility. In processing a utility waiver request, a State is not and cannot be an agent of the utility submitting such a request. The State role is more like that of a rulemaking authority. However, in a case where a State adopts an ASP requiring its utilities to provide supply and installation services, the State many coordinate preparation and submission of a consolidated waiver request from its utilities.

The second request is for clarification of guidance in the preamble to the March 4, 1987, notice of proposed rulemaking on the applicability of Section 216 of the NECPA to ASP provisions for utility supply and installation activities which can only be undertaken pursuant to a Section 216(e) waiver issued by the DOE. This preamble guidance explained proposed Section 456.1103(c). The commenter wanted to verify that all ASP supply and installation options are subject to the waiver requirements under Section 216. As far as DOE is aware, the only supply and installation options are in fact energy conservation measures. Since proposed Section 456.1103(c) provides that ASP's must contain procedures to assure that supply and installation of energy conservation measures are consistent with Section 216 of the NECPA, all supply and installation options to which the commenter alluded were proposed to be subject to the Section 216(e) waiver provisions. To clarify the cross reference to Section 216 of the NECPA in the text Section of Section 456.1103(c), the DOE is adding an additional cross reference to Subpart E of Part 456 which contains the regulations implementing Section 216 of the NECPA.

The third comment suggested amending parts of the rule including proposed Section 456.1103(c) to make clear that, pursuant to an ASP, a utility could not undertake an installation and supply activity prohibited by NECPA without obtaining a CSRA utility waiver under Subpart L. The language of Section 456.1103 which comes from Section 226(c) of the NECPA, as amended by CSRA, is directed at States and not utilities. It clearly provides that an ASP certified under Subpart K must "contain procedures to assure, that if a public utility supplies or installs residential energy conservation measures such actions shall be consistent with Section 216 of NECPA". Section 216 of NECPA sets forth the prohibitions on utility installation and supply activities, and it should be obvious to a careful reader that a State cannot include provisions in an ASP inconsistent with Section 216 prohibitions. A utility desiring a waiver from such a prohibition has no choice under the regulations but to submit a formal request for it.

5. Only one comment was received on proposed Section 456.1104, concerning the use of incentives in developing and implementing an alternative State plan. The commenter suggested that the effect of incentives in meeting goals of an ASP would be difficult to determine and felt that participating utilities should be allowed to pursue those avenues which would help them meet their goals. It appears the commenter misunderstood Section 456.1104, and thought that it mandated use of incentives. Section 456.1104 permits, but does not require, the use of incentives by State lead agencies or State regulatory authorities to assist in achieving the goals of an ASP.

6. One commenter suggested that proposed Section 456.1107(c) be changed to allow 30 days rather than 20 days, from the date of receipt, for the entity in charge of an ASP to file an answer to a petition claiming that an ASP has been inadequately implemented. DOE has retained the provision that 20 days is a reasonable time for a State to respond to a petition. Allowing additional time would be inconsistent with the 60 statutory day deadline on the Secretary to act on a request for hearing in a petition.

F. Subpart L—Utility Waiver Process

Two comments suggested amending Section 456.1203 to specifically require a State to provide public notice and a public hearing on a request for utility waiver. It was argued that, without such an amendment, lack of full participation

would deprive the States of valuable input. It was also argued that an amendment with such procedures is important because DOE rules would serve as a model for the States upon expiration of the RCS program. DOE has decided against promulgating the suggested amendment for two reasons. The amendment is not necessary because adequate public notice and an open hearing in virtually all circumstances are implicit requirements of the language providing for an opportunity for hearing. Any questions regarding the legal sufficiency of State hearing procedures can be dealt with on a case-by-case basis in an appropriate forum. Furthermore, the amendment is not desirable because it might be regarded by States as the acceptable least common denominator. States should use the flexibility provided by CSRA utility waiver provisions to develop procedures which they regard as appropriate for processing utility waiver applications consistent with law. It is not appropriate for DOE to insert procedural details when the statutory language is largely self-explanatory and appears intended for States to interpret and apply in the first instance.

G. Subpart M—Commercial Buildings and Multifamily Dwelling

There were no comments received on this Subpart, which provides for annual reports by States that elect to continue CACS plans adopted under Title VII of NECPA, and therefore the Subpart M will stand as written.

H. Technical Changes

DOE is making six revisions to correct technical errors which were contained in the **Federal Register** publication of March 4, 1987. Some of these errors were pointed out in written comments received by DOE, but it appears no one was misled.

1. Appeals and other relief. DOE is providing a technical clarification to Section 456.103(a) by inserting the words "except from Subparts K, L, and M" which is desirable because any applicable appeal provisions for those subparts are specifically set forth therein.

2. Termination. A sentence has been added at the end of Section 456.107 to make clear that the termination provision (which covers RCS regulations) does not apply to CACS regulations under Subpart M which specifically provides in effect for termination at the date provided by Title II of CSRA for any CACS State plan excepted from repeal of Title VII of NECPA.

3. Program announcement. Paragraph (a) of Section 456.305 has been revised to include language that was omitted in printing which was supposed to repeat the language of Section 215(a) of NECPA, as amended by CSRA, almost word for word. The words and 'every two years thereafter' has been inserted so that the paragraph reads: "....approval of the State plan and every two years thereafter, but not more than once during the period from August 28, 1986 to June 30, 1989, with the following:"

4. Accounting and payment of costs. Paragraph (b)(2) of Section 456.309 has been revised to correct a typographical error with respect to the limit on the recovery cost of program elements. That limit is $15 per dwelling unit rather than the $1.5 per dwelling unit printed in the March 4, 1987, interim final amendments.

5. Prohibition. Paragraph (b) of Section 456.502 has been revised to include language that was inadvertently omitted in printing. The words 'or finance the supply or installation of' have been inserted so that the paragraph reads: "....no covered utility may supply, install, or finance the supply or installation of any energy conservation...."

6. Qualification procedures for auditors. Paragraph (a) of Section 456.1014 has been revised to include language that was inadvertently omitted in printing. The words 'auditor training program or passed a DOE approved' has been inserted so that the paragraph reads: "....using either the DOE auditor training manual or any other DOE approved auditor training program or passed a DOE approved certification examination."

7. Program measures. Paragraph (a)(1)(i) of Section 456.1016 has been revised to correct a typographic error in which the formula for determining a program measure payback period was misprinted. The formula should have read

$$P = \frac{F-T}{S} \quad P>7 \text{ years}$$

8. Reporting requirements. The cross reference to Section 104 of the CSRA in proposed Section 456.1106(d) has been corrected to read Section 225 of the NECPA. Section 104 added Section 225 to the NECPA.

I. Other Comments

Several commenters provided suggestions for changes in provisions of the RCS rule which were not amended by the March 4, 1987, interim regulations or were irrelevant to changes required by CSRA. Those comments were considered out of scope and have not been addressed in the final rule. Only provisions which are subject to amendment as a result of CSRA were within the scope of this rulemaking.

III. Regulatory Impact Analysis

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether a rule is a "major rule", as defined by Section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for rules which fall within that definition.

The principal impacts of the final rule will be to decrease the costs of administering and complying with RCS plans, to establish procedures applicable to applications under CSRA by eligible customers complaining about allegedly inadequate implementation of alternative State plans, and to provide for reporting on program progress by a State which continues in effect a CACS State plan, approved before August 1, 1984. The final rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. DOE has concluded therefore that the final rule is not a "major rule".

The changes in the final rule directly and mainly impact on States and utilities. The impact on small businesses, if any, will be indirect and is not likely to be widespread throughout the Nation. To the extent that small businesses have complaints about alleged anti-competitive activities, CSRA and other law provide for remedies outside the scope of DOE regulatory authority.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that an agency prepare a regulatory flexibility analysis for any rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for

a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register**. The majority of the revisions in this rule would impact mainly upon the States and utilities. The procedures for complaints against the adequacy of implementation of alternative State plans, for reporting annually on progress under a CACS State plan which continues in effect under Title II of CSRA, elimination of the above described program services and the addition of provisions for granting utility waivers upon State recommendation are expected to have minimal, indirect impacts in a relatively small number of cases. Accordingly, pursuant to Section 605(b) of the Regulatory Flexibility Act, DOE certifies that the final rule will not have a significant impact on a substantial number of small entities.

V. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program (DOE/EIS-0050). The notice of availability was published in the **Federal Register** on November 7, 1979. The subject matter of this rulemaking is within the scope of this programmatic Environmental Impact Statement and the impacts of the rule were adequately addressed in the EIS. Copies may be obtained by writing: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

VI. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in Sections 456.316, 456.1020, 456.1103 and 456.1105 through 456.1108 were submitted to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The removal of 10 CFR Part 458 is expected to result in reductions in reporting and recordkeeping requirements, which will be reported to OMB, as provided in 5 CFR Part 1320, "Controlling Paperwork Burden on the Public."

List of Subjects in 10 CFR Parts 456 and 458

Energy audits, Energy conservation, Housing, Insulation, Intergovernmental relations, Renewable energy resources, Reporting and recordkeeping requirements, Utilities.

Issued in Washington, DC, August 25, 1987

Donna R. Fitzpatrick

Assistant Secretary, Conservation and Renewable Energy

1. 10 CFR Part 456 is revised to read as follows:

PART 456—ENERGY CONSERVATION SERVICE PROGRAM

Subpart A—General Provisions and Definitions

Sec.
456.101 Purpose and scope.
456.102 Petitions concerning conflicts of laws.
456.103 Appeals and other relief.
456.104 List of covered utilities.
456.105 Definitions.
456.106 [Reserved]
456.107 Termination.

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

Sec.
456.201 Scope.
456.202 Initial submission.
456.203 Notice, comment, and public hearing.
456.204 Procedures for submission and approval of State plans.
456.205 Home heating suppliers.
456.206 Tennessee Valley Authority (TVA).
456.207 Temporary Programs.
456.208 Status of plans approved prior to CSRA.

Subpart C—Content of State Plans

Sec.
456.301 Scope.
456.302 Coverage of State Plan.
456.303 Procedures for enforcing compliance with the State Plan.
456.304 State monitoring of utility supply, installation and financing.
456.305 Program announcement.
456.306 Requirements for program audits.
456.307 [Reserved]
456.308 [Reserved]
456.309 Accounting and payment of costs.
456.310 Customer billing, repayment of loans, and termination of service.
456.311 [Reserved]
456.312 Complaints processing and redress procedures.
456.313 Coordination.
456.314 Home heating suppliers.
456.315 Program measures.
456.316 Reporting and recordkeeping.
456.317 Quality assurance.

Subpart D—Nonregulated Utility Plans

Sec.
456.401 Scope.
456.402 Coverage.
456.403 Notice, comment, and public hearing.
456.404 Procedures for submission and approval of Nonregulated Utility Plans.
456.405 Temporary Programs.
456.406 Content of plans.

Subpart E—Supply, Installation, and Financing by Utilities

Sec.
456.501 Scope and definitions.
456.502 Prohibition.
456.503 Exemption for certain measures.
456.504 Exemption for utility subcontractor supply and installation.
456.505 Exemption for existing supply and installation.
456.506 Exemption for supply and installation authorized by State or local law.
456.507 Waivers.
456.508 Notification.
456.509 Procedure for obtaining determination and waivers.
456.510 Appeals.
456.511 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Subpart F—Federal Standby Authority and Enforcement Provisions

Sec.
456.601 Scope.
456.602 Conditions under which standby authority shall be invoked.
456.603 Standby authority in lieu of State Plans.
456.604 Standby authority for nonregulated utilities.
456.605 Failure to comply with orders.
456.606 Enforcement provisions; Penalties; Election of review procedures.

Subparts G-I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

Sec.
456.1000 Introduction.
456.1001 Definitions.
456.1002 Coverage of RCS Federal Standby Plan.
456.1003 Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.
456.1004 [Reserved]
456.1005 [Reserved]
456.1006 Program announcement.
456.1007 Requirements for program audits.
456.1008 [Reserved]
456.1009 [Reserved]
456.1010 Accounting and payment of costs.
456.1011 Customer billing, repayment of loans, and termination of service.
456.1012 [Reserved]
456.1013 Quality assurance.
456.1014 Qualification procedures for auditors.
456.1015 Home heating suppliers.
456.1016 Program measures.
456.1017 Supply, installation, and financing by utilities.
456.1018 Complaints processing procedures.
456.1019 Coordination.
456.1020 Reporting and recordkeeping.
456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.
456.1022 Exceptions.
456.1023 Waivers.

Subpart K—Alternative State Plans

Sec.
456.1101 Scope.
456.1102 Definitions.
456.1103 Content of plan.
456.1104 Incentives.
456.1105 Certification process.
456.1106 Reporting requirements.
456.1107 Procedures for administrative and judicial enforcement.
456.1108 Amendments.

Subpart L—Utility Waiver Process

Sec.
456.1201 Scope.
456.1202 Coverage.
456.1203 Approval process.
456.1204 Annual Report to Governor.
456.1205 Revocation procedures.

Subpart M—Commercial Buildings and Multifamily Dwellings

Sec.
456.1301 Scope.
456.1302 Authority to continue plans.
456.1303 Reporting.

Appendix I to Part 456—Program Measures.

Appendix II to Part 456—Prototypical House Assumptions.

Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels.

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 et seq. (42 U.S.C. 8211 et seq.), as amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 et seq. and of the Conservation Service Reform Act of 1986, Pub. L. 99–412; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 et seq. (42 U.S.C. 7101 et seq.).

Subpart A—General Provisions and Definitions

§ 456.101 Purpose and scope.

This part contains the regulations of the Energy Conservation Service Program. This program is mandated by Titles II and VII of the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619 as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96–294, and by Title I of the Conservation Service Reform Act of 1986 (CSRA), Pub. L. 99–412.

§ 456.102 Petitions concerning conflicts of laws.

(a) A utility filing a petition to determine whether the utility—

(1) Is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA, or

(2) Is required or permitted by a State or local law or regulation to take any action prohibited by NECPA, shall file the petition with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any such petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(b) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State, and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(c) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or permits or requires a utility to take any action prohibited by NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent the laws or regulations are inconsistent with NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

§ 456.103 Appeals and other relief.

(a) Any person seeking relief from the application of this rule, except from Subparts K, L, and M of this part may submit a request for relief in accordance with Subpart R of 10 CFR Part 205. When applicable, such a request shall contain the approval of the Governor.

(b) Any person aggrieved by any order, finding, or determination made under §§ 456.102, 456.502–456.505, or 456.507 may appeal that order, finding, or determination in accordance with Subpart H of 10 CFR Part 205. Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under Subpart H of 10 CFR Part 205 and an order granting or denying the appeal has been issued.

§ 456.104 List of covered utilities.

(a) Before the beginning of each calendar year, the Department of Energy shall publish in the **Federal Register** a list of all covered utilities for that calendar year.

(b) Not later than 60 days after publication of the list, each State Regulatory Authority shall forward to the Assistant Secretary a copy of such list with designations as to which covered utilities on the list are under the jurisdiction of that Regulatory Authority.

(c) The publication of the list is for informational purposes, and the failure to include a covered utility on the list or the failure of a State Regulatory Authority to designate a covered utility subject to its jurisdiction in no way affects the duties of or requirements upon such covered utility under these rules or any plan promulgated pursuant to these rules.

§ 456.105 Definitions.

For purposes of this part—

(a) *Alternative State Plan.* The term "alternative State plan" means a plan developed pursuant to Subpart K of this part.

(b) *Assistant Secretary.* The term "Assistant Secretary" means the Assistant Secretary for Conservation and Renewable Energy of the U.S. Department of Energy.

(c) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either—

(1) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceeded 750 million kilowatt-hours.

(d) *CSRA.* The term "CSRA" means Title I of the Conservation Service Reform Act of 1986, Pub. L. 99–412, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(e) *Eligible Customer.* The term "eligible customer" means a person who owns or occupies a residential building or dwelling unit therein and receives a bill or bills based on individually metered energy use from a covered utility or participating home heating supplier for energy used in such residential building or individual dwelling unit, except that—

(1) The owner of the common area within a residential building containing five or more dwelling units shall not be treated as an eligible customer for the purpose of the common area; and

(2) This definition shall not apply to any building which has five or more dwelling units and which does not contain an individual meter for heating or cooling energy sources used in such dwelling unit.

(f) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures in a residential building—

(1) *Caulking.* The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps which may include (i) at fixed joints on a building, (ii) under

baseboards inside a building, (iii) in exterior walls at electric outlets, (iv) around pipes and wires entering a building, and (v) around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modification" means—

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation, or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which, because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue Opening Modification (Vent Damper).* The term "flue opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnace which—

(A) Is installed downstream from the drafthood; and

(B) Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Intermittent Pilot Ignition Devices (IID).* The term "intermittent pilot ignition device (IID)" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Replacement Central Air Conditioner.* The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(7) *Floor Insulation.* The term "floor insulation" means a material, primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) *Duct Insulation.* The term "duct insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) *Pipe Insulation.* The term "pipe insulation" means a material, primarily designed to resist heat flow, which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) *Water Heater Insulation.* The term "water heater insulation" means a material, primarily designed to resist heat flow, which is suitable for wrapping around the exterior surface of the water heater casing.

(11) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone.

(12) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(13) *Storm Door.* The term "storm door" means a second door, installed outside or inside a prime door, creating an insulating air space.

(14) *Thermal Door.* The term thermal door" means—

(i) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material; or

(ii) A prime exterior door with an R-value of at least 2.

(15) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat reflecting or heat absorbing properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat reflecting or heat absorbing properties.

(16) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means devices that reduce the maximum kilowatt demand on an electric utility and which are either—

(i) Part of a radio, ripple or other utility controlled load switching system on the customer's premises;

(ii) Clock-controlled load switching devices on major appliances;

(iii) Interlocks, and other load actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(17) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed and which uses—

(i) A temperature control device for interior spaces incorporating more than one temperature control level, and

(ii) A clock or other automatic mechanism for switching from one control level to another.

(g) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Governor in a State Plan which save energy, do not require the installation of energy conservation or renewable resource measures, and do not adversely impact the RCS Program. Such practices may include, but are not limited to—

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80 °F. on gas or oil forced-air furnaces, and turning off the pilot light on a gas furnace during the summer;

(2) Nighttime Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55, during sleeping hours;

(3) Reducing Thermostat Settings in Winter, which means-limiting the maximum thermostat control setting for the furnace to 68 °F. during the heating season;

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78 °F. or higher during the cooling season;

(5) Water Flow Reduction in Showers and Faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute;

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120 °F., and reducing the use of heated water for clothes washing;

(7) Reducing Energy Use When a Home is Unoccupied, which means reducing the thermostat setting to 55 °F. when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer;

(8) Plugging Leaks in Attics, Basements, and Fireplaces, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, (ii) installing fireproof material to plug any holes around any damper in a fireplace, and (iii) adding insulation to an attic or basement door;

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacing washers in leaking water valves; and

(10) Efficient Use of Shading, which means using shades or drapes (i) to block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season.

