11-21-84
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federal register

Wednesday
November 21, 1984

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SECOND CLASS NEWSPAPER

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November 21, 1984

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Interstate Commerce Commission

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Environmental Protection Agency

Animal Biologics
Animal and Plant Health Inspection Service

Authority Delegations (Government Agencies)
Securities and Exchange Commission

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Maritime Administration

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Government Contracts
Labor Department

Handicapped
Commerce Department

Hazardous Waste
Environmental Protection Agency

Pesticides and Pests
Environmental Protection Agency

Radio Broadcasting
Federal Communications Commission

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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.

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Federal Home Loan Bank Board

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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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV, App. A

Regional Office Telephone Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(3) (47 FR 40783) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1984) to establish new telephone numbers for the Authority's Washington, D.C. Regional Office. The Washington, D.C. Regional Office location and mailing address have not been changed.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel (202) 382–0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1984)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1984). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the changed telephone numbers of the Washington, D.C. Regional Office of the Authority. The Washington Regional Office location and mailing address have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(3) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1984)) is amended to read as follows:

APPENDIX A TO 5 CFR CH. XIV—CURRENT ADDRESSES AND GEOGRAPHIC JURISDICTIONS

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(3) *Washington Regional Office*—1111 18th Street, NW., 7th Floor, Washington, D.C. 20033
Telephone: FTS—653–8500; Commercial—(202) 653–8500
Mailing Address: P.O. Box 33758, Washington, D.C. 20033–0758.

(5 U.S.C. 7134)

Dated: November 7, 1984.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 84–30420 Filed 11–20–84; 8:45 am]
BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 84–089]

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations which establish charges for reimbursable overtime work performed by employees of Veterinary Services (VS) at border ports, seaports, and airports: (1) By reassigning work locations from which inspectors may be dispatched and the locations where they will, upon request, perform inspection, quarantine, and other services relating to the importation and exportation of animals and certain other regulated articles and (2) by revising the commuted traveltime allowances involved in providing such reimbursable overtime services. This amendment is necessary in order to advise the public of the reassignment of work locations, services areas, and traveltime allowances. The effect of this amendment is to expand or reduce the commuted traveltime periods associated with providing the reimbursable overtime work.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Executive Officer, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 97, "Overtime Services Relating to Imports and Exports," (referred to below as the regulations) set forth provisions for obtaining, on a reimbursable basis, inspection, quarantine, and other services pertaining to the importation and exportation of animals during Sundays, holidays or at times outside the regular tour of duty of the employees of Veterinary Services (VS) who perform such services. The inspection, quarantine, and other reimbursable overtime services authorized by 7 U.S.C. 2260 are provided upon request by any person, firm or corporation having ownership, custody, or control of the animals or articles requiring such services.

Section 97.2 of the regulations contains administrative instructions prescribing commuted traveltime periods. Traveltime allowances reflect, as nearly as is practicable, the time, measured in hours, required for a VS employee to travel from the office where the employee is stationed to the locality where the reimbursable overtime service is provided.

This document amends § 97.2 of the regulations by revising the locations serviced by VS employees and the traveltime allowances used in determining the charge to be assessed for the reimbursable overtime work for certain locations in California, Illinois, Louisiana, Montana, Oregon, and Washington, as indicated in the rule

portion of this document. The amendment is necessary to reflect changes in the time necessarily spent in reporting to and returning from the place at which an employee of Veterinary Services performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. A traveltime allowance may be included in determining the charge assessed the recipient of the reimbursable overtime service provided.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Specifically, this amendment affects only those entities that request the services of an inspector on a Sunday, a holiday, or on an overtime basis. Services of an inspector during regularly established hours of service at a port are still furnished free of charge to those requiring the service. The pay provisions appropriate for employees performing inspection and quarantine services at ports of entry, and the features of the reimbursable plan for recovering the costs of furnishing port of entry inspection depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

List of Subjects in 9 CFR Part 97

Exports, Government employees, Inports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Therefore, § 97.2 of 9 CFR is amended by revising the entries in the table for California, Illinois, Louisiana, Montana, Oregon, and Washington, set forth below in alphabetical sequence, as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
* * * * * * *			
California:			
Calexico	San Ysidro		3
Edwards Air Force Base	Los Angles		4
Los Angeles and Los Angeles International Airport	San Bernardino		5
Do	Los Angeles	2	
Los Angeles Harbor, San Pedro, including Long Beach, Wilmington, and Terminal Island	Los Angeles		2
March Field	do		5
Newport Beach	do		4
Ontario	do		3
Ramona	San Ysidro		2
Sacramento		1	
Do	San Francisco		5
San Diego		1	
Do	San Ysidro		2
San Francisco including, Alameda, Richmond, Pittsburg, and other ports in San Francisco and San Pablo Bay areas		2	
San Louis Obispo	San Pedro		6
San Ysidro		1	
Stockton	San Francisco		4
* * * * * * *			
Illinois:			
Bloomington	Pana		3
Do	Tolono		3
Camp Grove	El Paso		3
Chicago		3	
Peoria	El Paso		2
Do	Tolono		4
Springfield	El Paso		3
Do	Nebo		3
Do	Paris		2
Do	Tolono		3
* * * * * * *			
Louisiana:			
Acadian Regional Airport, New Iberia	Abbeville		2
Any point below Chalmette and on the East Bank, Belle Chasse, LA, and points to and including Port Sulphur on the west bank	Baton Rouge		4
Any point on the Mississippi River above the St. Charles-Jefferson Parish boundary to and including Gramercy	do		2
Morgan City	do		5
New Orleans including Orleans Parish and all points on the east bank of the Mississippi River from the St. Charles-Jefferson Parish boundary to and including Chalmette, LA, and all points on the west bank from the St. Charles-Jefferson Parish boundary to but excluding Belle Chasse, LA	do		4
Undesignated ports	do		3