(h) *ESA*. The term "ESA" means Subtitle B of Title V of the Energy Security Act, Pub. L. 96–294, which amended Part 1 of Title II of the National Energy Conservation Policy Act (NECPA).

(i) *Governor*. The term "Governor" means the Governor or chief executive officer of a State or his designee; or, if a State agency is specifically designated by State law to carry out any function under the RCS Program, then the term "Governor" means that State agency for that function.

(j) *Home Heating Supplier*. The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a residential building.

(k) *Measure Warranties*. (1) The term "manufacturer's measure warranty" means, at a minimum, a written warranty by the manufacturer of an energy conservation or renewable resource measure that the eligible customer for whom the measure is installed, the installation contractor who installs the measure, and the seller of the measure shall be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture, or design;

(2) The term "supplier's measure warranty" means, at a minimum, a written warranty equivalent to that referred to in paragraph (1) of this definition provided by the supplier of an energy conservation or renewable resource measure to persons who purchase the measure from the supplier;

(3) The term "contractor's measure warranty" means, at a minimum, a written warranty by a contractor installing an energy conservation or renewable resource measure that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

(l) *NECPA*. The term "NECPA" means Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95–619, as amended by Subtitle B of Title V of the Energy Security Act (ESA) and by Title I of the Conservation Service Reform Act of 1986 (CSRA).

(m) *Nonregulated Utility*. The term "nonregulated utility" means a public utility which is not a regulated utility.

(n) *Nonregulated Utility Plan*. The term "nonregulated utility plan" means a plan developed pursuant to Subpart D of this part.

(o) *Participating Home Heating Supplier*. The term "participating home heating supplier" means a home heating supplier that has elected to participate in a State Plan which includes home heating suppliers.

(p) *Program Announcement*. The term "program announcement" means the RCS program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.305.

(q) *Program Audit*. The term "program audit" means an audit in which the estimates of costs and energy savings are based on an adequate assessment, including actual measurements or inspections, as appropriate, performed on-site by the auditor, of the building shell and of the space heating, space cooling, and water heating equipment of the residence of an eligible customer. In the case of residential buildings containing more than four dwelling units, the program audit may mean an audit in which the estimates of costs and energy savings are based on a sampling of the types of units in the building.

(r) *Program Information*. The term "program information" means the program announcement and any information dissemination activities related to an RCS program.

(s) *Program Measures*. The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I to this part, or which are determined to be program measures by a Governor in accordance with § 456.315(b).

(t) *Public Utility*. The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both to residential customers for use in residential buildings.

(u) *Rate*. The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge or classification, and any contract pertaining to the sales of electric energy or natural gas.

(v) *Ratemaking Authority*. The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(w) *RCS Program*. The term "RCS Program" (Residential Conservation Service Program) means the program required to be implemented by covered utilities pursuant to an approved State Plan, an alternative State plan, an approved Nonregulated Utility Plan, or a Federal Standby Plan.

(x) *Regulated Utility*. The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(y) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a residential building—

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermostat hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer devices, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (1) and (2) of this definition.

(4) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for residential purposes.

(5) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means a device which uses the sun's energy solely for the purpose of heating swimming pool water and which displaces the use of a swimming pool heater using electricity, gas or other fossil fuels.

(z) *Residential Building.* The term "residential building" means any building used for residential occupancy which—

(1) Is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply; and

(2) Has a system for heating or cooling, or both.

(aa) *Secretary.* The term "Secretary" means the Secretary of Energy.

(bb) *State.* The term "State" means a State, the District of Columbia and Puerto Rico.

(cc) *State Agency.* The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(dd) *State Plan.* The term "State Plan" means a plan developed pursuant to Subpart B and C of this part.

(ee) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency), except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(ff) *TVA.* The term "TVA" means the Tennessee Valley Authority.

§ 456.106 [Reserved]

§ 456.107 Termination.

Effective June 30, 1989, in accordance with Section 228 of NECPA, all authority, including the authority to enforce any prohibitions, under this part shall terminate, except that such expiration shall not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date. This section shall not apply to Subpart M of this part

Subpart B—Preparation, Submission, and Approval of State Plans and Temporary Programs

§ 456.201 Scope.

This subpart identifies the responsibilities of the States and the Tennessee Valley Authority (TVA) in the preparation and submission of State Plans; the procedures for approval of the State Plan by the Assistant Secretary; and the procedures for submission and criteria for approval of Temporary Programs.

§ 456.202 Initial submission.

If a State intends to submit a State Plan, the Governor shall submit by January 6, 1980, a list of nonregulated covered utilities, if any, operating in the State which will be subject to the State Plan.

§ 456.203 Notice, comment, and public hearing.

Prior to submission of the State Plan to the Assistant Secretary for approval, the Governor shall provide for meaningful public notice, an opportunity for public comment, and public hearing.

§ 456.204 Procedures for submission and approval of State Plans.

(a) *Who shall submit.* Three (3) copies of the proposed State Plan shall be submitted to the Assistant Secretary by either:

(1) The Governor of the State; or

(2) The TVA with respect to all covered utilities over which the TVA has ratemaking authority and, in the discretion of TVA, with respect to any covered utility over which the TVA and another State Regulatory Authority have ratemaking authority.

(b) *Time for submission.* The proposed State Plan shall be submitted by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary, upon request of the Governor, for good cause shown.

(c) *Approval.* If a proposed State Plan meets the criteria of Subparts B and C of this part, the Assistant Secretary shall approve it within 90 days of the date the proposed State Plan was submitted.

(d) *Disapproval.* (1) If a proposed State Plan does not meet the criteria of Subparts B and C of this part, the Assistant Secretary shall, within 90 days of the date the proposed State Plan was submitted, disapprove the proposed State Plan in writing and shall specify in writing the grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed State Plan, or such longer period as the Assistant Secretary may determine, for good cause shown, the Governor may submit another proposed State Plan.

(e) *Amendments.* The Governor may submit proposed amendments to an approved State Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.205 Home heating suppliers.

If the Governor submits a plan applicable to home heating suppliers in the State, it shall be a part of the State Plan and shall be submitted in accordance with the procedures of this subpart applicable to the submission of the State Plan.

§ 456.206 Tennessee Valley Authority (TVA).

In this part, except as otherwise specified, references to the Governor shall be deemed to refer also to the TVA and references to the State Plan shall be deemed to refer also to the TVA Plan. References in this part to a State as a geographic area shall, with respect to the TVA Plan, be referenced to the service areas of the covered utilities subject to the TVA Plan. Reference in this part to a State as a governmental entity (other than references to State laws or regulations) or to any State Agency or officer shall be deemed to refer also to the TVA.

§ 456.207 Temporary Programs.

(a) *Definition of Temporary Program.* A Temporary Program is a plan or a part of a State Plan which exempts in whole or in part for a specified period, to be determined by the Assistant Secretary, one or more utilities from one or more of the following provisions—

(1) The requirements for preparing and distributing the Program Announcement described in § 456.305;

(2) The requirements for offering and performing, audits described in § 456.306;

(3) The requirements concerning accounting and payment of costs described in § 456.309;

(4) The requirements regarding billing of costs, repayment of loans, and termination of service described in § 456.310; and

(5) The prohibition against supplying and installing by covered utilities described in § 456.502(a).

(b) *Continuation.* Temporary programs approved by the Secretary prior to August 28, 1986, may be extended until such date as determined by the Secretary.

(c) *Federal Standby Authority.* The Federal Standby Authority described in Subpart F shall not be exercised with respect to a covered utility which either—

(1) Is subject to an approved Temporary Program; or

(2) Was subject to an approved Temporary Program which has terminated and such covered utility will be subject, within a reasonable time to be determined by the Assistant Secretary, to an adequately implemented approved State Plan or Nonregulated Utility Plan.

§ 456.208 Status of Plans Approved Prior to CSRA.

Any residential energy conservation plan approved by the Secretary before August 28, 1986, shall continue as approved, provided certification is made to the Secretary that—

(a) The plan will continue until June 30, 1989, and one more program announcement will be made;

(b) The definition of "residential building" will be amended to "any building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which has a system for heating or cooling, or both; and

(c) Program coverage will include multi-family buildings containing five or more units when the dwelling units are individually metered for heating or cooling.

Subpart C—Content of State Plans

§ 456.301 Scope.

This subpart prescribes the minimum requirements for the content of State Plans. The State may include additional information and provide additional requirements in the State Plan for the RCS Program if such information and requirements are not specifically prohibited by these rules or by any applicable law or regulation. All references in this subpart to covered utilities apply to regulated and nonregulated covered utilities subject to the State Plan.

§ 456.302 Coverage of State Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State which meet the definition of "covered utility" in § 456.105 shall be subject to the State Plan and shall be identified in the State Plan.

(b) *Nonregulated utilities.* The State Plan shall identify which nonregulated covered utilities, if any, are covered under the State Plan.

(c) *Home heating suppliers.* The State Plan shall state whether it includes an RCS Program for home heating suppliers.

(d) *Temporary Programs.* The State Plan shall identify any covered utilities for which a request for a Temporary Program provision has been submitted, and describe or attach such provision for each such utility.

§ 456.303 Procedures for enforcing compliance with State Plan.

(a) For the purposes of this section the term "RCS participant" means any person or entity directly governed by the State Plan, including covered utilities, and participating home heating suppliers.

(b) The State Plan shall require each RCS participant to comply with the State Plan.

(c) The State Plan shall contain adequate procedures for enforcing compliance with the State Plan by each RCS participant.

§ 456.304 State monitoring of utility supply, installation, and financing.

The State Plan shall—

(a) Contain procedures to ensure that covered utilities which supply, install or finance the sale or installation of energy conservation or renewable resource measures shall—

(1) Charge fair and reasonable prices and interest rates, which shall be determined by periodic review of comparative prices and interest rates by a State designated agency;

(2) Conduct such activities in a manner which does not have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts of practices;

(3) When undertaking to finance a lending program for such measures through financial institutions, seek funds for such financing from financial institutions located throughout the area covered by the lending program (to the extent each such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers); and

(4) Meet the requirements of § 456.504 if they undertake supply or installation activities under § 456.504.

(b) Require any utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted by § 456.504, or providing financing for the purchase or installation of any such measure, to notify the Assistant Secretary when such program becomes effective.

§ 456.305 Program announcement.

(a) *Distribution and content.* The State Plan shall require each covered utility and each participating home heating supplier to provide each eligible customer, no later than six months after approval of the State Plan and every two years thereafter, but not more than once during the period from August 28, 1986 to June 30, 1989, with the following:

(1) A list of the program measures for the category of residential buildings owned or occupied by such eligible customer.

(2) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from installation of each of the program measures in a typical building or buildings in such category.

(3) A list of the energy conserving practices which shall be developed by the Governor. Such practices may include the practices defined in § 456.105.

(4) A reasonable estimate (or range of estimates) of the savings in energy costs for a specified period of time which are likely to result from the adoption of the practices, individually or as a group.

(5) An offer to perform the service required to be offered under § 456.306 (Program Audits) and a description of the service. The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first.

(b)(1) The State Plan shall specify whether a covered utility or participating home heating supplier is permitted or prohibited from including with the program information any advertising for the sale, installation or financing by any supplier, contractor, or lender (including the covered utility) of any program measure.

(2) If advertising is permitted, the State Plan shall contain procedures to ensure that such advertising does not

unfairly discriminate against any person.

(c) *Calculation procedures.* The State Plan shall, with respect to estimates of the savings required under § 456.305(a)(2), describe the procedures by which such estimates shall be made.

(d) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the Program Announcement but before June 30, 1989.

(2) The State Plan shall require,that each covered utility and participating home heating supplier provide each new customer within 60 days of such customer becoming a new customer with the information required in § 456.305(a).

(3) The State shall require that a covered utility or participating home heating supplier retain in its files for not less than five years a copy of each report of each program audit performed pursuant to the State Plan which shall be available to any subsequent owner without charge. The State Plan shall require that a covered utility or participating home heating supplier inform each subsequent eligible customer who is an owner of a residential building, or dwelling unit therein, of the availability of this report.

(e) The State Plan shall prohibit unfair discrimination among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.306 Requirements for program audits.

(a) *Timing of program audit.* The State Plan shall require that each covered utility participating home heating supplier shall provide a program audit to each eligible customer within a reasonable time after the request for an audit.

(b) *Content of program audit.* (1) The State Plan shall describe the program audit services to be offered by utilities and participating home heating suppliers and shall require at a minimum that covered utilities and participating home heating supplier provide (either directly or through one or more auditors under contract), upon request, to each eligible customer a program audit which addresses the applicable program measures and identifies the applicable energy conserving practices which shall be developed by the Governor. Such practices may include those practices defined in § 456.105.

(2) The State Plan may allow the auditor in each program audit to determine the applicability of each program measure in that residence based on applicability criteria set forth in the State Plan subject to DOE approval; and, in the case of residential buildings containing more than four dwelling units, based on either the above or DOE applicability criteria and usage cut-off procedures, as set forth in Appendix III. If a program measure is not applicable, then the requirements of this section to provide estimates of the cost and savings of installation of such measure in such residence do not apply.

(3) The State Plan shall contain procedures to assure the validity of the program audit with respect to all program measures.

(4) The State Plan shall require the auditor to offer at the time of the audit to provide the customer at a minimum with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(5) The State Plan shall allow auditors to perform a program audit only for those measures or products approved by the Governor.

(c) *Results of program audit.* (1) The State Plan shall require that the utility provide the following information in writing to each eligible customer who receives a program audit—

(i) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(ii) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure as designated in the Table of Program Measures (Appendix I);

(iii) An estimate of the energy savings, expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(2) The State Plan shall require any utility which does not provide in-person results of audits to provide customers with the opportunity to discuss the results of the audit with a qualified person.

(3) The State Plan shall allow utilities to provide audit results only for those measures or products approved by the Governor.

(d) *Prohibitions.* (1) The State Plan shall prohibit covered utilities and participating home heating suppliers from discriminating unfairly among eligible customers in providing program audits.

(2) The State Plan shall prohibit any auditor from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) The State Plan shall prohibit any unfair discrimination among program measures.

(e) *Program audits of furnaces.* The State shall require that, in order for an auditor of a covered utility or participating home heating supplier to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that covered utility or participating home heating supplier, the eligible customer must request such audit in writing.

(f) *Qualifications for program auditors.* The State Plan shall require that each person who performs a program audit pursuant to the State Plan shall be qualified to perform the necessary measurements and inspections to determine the estimated cost of purchasing and installing the recommended program measures and the savings in energy costs that are likely to result from the installation of such measures.

§ 456.307 [Reserved]

§ 456.308 [Reserved]

§ 456.309 Accounting and payment of costs.

(a) *Accounting.* The State Plan shall require with respect to Federally mandated measures, and may permit with respect to costs or revenues directly associated with State measures, that all amounts expended or received by a covered utility which are attributable to the RCS Program, including any penalties paid under Subpart F (Federal Standby Authority), shall be accounted for on the books and records separately from amounts attributable to all other activities of the covered utility.

(b) *Payment of costs.* The State Plan shall require that covered utilities treat costs as described below and shall describe how the costs described in paragraph (b)(2) of this section will be treated:

(1) All amounts expended by a covered utility in providing the information required under § 456.305(a) and in conducting all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the covered utility in the same manner as other current operating

expenses of providing such utility service;

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority (in the case of a regulated utility) or the nonregulated utility (except that the amount that may be recovered directly from a residential customer for whom the activities described in § 458.309(b)(2)(ii) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits and customer billing services, and

(ii) Project management requirements, including the providing of program audits; and

(3) In determining the amount to be recovered directly from customers as provided in paragraph (b)(2) of this section, the State regulatory authority (in the case of a regulated utility) or the nonregulated utility shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one covered utility, the Governor, or the covered nonregulated utility, as appropriate, may include in a State Plan or a Nonregulated Utility Plan procedures to ensure that each eligible customer may receive an RCS audit from only one of these covered utilities.

(2) No utility should be required to make more than one audit of a residential building or dwelling unit therein unless a new owner requests a subsequent audit.

§ 456.310 Customer billing, repayment of loans, and termination of service.

The State Plan shall require that—

(a) *Customer billing.* Every charge by a covered utility or a participating home heating supplier to a customer for any portion of the costs of carrying out any activity pursuant to the State Plan that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the State Plan must be included on the bill for periodic utility service.

(b) *Repayment of loans.* (1) In the case of any loan by a covered utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the RCS Program—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in such customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default in payment (as determined under applicable law) from the eligible customer; and

(iii) No penalty shall be imposed by a home heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No covered utility or participating home heating supplier shall terminate utility or fuel service to any customer for any default by such customer for payments due for any services under the RCS Program.

§ 456.311 [Reserved]

§ 456.312 Complaints processing and redress procedures.

The State Plan shall contain procedures—

(a) For resolving complaints against persons who sell or install energy conservation or renewable resource measures under the RCS Program; and

(b) To assure that any person who alleges any injury resulting from a violation of any State Plan provision shall be entitled to redress.

§ 456.313 Coordination.

The State Plan shall provide procedures to ensure effective coordination between the RCS Program and all local, State, and Federal energy conservation programs within and affecting the State.

§ 456.314 Home heating suppliers.

(a) *Consideration of limited resources.* If a State Plan covers home heating suppliers, it shall, within the terms of the requirements of this subpart, take into account the limited resources of small home heating suppliers.

(b) *Participation and withdrawal.* The State Plan, if it includes home heating suppliers, shall include a procedure by which the Governor shall allow a home heating supplier to participate in the RCS Program. The State Plan shall also allow a home heating supplier to withdraw voluntarily from the RCS Program.

(c) *Waiver of requirements.* The State Plan shall contain a procedure by which the Governor may waive for any participating home heating supplier any requirement of the State Plan, except those listed below, upon a demonstration to the Governor's satisfaction that the resources of such supplier do not enable it to comply with the particular requirement. The requirements which the Governor shall not waive are the following sections which prohibit anticompetitive activities or unfair discrimination by covered utilities or participating home heating suppliers—

(1) Section 456.306(c) (Prohibitions concerning program audits); and

(2) Section 456.306(d) (Furnace audits).

§ 456.315 Program measures.

(a) The State Plan shall contain a list of the program measures. This list shall contain either those energy conservation and renewable resource measures identified in Appendix I to this rule as program measures for that State, or a list of energy conservation and renewable resource measures determined to be program measures by the Governor in accordance with paragraph (b) of this section.

(b)(1) The Governor may exclude from the State RCS Program, any program measure identified in Appendix I as a program measure for that State on the following bases:

(i) When, by substituting State derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State (at the discretion of the Governor) tax credits (T), by the first year energy savings in dollars (S),

$$P = \frac{F-T}{S} \quad P > 7 \text{ years, and/or}$$

(ii) When, by substituting a State specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (b)(1)(i) of this section.

(2) The State Plan shall contain data to substantiate any exclusion pursuant to paragraphs (b)(1) (i) or (ii) of this section.

(c) The Governor may add any measure not identified in Appendix I as a program measure for that State, to the State RCS Program without DOE approval.

§ 456.316 Reporting and recordkeeping.

(a) The State Plan shall contain provisions to assure that a report is submitted to the Assistant Secretary no later than July 1, 1982, and annually thereafter through June 30, 1989, covering the twelve-month period ending the preceding April 1.

(b)(1) The report shall include—

(i) The number of energy audits requested, and/or provided;

(ii) The nature and status of any direct financing activities or exempted or waived supply or installation activities engaged in by the utilities;

(iii) Estimated State costs and utility costs of implementing the program; and

(iv) The general nature and approximate number of complaints received about the program and the operation of the complaints processing procedures of § 456.309 in the State.

(2) The report shall also contain a copy of any program announcement not already provided.

(c) The State Plan shall contain procedures to assure that a copy of the data collected during each audit and a copy of the costs and savings presented to the customer receiving the audit are retained on file for five years from the date of the audit.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to Departmental implementation of program responsibilities and subject to approval of OMB under the provisions of the Paperwork Reduction Act (Pub. L. 96-511)—

(1) Require additional information; and

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirements in paragraph (c) of this section.

§ 456.317 Quality assurance.

The State Plan shall contain procedures to ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the RCS Program.

Subpart D—Nonregulated Utility Plans

§ 456.401 Scope.

This subpart identifies the responsibilities of covered nonregulated utilities not subject to a State Plan for the preparation and submission of Nonregulated Utility Plans, the procedures for approval of Nonregulated Utility Plans by the Assistant Secretary, and the minimum requirements for the content of Nonregulated Utility Plans.

§ 456.402 Coverage.

This subpart shall apply to all nonregulated utilities which are not covered by a State Plan.

§ 456.403 Notice, comment, and public hearing.

Prior to submission of the Nonregulated Utility Plan to the Assistant Secretary for approval, the nonregulated utility shall—

(a) *Notice and comment.* Provide meaningful public notice of the requirement for the nonregulated utility to submit a Nonregulated Utility Plan.

(b) *Hearing.* Hold at least one public hearing in the nonregulated utility's service area for the purpose of hearing testimony and receiving comments on the content of the proposed Nonregulated Utility Plan.

§ 456.404 Procedures for submission and approval of Nonregulated Utility Plans.

(a) *Submission.* Each utility subject to this subpart shall submit to the Assistant Secretary a proposed Nonregulated Utility Plan by June 4, 1980, unless the time for submission has been extended by the Assistant Secretary for good cause shown upon request, of the nonregulated utility.

(b) *Approval.* If a proposed Nonregulated Utility Plan meets the criteria of this subpart, the Assistant Secretary shall approve it within 90 days of the date the proposed Nonregulated Utility Plan was submitted.

(c) *Disapproval.* (1) If a Nonregulated Utility Plan does not meet the criteria of this subpart, the Assistant Secretary shall, within 90 days of the date the proposed Nonregulated Utility Plan is submitted, disapprove the proposed Nonregulated Utility Plan and specify in writing grounds for disapproval.

(2) Within 60 days of the date of disapproval of a proposed Nonregulated Utility Plan, or such longer period as the Assistant Secretary may determine pursuant to the criteria of paragraph (a) of this section, the nonregulated utility shall submit another proposed Nonregulated Utility Plan.

(d) *Amendments.* The nonregulated utility may submit proposed amendments to an approved Nonregulated Utility Plan at any time. The Assistant Secretary shall approve or disapprove a proposed amendment within 90 days of receipt of the proposed amendment.

§ 456.405 Temporary Programs.

A nonregulated utility may operate a Temporary Program as defined in § 456.207(a) in accordance with the provisions of § 456.207.

§ 456.406 Content of plans.

(a) *General requirements.* (1) Except as provided in this section, each Nonregulated Utility Plan shall meet all the requirements for State Plans in Subpart C.

(2) Except as otherwise provided in this section, all references in Subpart C to—

(i) Covered utilities shall be deemed to refer to utilities subject to this subpart;

(ii) A State Plan shall be deemed to refer to a Non-Regulated Utility Plan;

(iii) Participating home heating suppliers shall not apply;

(iv) A State (as a governmental entity, other than references to State laws or regulations) or any State Agency or officer shall be deemed to refer to the nonregulated utility submitting the Plan; and

(v) A State (as a geographic area) shall be deemed to refer to the nonregulated utility's service area.

(b) *Utilizing State services.* (1) In a State submitting a State Plan, a nonregulated utility may, by written understanding with the appropriate State agency, utilize services which have been provided for in the State Plan.

(2) If a Nonregulated Utility Plan utilizes services as permitted by this paragraph, all references in the State Plan to those services with regard to utilities subject to the State Plan shall be deemed to refer to the nonregulated utility.

(3) If a Nonregulated Utility Plan proposes to utilize any of the services pursuant to this paragraph, the Plan shall so state and copies of the written agreements with the appropriate State agencies shall be included with the Nonregulated Utility Plan in the submission to the Assistant Secretary.

Subpart E—Supply, Installation, and Financing by Utilities

§ 456.501 Scope and definitions.

(a) This subpart contains the prohibition against a utility's supply and installation of energy conservation and renewable resource measures. It specifies the exemptions to this prohibition and the procedures, where applicable, for obtaining these exemptions. It also sets forth certain

requirements concerning utility financing programs.

(b) For purposes of this subpart—(1) A "covered utility" means a covered utility, any company which is owned or controlled by such a utility, or any company which owns or controls such a utility;

(2) A covered utility "installs" a measure whenever the contract for installation obligates the covered utility to install the measure;

(3) A covered utility "supplies" a measure when it sells a measure at retail or leases a measure to an eligible customer; and

(4) A covered utility "finances" the supply or installation of a measure when the loan contract names the utility as the lender.

§ 456.502 Prohibition.

(a) Except as provided in this subpart, no covered utility may supply or install any energy conservation or renewable resource measure.

(b) Notwithstanding §§ 456.503–456.507, no covered utility may supply, install, or finance the supply or installation of any energy conservation or renewable resource measure if the Federal Trade Commission, pursuant to Section 216(h) of NECPA, or a State regulatory authority, pursuant to State law, has determined that such activity involves—

(1) Charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures; or

(2) Engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation.

(c) Violations of this section are subject to a civil penalty of not more than $25,000 for each day of violation assessed by order of the Assistant Secretary pursuant to Section 216(h) and 219 of NECPA and § 456.606 of these rules.

§ 456.503 Exemption for certain measures.

The prohibition in § 456.502(a) shall not apply to the supply or installation of (a) furnace efficiency modifications, (b) clock thermostats, and (c) devices associated with load management techniques for the type of energy sold by the utility.

§ 456.504 Exemption for utility subcontractor supply and installation.

(a) The prohibition contained in § 456.502(a) shall not apply to any energy conservation measure or renewable resource measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and each supplier or contractor—

(1) Is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and

(2) If selected by the utility, is selected in a manner consistent with § 456.504(b).

(b) Activities of a public utility conducted pursuant to paragraph (a)(2) of this section—

(1) May not involve unfair methods of competition;

(2) May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(3) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer;

(4) Shall be undertaken, to the extent practicable and consistent with paragraphs (b)(1)–(3) of this section, in a manner that minimizes the cost of energy conservation and renewable resource measures to such customers; and

(5) Shall include making available upon request a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the public utility under paragraph (a) of this section.

(c) Before a utility can undertake a supply or installation program permitted by this section, the State Plan must contain procedures to ensure that such a program will be undertaken in full compliance with requirements described in paragraphs (a) and (b) of this section.

§ 456.505 Exemption for existing supply and installation.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure in which the covered utility was engaged on November 9, 1978—

(1) During such time as applications for determinations with respect to such activities, filed in accordance with § 456.509, are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure was being supplied or installed by the utility seeking such determination.

(b) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing—

(1) During such time as applications for determinations with respect to such activity filed in accordance with § 456.509 are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure had been broadly advertised or for which substantial preparations had been completed by the utility seeking such determination.

(c) Effective July 1, 1987, paragraphs (a) and (b) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines, pursuant to a request by a covered utility with supporting documentation, were being installed or supplied during the 12 month period ending June 1, 1985.

§ 456.506 Exemption for supply and installation authorized by State or local law.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure—

(1) In which a State or local law or regulation in effect on November 9, 1978, required or explicitly permitted a covered utility to engage; or

(2) Which the Attorney General of the appropriate State certifies to the Assistant Secretary was intended by a State law or regulation in effect on November 9, 1978, to be required or permitted.

(b) A covered utility is exempt from any Federal requirement to include in its RCS Program any supply or installation of any energy conservation or renewable resources measure in which it is engaged by reason of a State law or regulation in effect prior to November 9, 1978, permitting or requiring such activities. However, a covered utility that includes supply and installation in its RCS Program pursuant to the

exemption in paragraph (a) of this section shall be subject to all the requirements of the State Plan with respect to those activities in the same manner as any contractor, supplier, or lender, except that it shall be exempt from the requirements of § 456.309 (Accounting and Payment of Costs) and § 456.310 (Customer Billing, Repayment of Loans, and Termination of Service) with respect to such activities.

§ 456.507 Waivers.

(a) The Assistant Secretary may waive any prohibition of § 456.502(a) upon petition by a covered utility pursuant to § 456.509 and a finding that—

(1) The petition, in the case of a covered utility subject to a State Plan, is supported by the Governor; and

(2) If such waiver were granted—

(i) Fair and reasonable prices and rates of interest would be charged; and

(ii) The otherwise prohibited activities would not involve or result in unfair or deceptive acts or practices.

(b) Before the Assistant Secretary makes the finding described in paragraph (a)(2)(i) of this section, he or she shall consult with the Federal Trade Commission.

§ 456.508 Notification.

Each utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted under § 456.504, or providing financing for the purchase or installation of any such measure, must notify the Assistant Secretary when such program becomes effective.

§ 456.509 Procedure for obtaining determinations and waivers.

(a) A utility making an application for a determination under § 456.505 or a petition for a waiver under § 456.507 shall file such application or petition clearly labeled as such with the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All such petitions shall contain all information necessary for the determination under § 456.505 or the findings required by § 456.507.

(b) In addition to any other requirement that may be applicable, any utility making an application or petition under this section shall give direct notice to the Governor, State Energy Office, and State Regulatory Authority of any State in which such exemption or waiver would be applicable, informing them that they may within ten days submit comments on the application or petition to the Assistant Secretary. The application or petition filed with the Assistant Secretary shall include a certification that the applicant or petitioner has complied with the requirements of this paragraph. In the discretion of the Assistant Secretary, opportunity to comment may be provided to other interested persons.

§ 456.510 Appeals.

Any person adversely affected by any decision made pursuant to this subpart by the Assistant Secretary may appeal that decision in accordance with Subpart H of 10 CFR Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

§ 456.511 Certain exempt activities and compliance with accounting, costing, billing, and repayment provisions.

Any covered utility conducting activities pursuant to the exemptions provided for in § 456.503, § 456.504 or § 456.505(b) or the waiver provisions of § 456.507 shall comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.505(a) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of §§ 456.309 (a), (b)(2), and (b)(3), and § 456.310 with respect to such activities.

Subpart F—Federal Standby Authority and Enforcement Provisions

§ 456.601 Scope.

This subpart specifies the procedures to be followed to ensure that eligible customers receive the services of the Residential Conservation Service Program when a State or nonregulated utility does not submit an acceptable Residential Conservation Service Plan within the necessary time or fails to implement adequately an approved RCS or Alternative plan. These procedures are required to be implemented by the Secretary pursuant to the provisions of section 219 of NECPA. All of the Secretary's responsibilities under this subpart, except for the authority to bring actions in any court of the United States, have been delegated to the Assistant Secretary. Section 456.602 specifies the conditions under which the Assistant Secretary shall invoke standby authority for covered regulated utilities and covered nonregulated utilities. Sections 456.603 and 456.604 specify the content of the Federal plans for States and nonregulated utilities, respectively. Section 456.605 specifies the procedures to be followed by the Secretary if a public utility fails to comply with a Federal standby order issued pursuant to §§ 456.603 or 456.604. Section 456.606 specifies the civil penalties which the Assistant Secretary may assess and the enforcement provisions.

§ 456.602 Conditions under which standby authority shall be invoked.

The Assistant Secretary shall invoke standby authority if he concludes:

(a) That a State fails to submit a Residential Conservation Service Plan meeting the requirements of Subparts B and C by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.204 (b) or (d);

(b) That a nonregulated utility fails to submit a Residential Conservation Service Plan meeting the requirements of Subpart D by September 2, 1980, or within such additional period as the Assistant Secretary allows pursuant to § 456.404 (a) or (c);

(c) That 30 days have elapsed after a determination that an approved State RCS or alternative plan is not being adequately implemented in a State is final and may not be appealed under section 226(f)(2) of NECPA: or

(d) After notice and opportunity for a public hearing, that an approved plan is not being adequately implemented by a covered nonregulated utility.

§ 456.603 Standby authority in lieu of State plans.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (a) or (c) exists:

(a) The Assistant Secretary shall promulgate a Residential Conservation Service Plan which meets the appropriate requirements of Subpart B and C of this part and which is applicable to each covered regulated utility in the State;

(b) The Assistant Secretary shall, by order, require each covered regulated utility in the State to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order; and

(c) If the State had an approved plan which included nonregulated utilities, the Assistant Secretary shall take the actions described in §§ 456.604 (a) and (b) with respect to such nonregulated utilities.

§ 456.604 Standby authority for nonregulated utilities.

When the Assistant Secretary determines that one of the conditions specified in §§ 456.602 (b) or (d) exists;

(a) The Assistant Secretary shall, by order, require the covered nonregulated utility to promulgate a plan which meets the requirements of Subpart D of this part; and

(b) The Assistant Secretary shall, by order, require such nonregulated utility to carry out a Residential Conservation Service Program, which meets the requirements of the plan promulgated pursuant to paragraph (a) of this section, within 90 days of the issuance of the order.

§ 456.605 Failure to comply with orders.

If the Secretary determines that any covered utility to which an order has been issued pursuant to §§ 456.603(b), 456.604(a), or 456.604(b) has failed to comply with such order, the Secretary may file a petition in the appropriate United States district court to enjoin such utility from violating the order.

§ 456.606 Enforcement provisions; Penalties; Election of review procedures.

(a) Any covered utility which violates any requirement of a plan promulgated under §§ 456.603(a) or 456.604(a), or which fails to comply with an order under §§ 456.603(b), 456.604(a), or 456.604(b) within 90 days from the issuance of such order, or which violates the prohibition in § 456.502 concerning supply, installation, or financing by covered utilities, shall be subject to a civil penalty of not more than $25,000 for each violation.

(b) Each day that such violation continues shall be considered a separate violation.

(c) A civil penalty under this section shall be assessed by an order of the Assistant Secretary.

(d) Before issuing an order assessing a civil penalty against any person under this section, the Assistant Secretary shall provide to such person notice of the proposed penalty. The notice of proposed penalty shall inform the person of the opportunity to make an election, in writing, within 30 days after receipt of the notice. The election involves deciding whether to have the procedures of paragraph (f) of this section apply, in lieu of the procedures in paragraph (e) of this section, with respect to the assesment of a civil penalty.

(e)(1) Unless the election described in paragraph (d) of this section is made within 30 calendar days after receipt of the notice given under paragraph (d) of this section, the Assistant Secretary shall assess the penalty, by order, after a determination of violation has been made on the record. Such determination of violation shall be made after an opportunity has been afforded for an agency hearing pursuant to section 554 of Title 5, United States Code, before an administrative law judge appointed under section 3105 of Title 5. The assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a civil penalty is assessed under this paragraph (e) may, within 60 calendar days after the date of the order of the Assistant Secretary assessing the penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the Assistant Secretary, or the court may remand the proceedings to the Assistant Secretary for such further action as the court may direct.

(f)(1) In any case where the procedures of this paragraph (f) have been elected, as described in paragraph (d) of this section, the Assistant Secretary shall assess such penalty by order. The order shall be made not later than 60 calendar days after the alleged violator's date of receipt of notice of the proposed penalty under paragraph (d) of this section.

(2) If the civil penalty assessed by order under paragraph (f)(1) of this section has not been paid within 60 calendar days after the assessment order was made, the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph (f) apply may not be revoked except with the consent of the Assistant Secretary.

(g) If any person, fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (e) of this section, or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (f) of this section, the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the respective final order or judgment imposing the civil penalty shall not be subject to review.

(h) Notwithstanding the provisions of Title 28, United States Code, or of section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys with the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this section applies (including any related collection action) in a court of the United States or in any other court,except the Supreme Court. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

Subparts G–I—[Reserved]

Subpart J—Residential Conservation Service Federal Standby Plan

§ 456.1000 Introduction.

(a) The RCS Federal Standby Plan (FSP or Plan) specifies the procedures to be followed to ensure that eligible customers receive the services of the RCS Program when a State does not submit an acceptable RCS Plan within the necessary time or fails to implement adequately an approved plan.

(b) This Plan sets forth the functions which utilities subject to the Plan will be ordered to perform. The core of the Plan is the offer of an on-site energy audit of an eligible customer's residence.

(c) In implementing the Federal Standby Plan, the Assistant Secretary shall have the discretion to allow a utility which is currently complying in good faith with an approved RCS State plan to continue to operate under that plan even though the State lead agency has relinquished or been relieved of its responsibilities. Furthermore, the Assistant Secretary shall have the discretion to allow any utility in a Federal Standby State which is currently operating under an approved RCS Program in a separate State to operate a similar program in the Standby State. In accordance with § 456.1022, the utility shall submit to DOE for approval a copy of the RCS Plan under which it is currently operating.

§ 456.1001 Definitions.

All definitions set forth in § 456.105 are applicable where relevant to this subpart, except as set forth below.

(a) *Energy Conserving Practices.* The term "energy conserving practices" means low or no cost practices designated by the Assistant Secretary which save energy, do not require the installation of energy conservation or

renewable resource measures, and do not adversely impact the RCS Federal Standby Plan. Utilities may add to or delete from the practices set forth in § 456.105, as specified in § 456.1022.

(b) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in the RCS Federal Standby Plan.

(c) *Program Announcement.* The term "program announcement" means the RCS Program information and offer of services required to be provided by a covered utility or participating home heating supplier to each eligible customer by § 456.1006.

(d) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Assistant Secretary has by rule determined to be appropriate by climatic region and fuel use category and which are found in Appendix I of this part, or which are determined to be program measures by a utility or participating home heating supplier in accordance with § 456.1016.

(e) *RCS Federal Standby Plan.* The term "RCS Federal Standby Plan" (FSP or Plan) means a plan developed pursuant to Subpart F of this part and section 219 of the National Energy Conservation Policy Act (NECPA).

§ 456.1002 Coverage of RCS Federal Standby Plan.

(a) *Regulated utilities.* All regulated utilities providing utility service in a State where the FSP is ordered to be enforced and which meet the definition of "covered utility" shall be subject to the FSP.

(b) *Home heating suppliers.* Any home heating supplier in a State where the FSP is ordered to be enforced and which wishes to participate in the FSP may so notify the Assistant Secretary.

§ 456.1003 Procedures for investigating and enforcing compliance with the RCS Federal Standby Plan.

(a) *Investigation and enforcement.* (1) The Assistant Secretary requires each utility and each participating home heating supplier subject to the FSP to comply with the Plan pursuant to the authority given the Assistant Secretary in section 219 of NECPA (42 U.S.C. 8220).

(2) Individuals or groups wishing to report possible noncompliance with this Plan shall inform the Assistant Secretary. Each utility and participating home heating supplier shall inform their customers on how to notify the Assistant Secretary with respect to such reports. This information shall be contained in the program announcement distributed pursuant to § 456.1008. The Assistant Secretary may investigate any allegation of noncompliance or any complaint concerning the RCS Program or this Plan submitted to DOE, or on his own initiative may review the activities of utilities or participating home heating suppliers subject to the FSP to determine compliance with the Plan.

(b) *Conflicts of laws.* Each utility subject to the FSP shall petition the Assistant Secretary in accordance with § 456.102 whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA, or whenever the utility believes it is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA.

(1) The petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(2) The Assistant Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Assistant Secretary deems appropriate. Any such person or entity may file comments with the Assistant Secretary with respect to such petition within 30 days of receipt of the notice.

(3) If the Assistant Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or FSP promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or FSP promulgated pursuant to NECPA, the Assistant Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or FSP promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities subject to such State or local laws or regulations and shall moot any outstanding petitions under this section by such utilities.

(c) *Appeals.* (1) Any person aggrieved by any order, finding, or determination made under paragraph (b) of this section or § 456.1017 may appeal that order, finding, or determination within 30 days in accordance with 10 CFR, Subpart H of Part 205. All such appeals shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

(2) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that subpart and an order granting or denying the appeal has been issued.

§ 456.1004 [Reserved]

§ 456.1005 [Reserved]

§ 456.1006 Program announcement.

(a) *Distribution and content.* Each utility subject to the FSP shall send to each eligible customer a copy of the program announcement no later than 90 days after the issuance of an order from the Assistant Secretary to comply with the FSP. Each participating home heating supplier shall send to each eligible customer a copy of the program announcement no later than the date set forth in the notice from the Assistant Secretary approving participation by the home heating supplier in the FSP. A program announcement must, at a minimum—

(1) List the program measures identified in Appendix I or the program measures developed by the utility pursuant to § 456.1016, for the category of residential building owned or occupied by such eligible customer;

(2) List the energy conserving practices defined in § 456.105 and § 456.1001 or the practices developed by the utility and approved by the Assistant Secretary pursuant to § 456.1022 and state that they are of low or no cost;

(3) Include a reasonable estimate (or a range of estimates) of the savings in energy costs for a period of one year, which are likely to result from installation of each of the applicable program measures and adoption of the energy conserving practices in a typical building or buildings in such category;

(4) Include an offer to perform the service required to be offered under § 456.1007 (Program Audits);

(i) The offer of the program audit may be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. An unconditional offer, however, shall be offered to eligible customers within one year of a conditional offer.

(ii) The offer must explain that an eligible customer may request the service offered in the program announcement by a request card included in the program announcement, or by any other appropriate method which is the most convenient for the utility.

(iii) The offer must list the direct costs, if any, of receiving the service, which are to be charged to the eligible customer.

(5) Include the following disclosure or a similar statement: "The estimates contained in this program announcement are based on estimates for typical houses and local fuel prices which were in effect at the time this program announcement was published. The energy audit which we offer will provide more specific estimates for your home".

(b) *Calculation procedures.* Each utility or participating home heating supplier shall provide the Assistant Secretary, pursuant to § 456.1021, with a copy of the procedures used for determining the estimates of the savings in energy costs referred to in paragraph (a)(3) of this section.

(c) *New customers.* (1) A new customer is a person who becomes an eligible customer after a distribution of the program announcement but before June 30, 1989.

(2) Each utility and participating home heating supplier subject to the FSP shall send a program announcement which meets the requirements of this section to each new customer within 60 days of such customer becoming a new customer.

(3) Each covered utility or participating home heating supplier shall retain in its files for not less than five years a copy of each report of each program audit performed pursuant to an RCS Program. Within 60 days of becoming a new customer, each new eligible customer, who is an owner of a residential building or dwelling unit therein, shall be informed by the utility or participating home heating supplier subject to the FSP that, upon request and without charge, the customer may receive a copy of the results of any program audit of the customer's residence which the utility or participating home heating supplier may have performed pursuant to the RCS Program.

(d) *Prohibitions.* (1) The program announcement shall not include any advertising, unless approved by the Assistant Secretary pursuant to § 456.1022, for the sale, installation, or financing by any supplier, contractor, or lender (including the utility and participating homeheating supplier) of any energy conservation measure, renewable resource measure, energy conserving practice, or product. The utility or home heating supplier shall submit to DOE evidence which reasonably assures that such advertising shall not be anticompetitive or unfairly discriminate against any person.

(2) The utility or participating home heating supplier is prohibited from unfairly discriminating among measures, eligible customers, suppliers, contractors, and lenders in the content of, and in the providing of, information required under this section.

§ 456.1007 Requirements for program audits.

(a) *Timing and preconditions.* (1) Each utility or participating home heating supplier subject to the FSP that unconditionally offers an audit to an eligible customer shall provide such audit within 90 days after the customer's request for the audit.

(2) Each utility or participating home heating supplier subject to the FSP that conditionally offers an audit to an eligible customer shall provide an audit within 45 days after the customer's request.

(3) Each utility or participating home heating supplier subject to the FSP is prohibited from requiring any precondition for providing a program audit to an eligible customer and is prohibited from discriminating unfairly among eligible customers in providing program audits.

(b) *Contents of program audit.* (1) Each utility and participating home heating supplier subject to the FSP shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, a comprehensive program audit which addresses the applicable program measures and identifies the appropriate energy conserving practices referred to in § 456.105 and § 456.1001 or those practices approved by the Assistant Secretary pursuant to § 456.1022.

(2) The auditor shall determine in each program audit the applicability of each program measure in that residence based on applicability criteria set forth below or in the case of residential buildings containing more than four dwelling units, based on the DOE applicability criteria set forth in Appendix III of this part. Additionally, any utility or participating home heating supplier may establish its own applicability criteria, subject to the approval of the Assistant Secretary pursuant to § 456.1022. If a program measure is not applicable then the requirement of this section to provide estimates of the cost and savings of installation of the measure in such residence does not apply. A program measure is applicable in a residence if:

(i) The measure is not already present in the residence and the measure can be installed practically;

(ii) Installation of the measure is not a violation of Federal, State, or local law or regulations;

(iii) With respect to ceiling insulation, the difference between the existing level of insulation in the residence and the appropriate insulation level, as determined by the Assistant Secretary, is R-11 or more;

(iv) With respect to pipe and duct insulation, there are hot water pipes and heating and cooling ducts which extend through unconditioned spaces;

(v) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls;

(vi) With respect to floor insulation, no floor insulation is present;

(vii) With respect to flue-opening modifications, the furnace combustion air is taken from a conditioned area;

(viii) With respect to clock thermostats, the residence currently has a thermostat and the existing furnace or central air conditioner is compatible with a clock thermostat;

(ix) With respect to heat-absorbing or heat-reflective window and door material, the residence has an existing central or room air conditioner;

(x) With respect to direct gain glazing systems and indirect gain systems, the living space of the residence has either a south-facing (+ or −45° of True South) wall or an integral south-facing (+ or −45° of True South) roof, which is free of major obstruction to solar radiation;

(xi) With respect to active solar domestic hot water systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xii) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(xiii) With respect to replacement solar swimming pool heaters, there is an existing heated swimming pool and a location exists on the premises which is free of major obstruction to solar radiation;

(xiv) With respect to solaria/sunspace systems, the living space of the residence has a south-facing ground-level wall, which is free of major obstructions to solar radiation;

(xv) With respect to window heat gain retardants, the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning;

(xvi) With respect to window heat loss retardants, the living area has a window with fewer than three panes; and

(xvii) With respect to wind energy devices:

(A) The estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (32 feet) above ground level; and

(B) There are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(3) Each utility and participating home heating supplier subject to the FSP shall use as program audit procedures those obtained in the DOE Model Audit or any other audit procedures approved by DOE, pursuant to § 456.1022. For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's residence and the calculations which must be performed in making energy cost savings estimates.

(4) The auditor is required to base any cost and savings estimates for any applicable furnace efficiency modification of a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This season efficiency shall be based on estimated peak (tuned-up) steady state efficiency corrected for cycling losses. Steady state efficiency shall be derived from the manufacturer's design data and observation of the furnace components, or by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(5) The auditor shall offer, at the time of the audit, to provide the eligible customer, at a minimum, with a written sample of the typical format of the audit results and a brief explanation of how to interpret such results.

(c) *Results of program audit.* Each utility or participating home heating supplier subject to the FSP is required to provide the following information in writing to each eligible customer who receives a program audit:

(1) An estimate of the total cost, expressed in dollars or a range of dollars, of installation by a contractor of each applicable program measure.

(2) An estimate of the total cost, expressed in dollars or a range of dollars, of purchase by the customer of each applicable program measure.

(3) An estimate of energy savings, expressed in dollars or a range of dollars, of each applicable program measure addressed by the program audit.

(4) In the case of a utility or participating home heating supplier which does not provide in-person results of audits, the customer must be given the opportunity to discuss the results of the audit with a qualified person.

(d) *Prohibitions and disclosure required for program audits.* (1) Unless otherwise approved by the Assistant Secretary pursuant to § 456.1022, the auditor is prohibited from estimating, as part of any program audit provided pursuant to the FSP, the costs or energy cost savings of installing any measure or product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders.

(3) No utility, participating home heating supplier, or auditor may unfairly discriminate among program measures.

(4) Each auditor must provide the eligible customer with a written statement of any substantial interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any program measures.

(e) *Program audits of furnaces.* In order for an auditor of a utility or participating home heating supplier subject to the FSP to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following statement:

If your home is heated by a source of fuel other than (state the type of fuel supplied by the utility or participating home heating supplier), only the supplier of the other fuel may audit your furnace unless you specifically request us to audit your furnace. Federal law requires that the request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it please sign below.

(f) *Qualifications for program auditors.* Each auditor who performs a program audit pursuant to FSP shall:

(1) Be qualified according to the applicable procedures in § 456.1014 of this subpart; and

(2) Be under contract or subcontract to, be a employee of, or be an employee of a contractor or subcontractor to, a utility or participating home heating supplier subject to the FSP.

§ 456.1008 [Reserved]

§ 456.1009 [Reserved]

§ 456.1010 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a utility subject to the FSP which are attributable to the RCS Program, including any penalties paid under 10 CFR Part 456 Subpart F (Federal Standby Authority), shall be separately accounted for on the books and records from amounts attributable to all other activities of the utility.

(b) *Payments of costs.* Utilities subject to the FSP shall treat costs as described below and shall notify the Assistant Secretary, pursuant to § 456.1020, how the costs described in paragraph (b)(2) of this section will be treated.

(1) All amounts expended by a utility subject to the FSP for the program announcement and all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility subject to the FSP in the same manner as other current operating expenses of providing such utility service.

(2) The cost of the following program elements shall be recovered in the manner specified by the State regulatory authority for all regulated utilities subject to the FSP (except that the amount that may be recovered directly from a residential customer for whom the activity described in paragraph (b)(2)(ii) of this section is performed shall not exceed $15 per dwelling unit, or the actual cost of such activities, whichever is less):

(i) Administrative and general expenses, including those associated with program audits and customer billing services.

(ii) Project manager requirements, including the providing of program audits.

(3) In determining the amount to be recovered directly from customers as provided under paragraph (b)(2) of this section, the State regulatory authority shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) *Duplication of audits.* (1) In areas where a residential customer is an eligible customer of more than one utility or participating home heating supplier, such customer is entitled to an RCS audit from only one of these utilities or home heating suppliers.

(2) No utility or participating home heating supplier subject to the FSP shall be required to make more than one audit of a residential building or dwelling unit therein, unless a new owner, who is an eligible customer, requests a subsequent audit.

§ 456.1011 Customer billing, repayment of loans, and termination of service.

(a) *Customer billing.* Every charge to a customer by a utility or a participating

home heating supplier, subject to the FSP, for any portion of the costs of carrying out any activity pursuant to the FSP that is charged to the residential customer for whom such activity is performed (including repayment of a loan) and that is included on a billing for utility service submitted by the utility or home heating supplier to such residential customer, shall be stated separately on such billing from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed so as to require that charges to the customer for activities performed pursuant to the FSP must be included on the periodic utility or fuel bill.

(b) *Repayment of loans.* (1) In the case of any loan by a utility, the utility, with the approval of the customer, shall permit repayment of the loan as part of the periodic utility bill.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier under the FSP—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of the loan in the customer's payment of his periodic fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period;

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer; and

(iii) No penalty shall be imposed by a participating heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(c) *Termination of service.* No utility or participating home heating supplier subject to the FSP shall terminate or otherwise restrict utility or fuel service to any customer for payments due for any services under the FSP.

§ 456.1012 [Reserved]

§ 456.1013 Quality assurance.

(a) To ensure that reasonable levels of effectiveness and safety are maintained in the supply and installation of measures under the FSP, each utility or participating home heating supplier shall develop and offer to each customer at the time of the audit or with the audit results the following:

(1) Information on how to recognize the most common type of improper installation; and

(2) Information on the availability and responsibilities of independent (public or private) inspection services and the means of contacting these services.

(b) Pursuant to § 456.1021 each utility and participating home heating supplier shall submit to the Assistant Secretary for approval, the information to be provided to eligible customers required under paragraph (a) of this section.

(c) Any utility or participating home heating supplier may request an exception from the requirements of paragraph (a) of this section pursuant to § 456.1022. Such requests must demonstrate that existing mechanisms are sufficient to ensure reasonable levels of effectiveness and safety in the installation of measures.

§ 456.1014 Qualification procedures for auditors.

(a) Each utility and participating home heating supplier subject to the FSP must provide an adequate number of auditors for the RCS program who have successfully completed an auditor training program using either the DOE auditor training manual or any other DOE approved auditor training program or passed a DOE approved certification examination.

(b) Paragraph (a) of this section shall not applicable to any auditor who has previously operated under an approved RCS State Plan unless the utility or participating home heating supplier decides otherwise.

(c) Pursuant to § 456.1021, each utility and participating home heating supplier subject to the FSP shall provide to the Assistant Secretary for approval, procedures for training auditors, a description of the training materials, and a reasonable timetable for the implementation of the qualification procedures for auditors.

§ 456.1015 Home heating suppliers.

(a) *Participation and Withdrawal.* Any home heating supplier in a State subject to the RCS Federal Standby Plan wishing to participate in the Plan may contact the Assistant Secretary.

(1) Notwithstanding any other provision of this part, any participating home heating supplier may request a waiver of certain requirements in this Plan as provided in paragraph (b) of this section.

(2) Any participating home heating supplier may voluntarily withdraw from the FSP by submitting to the Assistant Secretary a written notification.

(3) Prior to withdrawal, the participating home heating supplier shall give notice of its withdrawal to those customers who have either requested RCS audits or otherwise have been involved in RCS services and shall refer them to the appropriate utility in the same service area.

(4) The withdrawal notice to the Assistant Secretary shall give assurance that the home heating supplier has performed the requirements in paragraph (a)(3) of this section.

(b) *Waiver of requirements.* (1) The Assistant Secretary will consider individual requests for waivers of FSP requirements from participating home heating suppliers on the basis of the limited resources of the home heating suppliers.

(2) The Assistant Secretary will not waive the following requirements for any home heating supplier who chooses to participate in the program:

(i) Section 456.1003 (Investigation and enforcement).

(ii) Section 456.1007(d) (Prohibitions and disclosures required for program audits).

(iii) Section 456.1007(e) (Furnace audits).

§ 456.1016 Program measures.

(a)(1) Each utility or participating home heating supplier subject to the FSP may exclude any program measure for its service area on the following basis:

(i) When, by substituting utility or home heating supplier derived data, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) less any Federal and State tax credit (T), by the first year energy savings in dollars (S),

$$P = \frac{F-T}{S} \quad P > 7 \text{ years, and/or}$$

(ii) When, by substituting a utility or home heating supplier specific prototypical house, it is determined that the program measure has a payback period (P) of more than seven years pursuant to the formula in paragraph (a)(1)(i) of this section.

(2) The utility or participating home heating supplier shall provide to the Assistant Secretary data to substantiate any exclusion pursuant to paragraph (a)(1) (i) or (ii) of this section.

(b) The utility or participating home heating supplier may add, with DOL's approval, pursuant to § 456.1022, any measure not identified in Appendix I as a program measure for its service area, to the Plan.

§ 456.1017 Supply, installation and financing by utilities.

(a) *General.* Except as provided below, the provisions of the paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost of residential energy conservation measures to such customers.

(b) *Exemption for utility subcontractor supply and installation.* The Assistant Secretary shall grant an exemption to the prohibition contained in § 456.502(a) to a utility to supply or install any energy conservation or renewable resource measure through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and the following conditions are met:

(1) The utility certifies to DOE that each supplier or contractor;

(i) Shall not be subject to the control of the utility, except as to the performance or such contract and shall not be an affiliate or subsidiary of such utility and;

(ii) If selected by the utility, shall be selected in a manner consistent with paragraph (b)(2) of this section.

(2) The utility submits to DOE a description of the proposed utility activities which shall include evidence that such activities:

(i) Shall not involve unfair methods of competition;

(ii) Shall not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(iii) Shall be undertaken in a manner that provides, subject to reasonable conditions to utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available to finance the supply or installation by any contractor or to finance the purchase of such measures to be installed by the customer; and

(iv) To the extent practicable and consistent with paragraphs (b)(2) (i)–(iii) of this section, shall be undertaken in a manner which minimizes the cost or residential energy conservation measures to such customers.

(3) Any covered utility wishing to obtain an exemption to the prohibition contained in § 456.502(a) shall obtain approval by sending the request for exemption along with the required conditions and evidence described in paragraphs (b) (1) and (2) of this section to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(4) Upon request, a utility conducting activities pursuant to this section shall provide DOE with a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the utility under paragraph (b) of this section.

§ 456.1018 Complaints processing procedures.

(a) *Conciliation services for customer complaints.* (1) Each utility or participating home heating supplier subject to the FSP is required at the time of the audit or with the audit results to offer to provide to eligible customers information on available conciliation services for the purpose of resolving complaints by eligible customers against persons who install or supply program measures under the RCS program.

(2) Each utility and participating home heating supplier shall establish procedures to resolve complaints by eligible customers against the utility or home heating supplier under the FSP.

(b) *Redress proceedings.* Each utility or participating home heating supplier subject to the FSP shall offer to provide to eligible customers, at the time of the audit or with the audit results, information on available redress proceedings for use by all persons alleging injury arising from an activity carried out under the FSP or from a violation of the FSP.

(c) *Additional requirement with respect to conciliation and redress.* Each utility or participating home heating supplier shall submit to the Assistant Secretary pursuant to § 456.1021, the information that will be made available to inform eligible customers of available conciliation services and redress proceedings. If such services are unavailable, the Assistant Secretary shall be notified and shall take appropriate action.

§ 456.1019 Coordination.

The Assistant Secretary shall contact annually the cognizant Federal, State, and local officials responsible for energy conservation programs within and affecting a State which is covered by the FSP.

§ 456.1020 Reporting and recordkeeping.

(a) Each utility and participating home heating supplier subject to the FSP shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all procedures submitted pursuant to § 456.1021. An annual report shall subsequently be submitted no later than each July 1 and thereafter until July 1, 1989, unless the initial six month report is required to be submitted less than 90 days prior to July 1. In such a case, the annual report shall be submitted the following July 1 and annually thereafter through June 30, 1989.

(b) The six month report or annual report or both, as indicated, shall include the following information:

(1) The approximate number of eligible customers (6 month report only).

(2) A copy of the program announcement if not already provided (6 month report only).

(3) The number of program announcements provided to eligible customers, including the number of those making conditional audit offers (6 month report and annual report).

(4) The number of energy audits requested and provided.

(5) The nature of any direct financing activities and exempted or waived supply or installation activities engaged in by the utilities, including:

(i) Where applicable, any copy of any State or local law or regulation in effect on November 9, 1978 which requires or explicitly permits the utility to engage in any supply or installation of any energy conservation or renewable resource measures (6 month report);

(ii) The procedures used to select products to be supplied, installed, or financed (6 month report and annual report);

(iii) The procedures used to select installers to perform utility supported work (6 month report and annual report);

(iv) Steps the utility has taken to ensure that the activities have no adverse effect on competition (6 month report and annual report); and

(v) The price and interest rates charged by utilities in conjunction with the supply, installation and financing services offered pursuant to exemptions or waivers granted under section 216 (b), (c), (d)(1), (d)(2), and (e) of NECPA (6 month report and annual report).

(6) Description of the treatment of costs described in § 456.1010(b)(2) (utility only) (6 month report or annual report).

(7) The estimated utility or home heating supplier costs of implementing the RCS Program incurred during the reporting period (6 month report and annual report).

(8) The number and description of complaints against the utility or

participating home heating supplier (6 month report and annual report).

(c) Each covered utility and participating home heating supplier shall keep for five years from the date of the program audit a copy of the audit report, and shall make such report available upon request to the Assistant Secretary.

(d) Any provisions of this section notwithstanding, the Assistant Secretary may, as he deems essential to the Departmental implementation of program responsibilities and subject to approval of the OMB under provisions of the Paperwork Act (Pub. L. 96-511)—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the recordkeeping requirement in paragraph (c) of this section.

§ 456.1021 Information which a utility and participating home heating supplier shall report to the Assistant Secretary.

Utilities and participating home heating suppliers subject to the FSP shall report the following procedures to the Assistant Secretary for his approval on a date specified in the order:

(a) Procedures for determining the estimates of energy costs savings (§ 456.1006(b)).

(b) Procedures for ensuring that reasonable levels of effectiveness and safety are attained in the supply and installation of measures under the RCS Program (§ 456.1013(b)).

(c) Training procedures and a description of the training materials for auditors, including the timetable for the implementation of the qualification procedures for auditors § 456.1014(c)).

(d) The information to be offered to eligible customers on available conciliation services and redress proceedings §§ 456.1018(a)(1) and (b)).

(e) Procedures for handling complaints against a utility or participating home heating supplier (§ 456.1018(a)(2)).

§ 456.1022 Exceptions.

As provided for in the applicable sections, any utility or participating home heating supplier wishing to seek an exception from one or more of the following sections shall obtain approval from the Assistant Secretary by sending the request for approval, along with supporting documents, to the Assistant Secretary for Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(a) Section 456.1000(c). (Exception for existing RCS programs);

(b) Section 456.1006(a)(2). (Listing substitute energy conserving practices in the program announcement);

(c) Section 456.1006(d). (Allowing advertising in the program announcement);

(d) Section 456.1007(a)(3). (Extending the time for the performance of an audit after a customer's request);

(e) Section 456.1007(b)(1). (Identifying substitute energy conserving practices during the program audit);

(f) Section 456.1007(b)(2). (Developing substitute applicability criteria);

(g) Section 456.1007(b)(3). (Developing substitute program audit procedures);

(h) Section 456.1007(e)(1). (Estimating costs or energy cost savings of installing any measure or product which is not a program measure);

(i) Section 456.1013(c). (Developing quality assurance procedures);

(j) Section 456.1016(a)(2). (Substantiating exclusion of program measures in calculating payback period); or

(k) Section 456.1016(b). (Adding program measures to the FSP not identified in Appendix I).

§ 456.1023 Waivers.

As provided for in Subpart L, any utility or participating home heating supplier wishing to petition for a waiver from any requirement under this subpart shall follow the procedures contained under section § 456.1203.

Subpart K—Alternative State Plans

§ 456.1101 Scope.

This subpart identifies the responsibilities of States and covered utilities under an Alternative State Plan authorized under section 103(a) of CSRA including the plan content, certification procedure, reporting requirements, enforcement procedures, and the amendment process.

§ 456.1102 Definitions.

(a) For purposes of this subpart, an "entity" means the Governor of any State or the designated State regulatory authority, or agency or instrumentality of the State authorized under State law to formulate and certify an alternative State plan for residential buildings under this subpart.

(b) "Covered utilities" are those regulated utilities which meet the definition of "covered utility" in § 456.105, and in addition, to the extent authorized by State law or agreed to by the organizations, includes non-regulated utilities and home heating suppliers. For purposes of this subpart, any utility with a retail service territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

§ 456.1103 Content of plan.

An alternative State plan certified pursuant to this subpart shall—

(a) Be designed to result in annual residential energy conservation savings of 2 percent or more.

(b) Contain the goals established for the plan and an analysis of the data and rationale used by the certifying entity to determine that the plan is likely to achieve such goals.

(c) Contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 of NECPA and Subpart E of this part and prices and rates of interest charged shall be fair and reasonable.

(d) Contain adequate procedures for preventing unfair, deceptive, and anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

§ 456.1104 Incentives.

The entity in charge of a plan under this subpart, or a State regulatory authority, may, to the extent permitted under State law, provide incentives for utilities to meet the goals contained in the State's alternative State plan, including providing such utilities that meet or exceed such goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

§ 456.1105 Certification process.

(a) *Certification.* (1) The entity which elects to certify a plan under this section shall certify, pursuant to a form prescribed by the Secretary (except as provided by paragraph (a)(2) of this section), to the Secretary that—

(i) The plan meets the requirements of § 456.1103;

(ii) The plan is likely to achieve the goals established for the plan if it is adequately implemented; and

(iii) The plan will be adequately implemented.

(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of the CSRA and until such form is made available, the certifying entity may make such certification on a form prescribed by such entity.

(3) Any certification under this section shall include a copy of the plan and a detailed explanation of the manner in which the contents of the plan will be implemented.

(b) *Consequences.* (1) Beginning with the certification date of a plan under this section and ending with the date on which a plan is no longer in effect—

(i) Subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217 and 218 of NECPA shall not apply with respect to regulated utilities in such State and nonregulated utilities which are included in the plan; and

(ii) Section 219 of NECPA shall apply to utilities described in subparagraph (a) only to the extent provided for under § 456.1107.

(2) Except as provided under § 456.1108, any State for which a plan is certified under this section shall continue to have such plan in effect until June 30, 1989.

§ 456.1106 Reporting requirements.

(a) The certifying entity shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

(b) Such report shall include—

(1) A statement of the number of residential buildings receiving benefits under the plan;

(2) An estimate of the actual energy savings resulting from the plan and a description of sources of such savings;

(3) A statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan;

(4) A detailed description of the benefits provided under the plan and of how the plan is implemented;

(5) Estimated State costs and utility costs of implementing the plan; and

(6) The names of the entities carrying out the plan.

(c) The first such report shall be made by the certifying entity within the 14-month period that begins with the plan certification date.

(d) Subject to approval of the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511), the Secretary may, to meet the requirements under section 225 of the NECPA, require additional information from entities.

§ 456.1107 Procedures for administrative and judicial enforcement.

(a) *Rights to petition.* At any time more than 1 year after an Alternative State plan has been certified under § 456.1105, any customer of a utility subject to such Alternative State plan may petition the Secretary of Energy to conduct a public hearing to determine if the Alternative State plan has been adequately implemented.

(b) *Content of petition.* Any petition mailed by the Secretary shall be received for filing only if such petition—

(1) Sets forth the petitioner's name and address;

(2) States that the petitioner is a customer of a named utility subject to an alternative State plan that was certified under § 456.1105 more than one year prior to the date of the petition;

(3) Explains how the alternative State plan has not been adequately implemented with sufficient specificity to give reasonable notice of any failure constituting grounds for complaint and any supporting allegations of relevant facts;

(4) States how the petitioner has been injured by any failure to adequately implement the alternative State plan stated as a ground for complaint;

(5) States whether and to what extent a hearing is desired;

(6) Contains a certificate verifying that a copy of the petition was transmitted, on the same date of transmittal to the Secretary to the entity which certified the alternative State plan, by certified mail, return-receipt requested; and

(7) Is signed by the petitioner before a Notary Public.

(c) *Answer.* The entity in charge of the alternative State plan shall have 20 days from the date of receipt to file an answer to the petition.

(d) *Denial of hearing.* Within 60 days of the date the petition is received for filing, the Secretary may deny a hearing, in whole or in part, in a written statement including supporting reasons if such a hearing is not justified in the public interest.

(e) *Prehearing dismissal.* Within 60 days after a petition is received for filing, the Secretary may dismiss such petition for failure to state adequate injury in fact or sufficient grounds for complaint which, if supported by the record, would warrant the conclusion that the alternative State plan has not been adequately implemented.

(f) *Notice of hearing.* Within 60 days of the date the petition is received for filing, the Secretary shall give advance notice to the public of any hearing to be carried out on a petition under this section including but not limited to—

(1) A description of the grounds for complaint in the petition;

(2) A date certain by which the public may submit written comments;

(3) Procedures for submission of evidence; and

(4) Such additional procedures as may be appropriate for the conduct of the hearing.

(g) *Making the determination.* Any determination by the Secretary concerning the adequacy of the implementation of any alternative State plan shall be on the record and shall be published in the **Federal Register** within 60 days after such determination is made.

(h) *Appeal.* Any person alleging that he is likely to be injured as a result of a determination by the Secretary under this section may, within 60 days after publication or notification of such determination, institute an action appealing the determination in the United States Court of Appeals for the appropriate judicial circuit. The court shall review the determination of the Secretary in accordance with Administrative Procedures Act, a' . shall have jurisdiction to affirm, ı. odify, set aside, in whole or in part, or to remand such determination to the Secretary for such other action as the court may direct.

(i) *Enforcement.* Except as provided in paragraph (f) of this section, if any determination by the Secretary that the alternative State plan has not been adequately implemented becomes final and may not be appealed, the Secretary shall, within 30 days of the date on which the determination may no longer be appealed, initiate standby authority under Subpart J with respect to such State.

(j) *Exception.* If a State which had an approved plan in effect under subpart B on the day before the date on which certification was made under § 456.1105 informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (a) of this section, that it will no longer implement a plan certified under this subpart and that it will implement the approved plan which was in effect in the State on the day before certification of the alternative State plan under this subpart, then—

(1) The determinations and actions described in paragraphs (b) through (d) of this section may not be carried out; and

(2) Sections 212 through 219 of NECPA shall apply in such State except to the extent that waivers are provided for utilities under Subpart L in such State.

§ 456.1108 Amendments.

(a) Except as provided by paragraph (b) of this section, a plan certified under this subpart may be amended by any amendment—

(1) Consistent with the requirements of § 456.1103; and

(2) Certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under § 456.1104.

(b) A plan certified under this subpart may not be amended—

(1) During the first year after it is certified; or

(2) More than once a year thereafter.

Subpart L—Utility Waiver Process

§ 456.1201 Scope.

This subpart specifies the procedures to be followed by covered utilities to request a waiver from the Secretary from any provision of this part or any provision of a State residential energy conservation program under this part. For purposes of this section, the term "residential energy conservation program" means any program carried out by a utility that has as its purpose—

(a) Increasing the efficiency with which petroleum, natural gas or electric energy is consumed in residential buildings served by such utility; or

(b) Utilizing solar or other forms of renewable energy in residential buildings served by such utility.

§ 456.1202 Coverage.

This subpart shall apply to all regulated and nonregulated utilities which meet the definition of "covered utility" in § 456.105.

§ 456.1203 Approval process.

(a) *Criteria.* A waiver may be approved under this subpart if a covered utility shows in appropriate State proceedings and the appropriate State officials find that—

(1) The existing and planned residential energy conservation programs that will be implemented by the utility if a waiver from such provision is approved will result in savings in petroleum, natural gas or electric energy consumed in residential buildings served by the utility that are equal to or greater than the savings that would be achieved in connection with a properly implemented State residential conservation service plan under this part; and

(2) Adequate procedures are in effect that prevent unfair, deceptive or anticompetitive acts or practices affecting commerce that relate to the implementation of such residential energy conservation programs, including provisions to assure that any person who alleges any injury resulting from unfair, deceptive or anticompetitive acts or practices in connection with such programs shall be entitled to redress under such procedures as may be established by the Governor in the State in which the utility provides the service.

(b) *Approval.* The Secretary shall approve a request of a utility for a waiver under paragraph (a) of this section if the Secretary determines that—

(1) Opportunity for a hearing on the request for a waiver has been provided in the State in which the utility provides utility service; and

(2) In the case of a regulated utility, the Governor of the State in which the utility provides utility service and the State regulatory authority that has ratemaking authority with respect to such utility both—

(i) Find that the showings under paragraphs (a) (1) and (2) of this section are sufficient; and

(ii) Support the request by the utility for the waiver.

(3) In the case of a nonregulated utility, the Governor of the State in which the utility provides utility service—

(i) Finds that the showings under paragraphs (a) (1) and (2) of this section are sufficient; and

(ii) Supports the request by the utility for the waiver.

(c) *Submittal.* (1) Utilities seeking a waiver shall prepare a request documenting their proposal and showing how the approval criteria of § 456.1203(a) are met. The request shall be submitted to the Governor and, in the case of regulated utilities, to the State regulatory authority.

(2) The Governor, and, in the case of regulated utilities, the State regulatory authority, shall, for those waiver requests supported, submit to the Assistant Secretary a statement concerning the opportunity for a hearing on the request and a brief summary of findings concerning the sufficiency of the utility showings regarding the criteria in paragraphs (a) (1) and (2) of this section together with the utility waiver request.

§ 456.1204 Annual Report to Governor.

Any utility that receives a waiver under this section shall provide the Governor of the State in which that utility provides utility service with an annual report describing the performance of its residential energy conservation programs in relation to the showings of such utility under paragraphs (a)(1) and (2) of this section.

§ 456.1205 Revocation procedures.

(a) The Secretary shall revoke any waiver granted to a covered utility subject to a State plan under this subpart upon a request under this section by the Governor of the State in which the utility provides utility service.

(b) The Governor, with the concurrence of the State regulatory authority in the case of a regulated utility, may request such a revocation on the basis that the savings described under § 456.1203(a)(1) on an annual basis are less than the savings in the year prior to approval of the waiver or that the procedures specified under § 456.1203(a)(2) are no longer adequate.

(c) A request for revocation may be made only after a review and opportunity for public hearing on the performance of the residential energy conservation programs of the utility. In order to facilitate such review and hearing, the utility shall provide the Governor such information as the Governor requests about such residential energy conservation program.

(d) The revocation request submitted to the Secretary shall contain a statement concerning the review and hearing discussed in paragraph (c) of this section, and a brief summary of the findings leading to the request to paragraph (b) of this section.

Subpart M—Commercial Buildings and Multifamily Dwellings

§ 456.1301 Scope.

This subpart applies to any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act before August 1, 1984.

§ 456.1302 Authority to continue plans.

Any State energy conservation plan to which this subpart applies may, with respect to regulated utilities, continue in effect until January 1, 1990.

§ 456.1303 Reporting.

The administering agency for any State energy conservation plan to which this subpart applies may report annually at such time as may be appropriate with respect to activities carried out under the authority of section 201 of CSRA.

Appendix I to Part 456—Program Measures

(a) *General.* (1) The measures table was developed by evaluating program measures with respect to a prototypical house (see Appendix II) for all HUD/MPS climate zones and categories of residential fuel use. A measure was determined to be a program measure for a climate zone and category of residential fuel use if the ratio of installed first cost, less any Federal and State income tax credits, divided by first year energy savings in dollars was less than or equal to 7 years. The RCS Model Audit procedures were used to determine energy savings.

(2) DOE applied only resident-installed costs to those measures which are not likely to be installed by a contractor: caulking and weatherstripping. Resident-installed and contractor costs were used to determine installed first cost for those measures which DOE believes could be easily installed by homeowners without encountering safety hazards or without conflicting with most building code requirements. These measures

include ceiling insulation, floor insulation, water heater insulation, clock thermostats, heat reflective and heat absorbing window and door materials, and pipe and duct insulation. Contractor-installed costs alone were used for those measures where local codes or regulations and safety considerations are likely to preclude homeowner installations or where a measure is not easily installed by a homeowner. These measures include: wall insulation, storm and thermal windows and doors, replacement heating systems, oil burner replacements, vent dampers, intermittent ignition devices (IID's), replacement central air-conditioners, active solar space heating systems, combined active solar space heating and hot water heating systems, solar domestic water heating systems, replacement solar pool heaters, and wind energy devices.

(b) *Climate Zones of Program Measures.* In the table of program measures, the climate zones for heating degree-days are as follows:

Climate	Heating degree-days
1	0 to 1000.
2	1001 to 2500.
3	2501 to 3500.
4	3501 to 4500.
5	4501 to 5000.
6	5001 to 6000.
7	6001 to 7000.
8	7001 and above.

The cooling degree-days utilized in the evaluation of program measures for each climate zone within each State are the cooling degree-days for the weather station which is specified for that climate zone in the DOE Model Audit.

(c) *Category of Residential Fuel Use.* The program measures are designated in the following tables by categories of residential fuel use. These categories are:

(1) For ceiling insulation, wall insulation, floor insulation, duct insulation, pipe insulation, storm or thermal windows, storm or thermal doors, replacement heating systems, replacement oil burners, vent dampers, IID's, active solar space heating systems, and combined solar space heating and solar domestic hot water systems:

(i) "Electricity," which includes all residential buildings in which the principal source of space heating is an electric resistance heating system;

(ii) "Gas," which includes all residential buildings in which either natural gas, or propane, or butane is the principal space heating fuel;

(iii) "Oil," which includes all residential buildings in which either #2 heating oil or kerosene is the principal space heating fuel and includes all other residential buildings not included in the categories "Electricity," "Gas," or "Heat Pump";

(iv) "Heat Pump," which includes all residential buildings in which the principal source of space heating is an electric heat pump.

(2) For water heater insulation and solar domestic hot water:

(i) "Electricity" includes all residential buildings in which the principal fuel for water heating is electricity;

(ii) "Gas" includes all residential buildings in which the principal fuel for water heating is either natural gas, or propane, or butane;

(iii) "Oil" includes all residential buildings for which the principal fuel for water heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(3) For heat reflective and heat absorbing window and door material, "Electricity" includes all residential buildings in which electricity is used for air-conditioning and includes buildings that are cooled with a heat pump.

(4) For replacement central air-conditioners, "Electricity" includes all residential buildings in which electricity is used by a central air-conditioner.

(5) For replacement solar swimming pool heaters:

(i) "Electricity" includes all swimming pools for which the principal fuel for pool heating is electricity;

(ii) "Gas" includes all swimming pools for which the principal fuel for pool heating is natural gas, or propane, or butane;

(iii) "Oil" includes all swimming pools for which the principal fuel for pool heating is either #2 heating oil, kerosene, or a fuel not included under "Electricity" or "Gas" in this subsection.

(6) For wind energy devices:

(i) "Electricity" includes all residences in which the principal source of space heating is an electric resistance heating system and which have electric domestic water heating;

(ii) "Heat Pump" includes all residences in which the principal source of space heating is an electric heat pump and which have electric domestic hot water heating.

(d)(1) *Caulking, Weatherstripping, and Clock Thermostats.* Caulking and weatherstripping fell within the 7-year payback in all climate zones for all fuel use categories for resident-installed costs and are considered program measures in all States. Clock thermostats fell within the 7-year payback in all climate zones for all fuel use categories for resident- and contractor-installed costs. (For the sake of simplicity, these measures do not appear in the tables.)

(2) *Devices Associated with Electric Load Management Techniques.* Devices associated with electric load management techniques are program measures for all categories of fuel use if the local electric utility offers a residential rate that reflects any differences in the utility's cost of service (either energy or demand costs) between peak and off-peak periods, or if a residential electric rate comprised of an integrated peak measured demand and an energy use component is applied.

(3) *Ceiling Insulation.* Where indicated as a program measure in Table 2, the R-Value for ceiling insulation shall be determined by the State.

(4) *Floor Insulation.* Where indicated as a program measure in Table 2, the R-Value for floor insulation shall be determined by the State.

(5) *Replacement Solar Swimming Pool Heaters.* These are evaluated as a program measure as indicated in Table 2. This analysis assumed a pool blanket or cover is also used. The measure should be audited for as indicated in Table 2 whenever the residence has a heated pool.

(6) *Intermittent Ignition Devices (IID's).* IID's are not displayed as program measures in Table 2, but are program measures for the category "Gas" in the Oregon climate zone "8."

(7) *Active Solar Space Heating Systems and Combined Solar Space Heating and Hot Water Systems.* Active solar space heating systems and combined solar space heating and hot water systems are program measures as indicated by Table 1 below.

TABLE 1

State	HUD/MPS region	Fuel	Active solar systems	Combined [1]
Arizona	3	Electric	C	C.
		Gas		
		Oil		
		H.P.		
Arizona	4	Electric	C	C.
		Gas	[C]	
		Oil	C	
		H.P.	[C]	
California	3	Electric		C.
		Gas		
		Oil		
		H.P.		
New Mexico	3	Electric	C	C.
		Gas		
		Oil		
		H.P.		
New Mexico	4	Electric	C	C.
		Gas		
		Oil		
		H.P.	[C]	
New Mexico	5	Electric	C	
		Gas		
		Oil		
		H.P.		

[1] Combined solar space heating and hot water systems.

(8) *Wind Energy Devices.* A State that does not change its audit requirements by deleting measures based on the amended RCS measures table shall, whenever a wind energy device appears in Table 2 with brackets and is also asterisked, continue to include a wind energy device as a program measure in its State Plan. Whenever a wind energy device is bracketed or bracketed and asterisked, a State that changes its audit requirements by deleting measures based on the amended RCS measures table shall include in its State Plan the requirement that utilities audit for the appropriate type of wind energy device identified in Table 2. Where both types of wind energy devices are identified in Table 2, an audit is required for only one of these devices.

(e) *Bracketed Measures.* A State is required to include in its State Plan those measures that appear in brackets in Table 1 or 2 only when a State changes its audit requirements by deleting any measures from its State Plan based upon the amended RCS measures tables.

(f) *Table of Program Measures by State.* All other program measures are displayed in Table 2 organized by State where:

R=Resident-installed costs
C=Contractor-installed costs
X=2-kW nonutility interconnected DC wind machine without battery storage
Y=2-kW interconnected AC wind machine without battery storage.

TABLE 2

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
AL	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C				C	
	H.P.	RC		[R]		R	R									C	
AL	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
AK	8																
	Electric	RC	C	RC		RC	RC	C		RC							
	Gas	RC	C	RC		RC	RC				C		C				
	Oil	RC	C	RC		RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C	[R]	RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
AZ	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AZ	3																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			[X]
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									[X]
AZ	4																
	Electric	RC	C	RC	RC	RC	RC	C	[C]	RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C			C	
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
AZ	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
AZ	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
AR	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
AR	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
CA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
CA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
CA	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	H.P.	RC	C	RC		RC	RC	C									
CA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
CO	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
CO	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
CO	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C	C	[XY]
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[XY]
CT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[X]*
DE	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
DC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
FL	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C		C	
	Gas	RC	C		RC	R	R										
	Oil	RC	C	[R]	RC	R	R	[C]								C	
	H.P.	RC	C			R	R									C	
FL	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		R	R									C	
GA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC	C	[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[R]		R	R									C	
GA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[RC]		RC	RC									C	
GA	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
HI	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C			[xy]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]	[C]				C				
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C]								[xy]*
ID	7																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
ID	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
IL	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
IL	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IL	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IL	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
IN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IN	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
IA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
IA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
KS	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									
KS	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
KS	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KS	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
KY	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
KY	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	R	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
KY	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
LA	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[R]	RC	RC	R										
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC									C	
LA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
ME	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							[X]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[X]*
MD	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
MD	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
MD	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
MA	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[X]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[X]*
MA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
MI	7																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
MI	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
MN	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MS	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC				C			
	Gas	RC		[R]	RC	R	R										
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P	RC	C	[R]		R	R										
MS	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC										
MO	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C								C	
MO	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MO	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
MT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NB	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NV	2																
	Electric	RC	C	[RC]	RC	RC	RC			RC	C						
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC					C					
	H.P	RC		[RC]		R	RC										
NV	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC										
NV	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC										

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
NV	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									
NV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NV	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NH	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C			C					C	[x]*
NJ	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NJ	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	
NM	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P	RC	C	[RC]		RC	RC	[C]									[x]*
NM	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C									[x]*
NM	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P	RC	C	RC		RC	RC	C								C	[x]*
NM	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									[xy]*
NM	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C									
NM	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	H.P	RC	C	RC		RC	RC	C								C	[x]*
NY	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C	C	[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P	RC	C	RC		RC	RC	C								C	[xy]*
NY	8																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C				C	C	[xy]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[xy]*
NC	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC		[R]		R	R									C	
NC	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC									C	
NC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
NC	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
ND	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
OH	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
OH	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
OH	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
OK	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[x]*
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									[x]*
OK	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			[xy]*
	Gas	RC	C	RC	RC	RC	RC	C					C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C									[xy]*
OK	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C		[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[xy]*
OK	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C	C	C	[xy]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	[xy]*
OR	4																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC		RC		RC	RC										
OR	5																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
OR	6																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	7																
	Electric	RC	C	RC	RC	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
OR	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
PA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
PA	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PA	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
RI	6																
	Electric	RC	C	RC	RC	RC	RC	C	C	RC	C					C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[x]*
SC	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC				C		C	
	Gas	RC		[RC]	RC	R	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC		[R]		R	R									C	
SC	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC				C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C				C	
	H.P.	RC	C	[RC]		RC	RC									C	
SC	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC									C	
SD	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
SD	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
TN	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Gas	RC		[RC]	RC	RC	RC						C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC										
TN	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC										
TN	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC		RC	RC	RC	RC						C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
TX	1																
	Electric	RC	C	[R]	RC	R	R	[C]		RC				C			
	Gas	RC	C		RC	R	R	[C]									
	Oil	RC	C	[R]	RC	R	R	[C]									
	H.P.	RC	C			R	R	[C]									
TX	2																
	Electric	RC	C	[RC]	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]					C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]									
TX	4																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
TX	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C				C	
	H.P.	RC	C	RC		RC	RC	C								C	
UT	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C			
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
UT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C				C		
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
UT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC					C		
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
VT	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						[x]*
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									[x]*
VT	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC						C	[x]*
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	[x]*
VA	3																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C			C		C	
	Gas	RC	C	[RC]	RC	RC	RC	[C]			C		C				
	Oil	RC	C	[RC]	RC	RC	RC	[C]				C					
	H.P.	RC	C	[RC]		RC	RC	[C]								C	
VA	4																

TABLE 2—Continued

State	HUD/MPS region fuel	Insulation						Storm or thermal windows	Storm or thermal doors	Heat reflective and absorbing window materials	Replacement heating system	Replacement oil burner	Vent damper	Replacement central air conditioner	Solar domestic water heater	Replacement solar pool heater	Wind energy
		Ceiling	Wall	Floor	Water heater	Duct	Pipe										
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C				C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	5																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
VA	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C					C	
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C								C	
WA	6																
	Electric	RC		RC		RC	RC			RC							
	Gas	RC	C	RC	R	RC	RC	C			C		C				
	Oil	RC	C	RC	R	RC	RC	C			C	C					
	H.P.	R		RC		RC	RC										
WA	7																
	Electric	RC		RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC		RC		RC	RC										
WA	8																
	Electric	RC	C	RC	R	RC	RC			RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	5																
	Electric	RC	C	RC	RC	RC	RC			RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC										
WV	6																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WI	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	RC	RC	RC	C			C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	7																
	Electric	RC	C	RC	RC	RC	RC	C		RC	C						
	Gas	RC	C	RC	RC	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
WY	8																
	Electric	RC	C	RC	RC	RC	RC	C		RC							
	Gas	RC	C	RC	R	RC	RC				C		C				
	Oil	RC	C	RC	RC	RC	RC	C			C	C					
	H.P.	RC	C	RC		RC	RC	C									
PR	1																
	Electric	RC	C	[RC]	RC	RC	RC	[C]	[C]	RC				C	C		
	Gas	RC	C	[R]	RC	R	R	[C]	[C]								
	Oil	RC	C	[R]	RC	R	R	[C]	[C]								
	H.P.	RC	C	[R]		R	R	[C]	[C[								

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
Alabama	2	Electric				R	R, C.
		Gas					
		Oil				R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.					
	3	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.					
Alaska	8	Electric				R, C	R, C.
		Gas				R	
		Oil				R, C	
		H.P.				R, C	
Arizona	1	Electric			R		R, C.
		Gas			R		
		Oil			R		
		H.P.					
	2	Electric	R	R	R, C	R	R, C.
		Gas	R		R, C		
		Oil	R		R, C		
		H.P.			R		
	3	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	4	Electric	R	R, C	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas		R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
	6	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R, C	R	
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R, C	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil		R	R, C	R	
		H.P.	R	R	R, C	R, C	
Arkansas	3	Electric	R		R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P			R	R	
California	2	Electric	R	R	R, C	R	R, C.
		Gas			R	R	
		Oil		R	R	R	
		H.P			R	R	
	3	Electric	R, C	R	R, C	R, C	R, C
		Gas	R		R	R	
		Oil	R	R	R, C	R, C	
		H.P	R		R	R	
	4	Electric	R, C	R	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P	R	R	R	R, C	
	5	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R, C	R	R, C	R, C	
		H.P	R, C	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R	
		Oil	R	R	R, C	R, C	
		H.P	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas	R	R	R	R, C	
		Oil	R, C	R	R, C	R, C	
		H.P	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas	R		R	R, C	
		Oil	R	R	R, C	R, C	
		H.P	R	R	R, C	R, C	
Colorado	6	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R, C	
		H.P	R	R	R, C	R	
	8	Electric	R	R	R, C	R, C	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas			R	R	
		Oil			R, C	R, C	
		H.P	R	R	R, C	R, C	
Connecticut	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Delaware	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
District of Columbia	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Florida	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R		
		H.P.					
Georgia	2	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	4	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Hawaii	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
Idaho	7	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.				R	
	8	Electric				R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R		
Illinois	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Indiana	4	Electric			R	R	RC
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
	6	Electric			R, C	R	R, C.
		Gas				R	
		Oil			R, C	R	
		H.P.			R	R	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R	
Iowa	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P.			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Kansas	4	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	5	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas					
		Oil	R	R	R, C	R	
		H.P.	R	R	R, C	R	
Kentucky	4	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	5	Electric			R, C	R	R, C.
		Gas					
		Oil			R, C	R	
		H.P.			R	R	
	6	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
Louisiana	2	Electric			R	R	R, C.
		Gas					
		Oil					
		H.P.					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
Maine	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Maryland	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric		R	R	R, C	R, C.
		Gas				R	
		Oil		R	R	R	
		H.P				R	
Massachusetts	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P			R, C	R, C	
	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Michigan	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Minnesota	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P			R, C	R, C	
Mississippi	2	Electric					R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas					
		Oil					
		H.P					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
Missouri	4	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
Montana	8	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Nebraska	6	Electric			R	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Nevada	2	Electric			R	R	R, C.
		Gas					
		Oil			R		
		H.P.					
	3	Electric	R		R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	4	Electric			R	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	5	Electric			R, C	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R, C	
		Oil			R	R, C	
		H.P			R	R, C	
New Hampshire	7	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R, C	R, C	
New Jersey	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P			R	R, C	
New Mexico	3	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R		
		Oil	R	R	R, C	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		H.P	R	R	R, C	R	
	4	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R	
	5	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	6	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R, C	R, C	R, C	R, C	R, C.
		Gas			R, C	R	
		Oil	R	R	R, C	R	
		H.P	R	R	R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P	R	R	R, C	R, C	
New York	6	Electric	R, C	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R	
		H.P	R	R	R, C	R, C	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R,C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil	R		R	R, C	
		H.P	R	R	R, C	R, C	
North Carolina	2	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	3	Electric			R	R	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R	
	5	Electric			R, C	R, C	R, C
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R	
North Dakota	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R, C	
Ohio	5	Electric			R	R, C	R.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	6	Electric			R	R, C	R.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Oklahoma	3	Electric		R	R, C	R	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	4	Electric			R, C	R, C	R, C.
		Gas			R		
		Oil			R, C	R	
		H.P			R, C	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P			R, C	R	
	6	Electric		R	R, C	R, C	R, C.
		Gas			R		
		Oil		R	R, C	R	
		H.P		R	R, C	R	
Oregon	4	Electric			R	R	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas			R	R, C	
		Oil			R, C	R, C	
		H.P					
	5	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P				R	
	6	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
	7	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil	R		R, C	R, C	
		H.P			R	R	
	8	Electric			R	R	R, C.
		Gas			R, C	R, C	
		Oil			R, C	R, C	
		H.P			R	R	
Pennsylvania	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P				R	
	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R	
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Rhode Island	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
South Carolina	2	Electric					R, C.
		Gas					
		Oil					
		H.P					
	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P				R	
South Dakota	7	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	R, C.
	8	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P			R	R, C	
Tennessee	3	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	4	Electric				R	R, C.
		Gas					
		Oil			R	R	
		H.P					
	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P				R	
Texas	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					
	2	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.					
	3	Electric			R, C	R	R, C.
		Gas					
		Oil			R	R	

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants[1]
		H.P.			R	R	
	4	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R	R	
		H.P.			R	R	
	5	Electric		R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R	
		H.P.			R	R	
Utah	5	Electric	R		R, C	R, C	R, C.
		Gas					
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R, C	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	7	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric	R	R	R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.	R	R	R, C	R, C	
Vermont	7	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R, C	R, C	
Virginia	3	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	4	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
	5	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.			R	R	
	6	Electric			R	R, C	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Washington	6	Electric					R.
		Gas			R	R	
		Oil			R	R	
		H.P.					
	7	Electric					R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
	8	Electric				R	R.
		Gas			R	R	
		Oil			R	R, C	
		H.P.					
West Virginia	5	Electric			R	R	R, C.
		Gas					
		Oil			R	R	
		H.P.				R	
	6	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R	
		H.P.				R	
Wisconsin	7	Electric			R	R, C	R, C.
		Gas			R	R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R, C	R, C	R, C.
		Gas			R	R	
		Oil			R, C	R, C	
		H.P.			R	R, C	
Wyoming	7	Electric			R	R	R, C.
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
	8	Electric			R	R, C	R, C.

State	HUD/Region	Fuel category	Direct gain	Indirect gain	Solaria sunspace	Window heat loss retardants	Window heat gain retardants [1]
		Gas				R	
		Oil			R	R, C	
		H.P.			R	R	
Puerto Rico	1	Electric					R, C.
		Gas					
		Oil					
		H.P.					

[1] This measure is only applicable for homes where the air-conditioning system is powered electrically.

Appendix II to Part 456—Prototypical House Assumptions

(a) *Reference House.* (1) The prototypical house, on which the RCS measures table is based, is the ranch style home developed in the National Bureau of Standards document NBSIR 77-1309. This house is based upon a National Association of Home Builders (NAHB) survey of 84,000 homes built by 1,600 builders selected randomly from the builder members of NAHB. The house is typical of ranch style houses built in 1974.

(2) The house has been slightly modified to make it more representative of existing housing stock and to allow for the calculation of all RCS measures. DOE has elected to reduce the insulation levels from the NAHB survey (1974) level of R-19 ceiling and R-11 walls to R-7 insulation in the ceiling and no insulation in the walls as a basis for the measures table. Insulation manufacturers' data on residential retrofit applications for ceiling insulation indicate that the majority of existing attics that have not been reinsulated have an existing R-Value of between R-5 and R-9. The furnace/hot water space has been enlarged to accommodate oil furnaces and storage for solar domestic water heaters. The prototypical house, to provide the basis for audits, is assumed to have the features necessary for the application of renewable energy measures. For example, it was assumed to have a south-facing roof suitable for solar collectors, no obstruction to wind energy systems, and a swimming pool that could use a solar pool heater. It is recognized that many residences do not have these features.

(3) The prototypical house and assumptions were chosen as representative of typical homes in the Nation which could benefit from RCS measures. States are encouraged to review the prototypical house relative to construction practices on the local level. A State may submit an amended RCS measures table based upon modifications to the prototypical house if documentation supports such requests.

(b) *Characteristics of the Prototypical House.* (1) *Infiltration.* The prototypical house is assumed to have deteriorated caulking on window and door frames, no weatherstripping, and no gaskets on electrical outlets. Some minor cracks are assumed to exist in ceiling and floor joints. Some wiring and pipe penetration is assumed through the attic floor.

Existing conditions also include undampered vents, no fireplace, and at least 13 entrances and exits through the home per average day. The infiltration category of the prototypical house is essentially the "poor" category listed in the RCS Model Audit.

(2) *Insulation.* As indicated above, the prototypical house is assumed to have no wall insulation, R-7 ceiling insulation in a vented attic, and no floor or crawl space insulation. The walls with 2 x 4 studs on 16-inch centers have a thermal conductance of 0.21 Btu per hour per square foot per degree Fahrenheit (Btu/h/ft²/° F). The thermal conductance of the ceiling with joists or truss cords on 24-inch centers is 0.12 Btu/h/ft²/° F. The thermal conductance of the floor with 2 x 10 floor joists on 24-inch centers and carpeting and vented crawl space is 0.19 Btu/h/ft²/° F.

(3) *Windows.* All glazing is assumed to be single pane with a thermal conductance of 1.13 Btu/h/ft²/° F.

(4) *Water Heater.* The water heater is assumed to be more than 3 years old and is in conditioned space with adequate clearance for an insulation jacket.

(5) *Space Heating and Cooling.* Primary space conditioning equipment for the prototypical home includes one of the following: electric resistance furnace, electric resistance baseboard, electric resistance radiant ceiling or wall panels, electric heat pump, electric boiler, natural gas-fired boiler, gas-forced air, or oil-fired furnace. An electric drive central air-conditioner is assumed. Industry accepted seasonal efficiencies for existing systems more than 5 years old, and new commercially available systems are used in the calculations. In the prototypical house, combustion air is taken from conditioned space, if required. Oil burners are not retention or wet base types. Natural gas pilot lights are assumed to be on for the heating season. All existing systems in the reference house are more than 5 years old.

(6) *Distribution Systems.* Distribution ducting and hydronic pipe are assumed to be in unconditioned areas and are uninsulated.

(7) *Heating and Cooling System Controls.* The prototypical house is assumed not to have a clock thermostat. It is also assumed that there is no manual nighttime temperature setback.

(8) *Heat Reflecting and Heat Absorbing Window and Door Material.* The prototypical house has 127 sq. ft. of unshaded windows which face east and west. For purposes of calculation, the house was oriented so that the ends of the house which contained no glazing face north and south.

(9) *Solar Domestic Hot Water Systems.* It is assumed that 80 gallons of hot water are used per day by a family of four (ASHRAE Systems Handbooks, 1980). The hip roof is not shaded and has an adequate south-facing area for collectors.

(10) *Replacement Solar Pool Heaters.* The 450 sq. ft. swimming pool is assumed to have a cover that is put in place in nonuse hours.

(11) *Wind Energy Systems.* There is no major obstruction to wind. The size of the wind generator is 2 kW, and all energy generated is used. The analysis was performed for residences that used electricity for heating and water heating.

(c) *Thermal Envelope.*

—Glazing
- Single panel U-Value=1.13
- East area + sliding glass door=72 ft²
- West area=55 ft²
- Total area=127 ft²

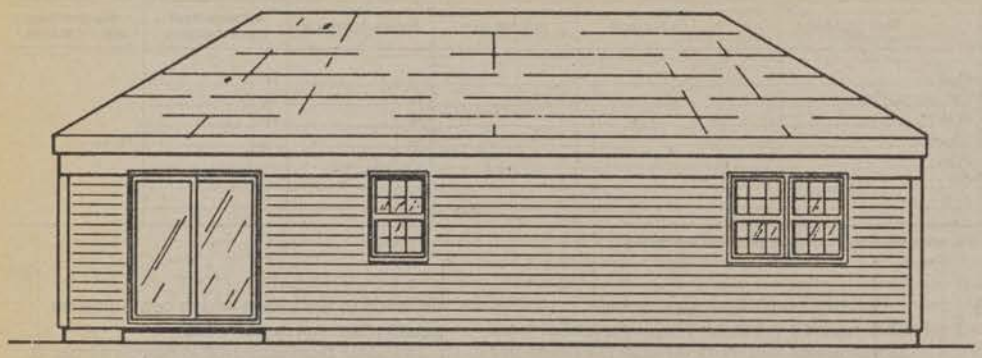
—Walls
- No insulation
- U wall=0.24—excludes the stud cross section and represents 75 percent of the exposed area
- U studs=0.13—which is 25 percent of the exposed area
- U overall=0.21—which is the weighted value of the U of the wall and the U of the stud cross section
- South wall area=224 ft²
- North wall area=224 ft²
- East wall area=264 ft²
- West wall area=260 ft²

—Ceiling
- R-7 insulation
- U ceiling=0.115—excludes the truss cord and represents 90 percent of the exposed area
- U truss=0.17—which is 10 percent of the exposed area
- U overall=0.12
- Area=1,176 ft²

—Front Entry Door
- U=0.47 (hardwood door)
- Area=21 ft²

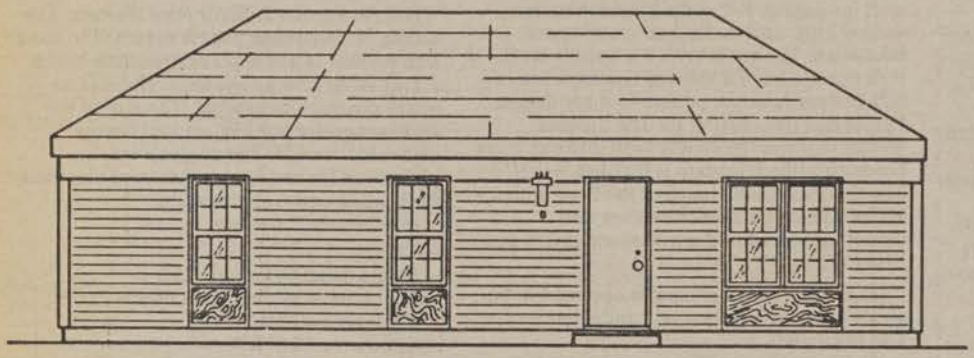
—Floor Above Crawl Space
- No insulation
- U floor=0.2—excludes the joist and represents 90 percent of the exposed area
- U joist=0.09—which is 10 percent of the exposed area
- U overall=0.19
- Area=1,176 ft²

BILLING CODE 6450-01-D



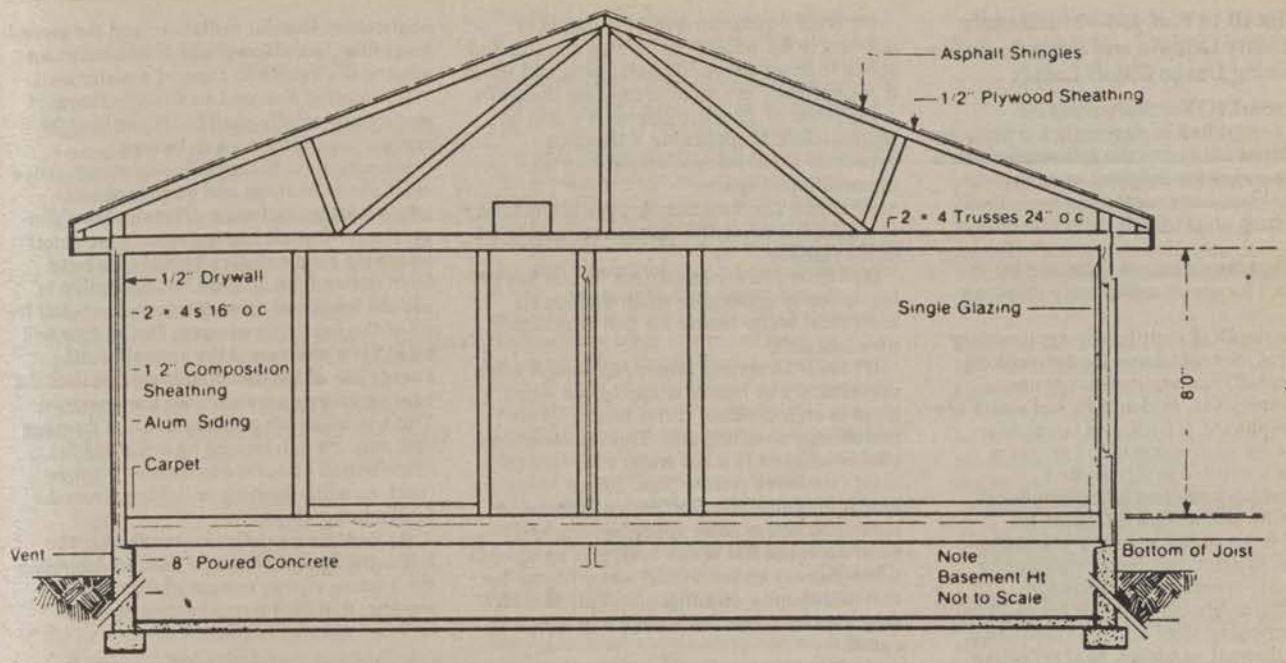
Rear Elevation of a Typical Ranch House

0 2 4 8

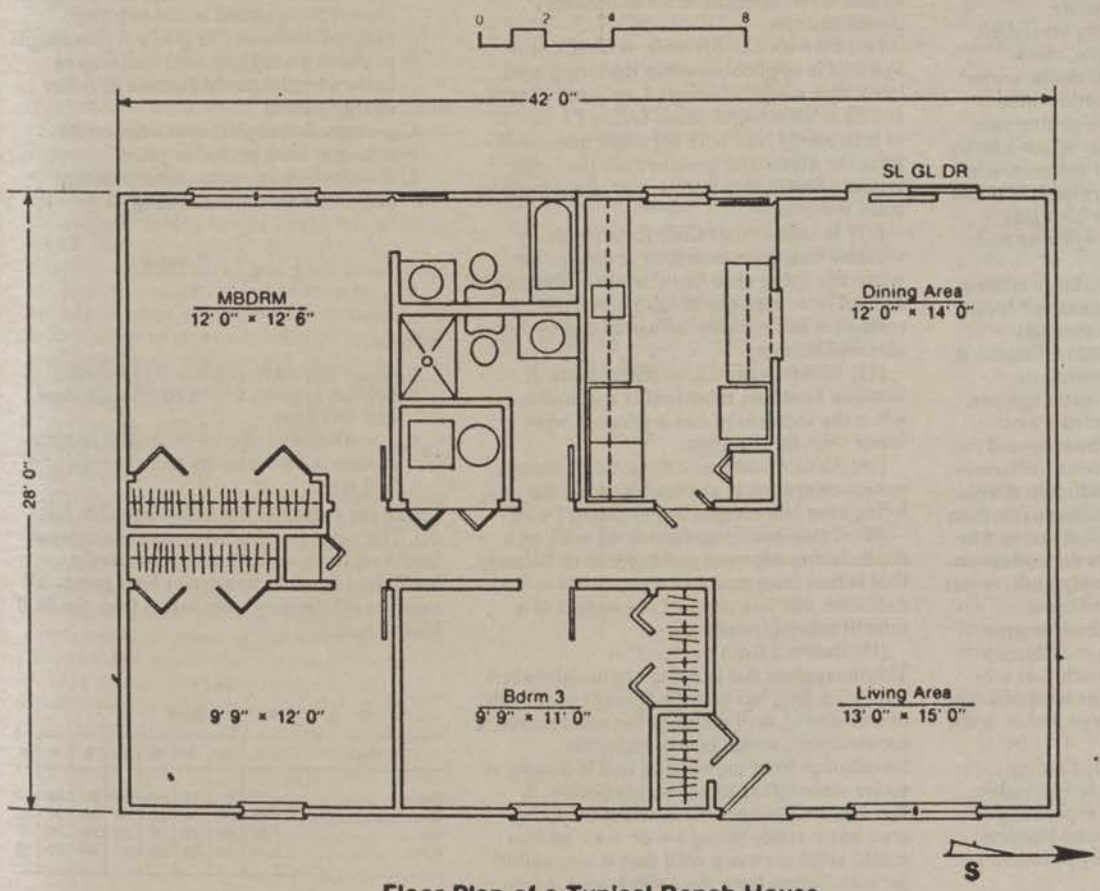


Front Elevation of a Typical Ranch House

0 2 4 8



Section Thru Typical Ranch



Floor Plan of a Typical Ranch House

0 2 4 8

BILLING CODE 6450-01-C

Appendix III to Part 456—Multifamily Applicability Criteria and Procedures for Determining Usage Cutoff Levels

(a) *General.* (1) For those program measures identified in Appendix I, a State or nonregulated utility has the following options regarding audits for dwelling units in residential buildings containing more than four dwelling units (multifamily dwelling units):

(i) Accept the measures indicated by Appendix I for use in multifamily dwelling units.

(ii) Use the DOE multifamily applicability criteria and/or procedures for determining specific cutoffs for heating energy use, cooling energy use, or domestic hot water use in paragraphs (b), (c), (d), and (e) of this appendix for all or some of the program measures identified in Appendix I.

(iii) Develop a method for determining applicability and submit it to DOE for approval in accordance with § 456.306(b).

(2) DOE has not developed multifamily applicability criteria or methods for determining usage cutoff levels for caulking, weatherstripping, duct and pipe insulation, storm or thermal windows, heat reflective and heat absorbing window materials, and IID's. DOE has determined that these measures have the same applicability in multifamily dwelling units as in the prototypical house.

(3) DOE has developed specific applicability criteria for ceiling insulation, floor insulation, wall insulation, clock thermostats, storm or thermal doors, water heater insulation, solar domestic water heaters, replacement solar swimming pool heaters, combined active solar space heating and solar domestic hot water systems, wind energy devices, direct gain systems, window heat gain retardants, window heat loss retardants, solaria/sunspace systems and indirect gain systems.

(4) In addition to the applicability criteria, methods for determining usage cutoff levels have been developed for replacement furnaces or boilers, replacement oil burners, flue dampers, replacement central air-conditioners, solar domestic water heaters, active solar space heating systems and combined active solar space heating and solar domestic hot water systems because they may have significantly different simple paybacks for multifamily dwelling units than for the single family prototypical house. The payback for these measures is dependent on heating energy use, cooling energy use, or hot water use. An audit for each of these measures is required if the annual energy usage or hot water usage in a multifamily dwelling unit is high enough such that a 7-year payback is probable. That level of usage for which a 7-year payback is probable is the cutoff level for that measure.

(b) *Applicability criteria.* (1) *Ceiling Insulation.* Ceiling insulation is applicable when the audit is for ceilings separating a conditioned space from an unconditioned space and when it is physically practical to insulate the ceiling.

(2) *Floor Insulation.* Floor insulation is applicable for floors separating a conditioned space from an unconditioned space and when it is physically practical to insulate the floor.

(3) *Wall Insulation.* Wall insulation is applicable for walls separating a conditioned space from an unconditioned space and when it is physically practical to insulate the walls.

(4) *Storm or Thermal Doors.* A storm or thermal door is applicable if the door separates a conditioned space from an unconditioned space.

(5) *Clock Thermostats.* A clock thermostat is applicable when the thermostat is not part of the furnace.

(6) *Water Heater Insulation.* Water heater insulation is applicable when there is an individual water heater for that multifamily dwelling unit.

(7) *Solar Domestic Water Heaters.* A solar domestic water heater is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(8) *Combined Active Solar Space Heating and Solar Domestic Hot Water Systems.* A combined active solar space heating and solar domestic hot water system is applicable when there is an individual water heater for that multifamily dwelling unit. This measure may also be subject to a hot water usage cutoff.

(9) *Wind Energy Devices.* A wind energy device is not applicable for multifamily dwelling units.

(10) *Replacement Solar Swimming Pool Heaters.* A replacement solar swimming pool heater is not applicable for multifamily dwelling units.

(11) *Direct Gain Systems.* A direct gain systems is applicable when the living area has either a south-facing (+ or −45° of true south) or an integral south-facing (+ or −45° of true south) roof with tilt angle measured from the horizontal greater than the local latitude that is free from major obstruction to solar radiation.

(12) *Window Heat Gain Retardants.* A window heat gain retardant is applicable when the living area has a window that is not shaded from summer sunshine and the residence has substantial use of energy for air conditioning.

(13) *Window Heat Loss Retardants.* A window heat loss retardant is applicable when the living area has a window with fewer than three panes.

(14) *Solaria/sunspace Systems.* A solaria/sunspace system is applicable when the living area has either a south-facing (+ or −45° of true south), ground level wall, or a south-facing adjacent patio, porch or balcony that is free from major obstruction to solar radiation and can support the weight of a retrofit solaria/sunspace.

(15) *Indirect Gain Systems.* A Thermosyphon Air Panel is applicable when the living area has a south-facing (+ or −45° of true south) wall which is not solid masonry construction, which is accessible for installation from the outside and is free from major obstruction to winter insulation. A Trombe wall is applicable when the living area has a south-facing (+ or −45° of true south) solid masonry wall that is accessible for installation from the outside and is free from major obstruction to solar radiation. A water wall is applicable when the living area has a south-facing (+ or −45° of true south) ground level wall that is free from major obstruction to solar radiation, and the ground level floor is slab on grade or has sufficient structural strength to support a water wall.

(c) *Heating Energy Use Cutoffs.* Heating energy use cutoffs shall be determined for replacement furnances or boilers, replacement oil burners, flue dampers, active solar space heating, and combined solar space heating and solar domestic hot water systems. After all heating energy use cutoff levels for each category of fuel type have been determined, a State has the option to use the lowest of these levels as the cutoff for all of the heating measures. The auditor will audit for a measure if the annual heating energy use of the dwelling is greater than the heating energy use cutoff for that measure. The annual heating energy use of a dwelling unit must be determined by removing the contribution of nonspace heating sources (such as water heating or lighting) from the total energy usage.

(1) *Replacement Furnace or Boiler.* The following formula shall be used to determine the heating energy use cutoff for oil, gas, electric, and heat pump heating systems:

$$E_{RFCO} = \frac{C_{RF}}{7\ (LEP)\ (\Delta n)}$$

Where

E_{RFCO} = annual heating energy consumption (based on assumed worst existing system) necessary to give a 7-year simple payback on replacement furnaces or boilers (replacement furnace or boiler energy cutoff)

C_{RF} = installed capital cost − tax credit

7 is the payback period in years

LEP = local energy price, $/unit energy (same energy units as E_{RFCO})

$$\Delta = 1 - \frac{n_{existing}}{n_{new}}$$

Where

$n_{existing}$ = assumed efficiency of existing heating system, varies by climate zone and fuel type,

n_{new} = efficiency of new improved heating system, also varies by climate zone and fuel type.

Use the values in the following table for Δn. The values in this table were calculated based on the assumption of a relatively inefficient existing furnace or heat pump. All existing efficiencies were taken from the RCS Model Audit.

Δn

HUD MPS Zone

Fuel	1	2	3	4	5	6	7	8
Electric	.55	.51	.44	.41	.35	.31	.26	.09
Gas	.36	.36	.36	.36	.36	.36	.36	.36
Oil	.20	.20	.20	.20	.20	.20	.20	.20
H.P.	.20	.20	.20	.20	.20	.20	.20	.20

(2) *Replacement Oil Burner.* The following formula shall be used to determine the heating energy use cutoff for replacement oil burners.

$$E_{RBCO} = \frac{C_{RB}}{(LEP)\ (7)\ (0.18)}$$

Where

E_{RBCO}=annual heating energy consumption necessary to give a 7-year payback on a replacement oil burner (replacement oil burner energy cutoff)

C_{RB}=cost of installed replacement oil burner − tax credit

LEP=local energy price, $/unit energy (same energy units as E_{RBCO})

7 is the payback period in years

0.18 is a high estimate of the proportion of heating energy that may be saved due to a replacement oil burner.

(3) *Flue Damper.* The following formula shall be used to determine the heating energy use cutoff for flue dampers for gas heating systems.

$$E_{FDCO} = \frac{C_{FD}}{(LEP)\ (7)\ (0.1)}$$

Where

E_{FDCO} =annual energy consumption necessary to give a 7-year payback on a flue damper (flue damper energy cutoff)

C_{FD}=installed flue damper cost − tax credit

LEP=local energy price, $/unit energy (same energy units as E_{FDCO})

7 is the payback period in years

0.1 is a high estimate of the proportion of heating energy that may be saved due to a flue damper.

(4) *Active Solar Space Heating.* (i) The cost of active solar space heating systems depends on insulation as well as heating energy use, which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then, by successive approximation, determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedure to determine the heating energy use cutoff for solar space heating:

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the Solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(5) *Combined Solar Space Heating and Solar Domestic Hot Water Systems.* (i) The cost of combined active solar space heating and solar domestic hot water systems depends on insulation as well as heating energy use which makes it difficult to produce a generic formula that will indicate the annual heating energy use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the heating energy use cutoff level by calculating the simple payback associated with a range of annual heating energy uses and then by successive approximations determine the heating energy use cutoff level that corresponds to a 7-year simple payback.

(ii) Use the following procedures to determine the cutoff for combined solar space heating and domestic hot water systems.

(A) Determine savings (using each heating fuel type) and costs for active solar space heating using an approved audit procedure, such as the Model Audit, for a range of annual heating energy uses. For each fuel, choose an annual heating energy use cutoff level, based on these calculations, which corresponds to a 7-year simple payback.

(B) Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (solar savings fraction is the percent of the heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; the tilt of the collector should be optimal for the specified latitude; and the hot water usage is 80 gallons per day with the water temperature set at 120° F.

(d) *Cooling Energy Use Cutoffs.* (1) Cooling energy use cutoffs shall be determined for replacement central air-conditioners.

(2) *Replacement Central Air-Conditioners.* (i) The following formula shall be used to determine the cooling energy use cutoff for replacement central air-conditioners:

$$E_{ACCO} = \frac{C_{RAC}}{7\ (LEP)\ (\Delta COP)}$$

Where

C_{RAC}=installed cost of replacement central air-conditioner

$$\Delta COP = 1\ \frac{COP_{existing}}{COP_{new}}$$

7 is the payback period in years

LEP=local energy price $/unit energy

$COP_{existing}$=assumed coefficient of performance of existing system

COP_{new}=improved coefficient of performance of new system.

(ii) The value of 0.46 may be used for ΔCOP. This value is based on an assumed existing SEER of 6.6 (COP of 1.9) and a new SEER of 12.0 (COP of 3.5).

(iii) An audit should be conducted for replacement central air-conditioners if the annual cooling energy use of the dwelling unit is greater than the cooling energy cutoff. The annual cooling energy use of the dwelling unit shall be determined by removing the contribution of noncooling sources, (such as lighting, appliances, and water heating) from the total energy consumption.

(e) *Domestic Hot Water Use Cutoff.* (1) A domestic hot water use cutoff level shall be determined for solar domestic hot water systems. The cost of solar domestic water heater systems depends on insulation as well as hot water use which makes it difficult to produce a generic formula which will indicate the hot water use cutoff level which corresponds to a 7-year simple payback. Therefore, a State shall determine the simple payback associated with a range of daily hot water uses and then by successive approximation determine the hot water use cutoff level that corresponds to a 7-year simple payback.

(2) *Solar Domestic Hot Water System.* Use the following procedures to determine the domestic hot water use cutoff for solar domestic hot water systems.

(i) Determine savings (for each water heating fuel type) and costs for solar domestic hot water, using an approved audit procedure, such as the DOE Model Audit, for a range of gallons per day of hot water usage.

(ii) Based on the sample calculations, determine what is the gallons-per-day cutoff level for each fuel type which corresponds to a 7-year simple payback. Calculations should assume: no obstruction to solar radiation; due south orientation of collectors; a solar savings fraction consistent with the values given in the Model Audit for the climate (the solar savings fraction is the percent of the water heating load provided by the solar system); enough roof area to provide the solar savings fraction indicated above; and the tilt of the collector should be optimal for the specified latitude.

(iii) This gallons-per-day number shall be used as a cutoff level for determining whether to audit for a solar domestic hot water system in a multifamily dwelling unit. A method must be developed for auditors to determine gallons-per-day usage at the dwelling unit. (For example, the DOE Model Audit determines gallons-per-day usage using the number of people in residence and the presence of a dishwasher and/or a washing machine.)

PART 458—[REMOVED]

2. 10 CFR Part 458 is removed.

[FR Doc. 87-20306 Filed 9-8-87; 8:45 am]

BILLING CODE 6450-01-D

federal register

Wednesday
September 9, 1987

Part XI

The President

EO 12606—The Family

EO 12607—President's Commission on Privatization

Federal Register
Vol. 52, No. 174
Wednesday, September 9, 1987

Presidential Documents

Title 3—

The President

Executive Order 12606 of September 2, 1987

The Family

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that the autonomy and rights of the family are considered in the formulation and implementation of policies by Executive departments and agencies, it is hereby ordered as follows:

Section 1. *Family Policymaking Criteria.* In formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being, Executive departments and agencies shall, to the extent permitted by law, assess such measures in light of the following questions:

(a) Does this action by government strengthen or erode the stability of the family and, particularly, the marital commitment?

(b) Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?

(c) Does this action help the family perform its functions, or does it substitute governmental activity for the function?

(d) Does this action by government increase or decrease family earnings? Do the proposed benefits of this action justify the impact on the family budget?

(e) Can this activity be carried out by a lower level of government or by the family itself?

(f) What message, intended or otherwise, does this program send to the public concerning the status of the family?

(g) What message does it send to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society?

Sec. 2. *Governmentwide Family Policy Coordination and Review.*

(a) Executive departments and agencies shall identify proposed regulatory and statutory provisions that may have significant potential negative impact on the family well-being and provide adequate rationale on why such proposal should be submitted. The head of the department or agency, shall certify in writing that, to the extent permitted by law, such measure has been assessed in light of the criteria in Section 1 of this Order and how such measures will enhance family well-being. Such certification shall be transmitted to the Office of Management and Budget. Departments and agencies shall give careful consideration to family-related concerns and their impact in notices of proposed rulemaking and messages transmitting legislative proposals to the Congress.

(b) The Office of Management and Budget shall, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are applied in light of the criteria set forth in Section 1 of this Order.

(c) The Office of Policy Development shall assess existing and proposed policies and regulations that impact family well-being in light of the criteria established by Section 1 of this Order, provide evaluations on those measures that have significant potential impact on the family to the Office of Management and Budget, and advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in America.

Sec. 3. *Report.* The Office of Policy Development shall submit preliminary reports including specific recommendations to the Domestic Policy Council and shall submit a final report to the President no later than 180 days from the date of this Order. Each year thereafter, a report, including recommendations shall be submitted, through the Domestic Policy Council to the President.

Sec. 4. *Judicial Review.* This Order is intended to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan

THE WHITE HOUSE,
September 2, 1987.

[FR Doc. 87-20895
Filed 9-8-87; 11:56 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12607 of September 2, 1987

President's Commission on Privatization

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), a Commission to review the appropriate division of responsibilities between the Federal government and the private sector, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Privatization. The Commission shall be composed of not more than 13 members appointed or designated by the President. The members shall be drawn from among a bipartisan cross-section of distinguished leaders.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall study and evaluate:

(1) Past and current privatization efforts by the Federal government, State and local governments, and foreign governments, including asset sales by the Federal government;

(2) Literature and writing on privatization; and

(3) The environment for additional privatization efforts by the Federal government.

(b) The Commission shall review the current activities of the Federal government, including asset holdings, and identify those functions that:

(1) Are not properly the responsibility of the Federal government and should be divested or transferred to the private sector, with no residual involvement by the Federal government; or

(2) Require continuing oversight by an Executive Branch agency but can be performed more efficiently by a private entity, including the use of vouchers as an alternative to direct service.

(c) The Commission shall develop the framework for a privatization program, identifying:

(1) Privatization opportunities, including those identified in (b) above, listed in order of priority;

(2) Legislative and administrative actions necessary to effect the privatization initiatives or remove existing privatization restrictions;

(3) Needed improvements to personnel and administrative policy to create an environment conducive to privatization;

(4) Organizational and resource requirements necessary to implement successfully the privatization program; and

(5) Actions necessary to create broad-based support for privatization efforts.

(d) The Commission shall submit its findings and recommendations to the President and the Director of the Office of Management and Budget by March 1, 1988. Interim recommendations shall be transmitted to the Director for consideration in the formulation of the President's FY 1989 budget.

Sec. 3. *Administration.* (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) To the extent provided by law and subject to the availability of appropriations, the Director of the Office of Management and Budget shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. *General Provision.* (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Director of the Office of Management and Budget, in accordance with guidelines and procedures established by the Administrator of General Services; and

(b) The Commission shall terminate 30 days after submitting its final report to the President.

Ronald Reagan

THE WHITE HOUSE,
September 2, 1987.

[FR Doc. 87-20896
Filed 9-8-87; 11:57 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 52, No. 174

Wednesday, September 9, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

32907-33216.....1
33217-33398.....2
33399-33570.....3
33571-33796.....4
33797-33914.....8
33915-34192.....9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
August 27, 1987.....33397

Executive Orders:
12606.....34188
12607.....34190

7 CFR

2.....33571
301.....32907, 33218
905.....33217
910.....33224, 33572
1079.....33915
1250.....33903

Proposed Rules:
210.....32930
245.....33834
413.....33941
423.....32931
431.....32932
432.....33942
724.....33943
945.....33833
1068.....33943
1136.....32933
1139.....32933
1942.....32933
1951.....32933, 32935
1955.....32933
1965.....32935

8 CFR

204.....33797

9 CFR

78.....33798
91.....33573
94.....33800

10 CFR

20.....33916
456.....34138
458.....34138

Proposed Rules:
73.....33420

12 CFR

522.....33399
563.....33399
592.....33399

Proposed Rules:
Ch. V.....33595
226.....33596

13 CFR

Proposed Rules:
107.....33598

14 CFR

39.....32912, 32913, 33224, 33227, 33228, 33917, 33918
43.....34096
45.....34096
71.....32914, 32915, 33680, 33919
91.....34096
234.....34056, 34077
255.....34056

Proposed Rules:
21.....33246
23.....33246
39.....32937, 33947-33952

15 CFR

373.....33919
399.....33919

16 CFR

13.....33921

17 CFR

202.....33796

Proposed Rules:
1.....33680

18 CFR

11.....33801

Proposed Rules:
2.....33756, 33766
284.....33756, 33766

20 CFR

404.....33316, 33921
416.....33921
602.....33520

21 CFR

58.....33768
81.....33573
177.....32916, 33574, 33802
178.....33929, 34047
310.....34047
331.....33576
341.....34047
369.....34047
510.....32917
540.....32917
558.....33803, 33930
886.....33346
888.....33686

Proposed Rules:
189.....33952
352.....33598
872.....34047
886.....33366
888.....33714

23 CFR

Proposed Rules:
1204.....33422
1205.....33422

24 CFR

201 ... 33404
203 ... 33680
215 ... 34108
234 ... 33680, 33804
236 ... 34108
813 ... 34108
882 ... 34108
888 ... 34118
912 ... 34108
913 ... 34108

25 CFR

Proposed Rules:
38 ... 33382

26 CFR

1 ... 33577, 33808, 33930
31 ... 33581
41 ... 33583
602 ... 33583
Proposed Rules:
1 ... 33427, 33836
5h ... 33953
41 ... 33602
55 ... 33953

27 CFR

Proposed Rules:
4 ... 33603
5 ... 33603
7 ... 33603

28 CFR

2 ... 33407, 33408
16 ... 33229
51 ... 33409
Proposed Rules:
2 ... 33431, 33433

29 CFR

1625 ... 33809
Proposed Rules:
2550 ... 33508
2616 ... 33318
2617 ... 33318

30 CFR

46 ... 33234
47 ... 33234
Proposed Rules:
57 ... 33956
202 ... 33247
203 ... 33247
206 ... 33247
207 ... 33247
210 ... 33247
241 ... 33247
842 ... 34050
843 ... 34050
931 ... 34956

32 CFR

199 ... 32992
728 ... 33718

33 CFR

3 ... 33809
67 ... 33809
80 ... 33809
100 ... 33809
110 ... 33809
117 ... 33812
147 ... 33809
150 ... 33809
161 ... 33585, 33809
162 ... 33809
165 ... 33809
166 ... 33587, 33809
167 ... 33587, 33809
177 ... 33809
Proposed Rules:
117 ... 33434, 33836
165 ... 33435, 33436

34 CFR

602 ... 33908
603 ... 33908

36 CFR

1220 ... 34134
1228 ... 34134
Proposed Rules:
251 ... 33837, 33839
404 ... 33957

37 CFR

Proposed Rules:
1 ... 34080

38 CFR

Proposed Rules:
13 ... 33248

39 CFR

10 ... 33409

40 CFR

52 ... 32918, 33590, 33592, 33933
60 ... 33316, 33934
136 ... 33542
180 ... 33236, 33238, 33903, 33935
270 ... 23936
305 ... 33812
306 ... 33812
795 ... 3299
799 ... 3299
Proposed Rules:
22 ... 33960
24 ... 33960
52 ... 33250, 33252, 33437, 33840
62 ... 33605
80 ... 33438
86 ... 33438, 3356
136 ... 33547
180 ... 33903
261 ... 33439
300 ... 33446
600 ... 33438
721 ... 33606
761 ... 33680

42 CFR

405 ... 33034
412 ... 33034, 33168
413 ... 32920, 33034
466 ... 33034
Proposed Rules:
59 ... 33209

43 CFR

Public Land Orders:
6649 (corrected by PLO 6657) ... 33239
6653 ... 32990
6657 ... 33239
Proposed Rules:
3160 ... 33247

44 CFR

5 ... 33410
59 ... 33410
60 ... 33410
361 ... 33814
Proposed Rules:
5 ... 33960

45 CFR

74 ... 33239

46 CFR

581 ... 33936
Proposed Rules:
25 ... 33448
38 ... 33841
54 ... 33841
98 ... 33841
151 ... 33841

47 CFR

36 ... 32922
67 ... 32922
73 ... 33240-33243, 33593
76 ... 32923
Proposed Rules:
Ch. I ... 33962
36 ... 32937
67 ... 32937
73 ... 33253-33256, 33609, 33610
80 ... 33610

48 CFR

208 ... 33411
213 ... 33413
217 ... 33415
253 ... 33413
571 ... 33416
Proposed Rules:
209 ... 33450
225 ... 33450
252 ... 33450

49 CFR

192 ... 32924
383 ... 32925
543 ... 33821
571 ... 33416
1181 ... 33418
1207 ... 33418
1244 ... 33418
1249 ... 33418
1313 ... 33419
Proposed Rules:
172 ... 33611, 33906
173 ... 33906
174 ... 33906
175 ... 33906
176 ... 33906
177 ... 33906
178 ... 33906
179 ... 33906
1039 ... 33257

50 CFR

17 ... 32926
301 ... 33831
611 ... 33593
642 ... 33594
661 ... 33244
663 ... 33593
675 ... 33245
Proposed Rules:
17 ... 32939, 33849, 33850, 33980
611 ... 32942
675 ... 32942

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 31, 1987