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
* * * * * * *			
Montana:			
Great Falls Airport	Vaughn	1	
Port of Opheim	Opheim		1
Do	Wolf Point		5
Port of Raymond	Raymond		1
Port of Sweetgrass	Great Falls		5
Sweetgrass		1	
* * * * * * *			
Oregon:			
Portland	Canby		3
Do	Salem		3
Do	Troutsdale	2	
* * * * * * *			
Washington:			
Blaine		1	
Do	Seattle		6
Lynden	Blaine		2
Do	Seattle		6
Moses Lake	Oroville, WA		6
Do	Spokane		5
Do	Wenatchee		3
Do	Yakima		4
Oroville		1	
Sea-Tac Airport	Olympia		3
Seattle		2	
Sumas	Blaine		2
Do	Seattle		6
Tacoma	do		3

Authority: 64 Stat. 561; 7 U.S.C. 2260; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 14th day of November, 1984.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-30451 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 113 and 114

[Docket No. 84-071]

Viruses, Serums, Toxins, and Analogous; Standard Requirements and Production Requirements for Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This action reduces restrictions on movement of partially prepared products or serials of completed fractions of combination products between licensed establishments by removing the requirement for common ownership of establishments and by removing the provision limiting bulk shipments to inactivated materials only. Preparation of certain products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This amendment permits licensure of establishments for preparation and shipment of products for further manufacture.

EFFECTIVE DATE: This amendment becomes effective November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The final rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not result in a significant economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

Preparation of certain biological products from beginning to final use form in a single licensed manufacturing facility is sometimes not feasible and frequently less economical than partial preparation in more than one licensed establishment. This is especially true of

products of synthetic origin or those resulting from new advanced technologies. Producers of the immunogenic portions of these products frequently have no facilities or marketing capability for final use products. Firms capable of completing and marketing final use products often do not have the capability of preparing these basic immunogenic components. At present, 9 CFR 114.3(d) restricts combined use of separate producing establishments to those licensed establishments under common ownership. It also restricts bulk shipments to inactivated materials. This revision permits the use of licensed facilities not under common ownership to share in the preparation of final use products and removes the restrictions prohibiting shipment of live cultures. Such changes will permit use of facilities where the most economical methods are available for preparation of fractions to be used in products of other licensed manufacturers or for export. Establishments may be licensed for preparation of final use products, as at present, for products for further manufacture, or for both.

Provisions regarding bulk liquid products and concentrates in large containers which are allowed to be prepared in licensed establishments for export only are made in 9 CFR 112.8. Tests to be conducted on these products are prescribed in 9 CFR 113.10. This revision extends the provisions for testing to include bulk material shipped for further manufacture.

The Department requires that the methods of shipment will not result in harm to the product or the environment.

Comments Received

On April 10, 1984, a notice of proposed rulemaking was published in the **Federal Register** at 49 FR 14288 discussing this revision and soliciting comments.

Comments were received from 17 commercial concerns and one State regulatory official. All recommended adoption of the proposed amendment.

One licensed manufacturer recommended exclusion of components or fractions used in diagnostic test kits from requirements for licensure. This recommendation was based on the fact that these products are not administered to animals and that efficacy is established in tests applied to each serial. Failure to control the quality of biologically active entities in a test kit could result in loss of specificity or sensitivity undetected in the serial tests. Licensure of the producers of these fractions or components would not be an unjustified imposition. Therefore, this recommendation was not accepted.

Four firms recommended that, in addition to provisions regarding partially prepared products allowed to be prepared in licensed establishments for export only, imported products should also be considered. One firm opposed this recommendation on the basis that adequate supplies of all materials are available domestically. The advantages of obtaining partially prepared products by importation are virtually identical with those attributed to the basic proposal regarding domestic manufacture. Therefore, the proposed revision of 9 CFR 114.3(d) is being changed to include products imported for distribution and sale in accordance with 9 CFR 104.5. This will permit importation of partially prepared products subject to the controls specified in 9 CFR 104.5 and with the same assurance of final product quality.

Three comments were received which raised questions about Standard Requirement potency tests on products not in completed form. No action was deemed necessary because these products would not be subject to such tests.

List of Subjects in 9 CFR Parts 113 and 114

Animal biologics.

PART 113—STANDARD REQUIREMENTS

Section 113.10 is revised to read:

§ 113.10 Testing of bulk material for export or for further manufacture.

When a product is prepared in a licensed establishment for export in large multiple-dose containers as provided in § 112.8(d) or (e) of this subchapter or for further manufacturing purposes as provided in § 114.3(d) of this subchapter, samples of the bulk material shall be subjected to all required tests prescribed in the filed Outline of Production or Standard Requirements for the product. Samples of concentrated liquid product shall be diluted to a volume equal to the contents of the sample times the concentration factor prior to initiating potency tests.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Section 114.3(d) is revised to read:

§ 114.3 Separation of establishments.

* * * * *

(d) Partially prepared products or serials of completed products for further manufacture may be moved from one licensed establishment to another licensed establishment, imported under the provisions of § 104.5, or moved from a licensed establishment for purpose of being exported under conditions prescribed in an Outline of Production filed with Veterinary Services. Licensed products or products imported for distribution and sale may be prepared and recommended for final use, for further manufacturing purposes, or both. All serials shall be subject to the requirements for testing and release specified in § 113.5 or § 113.10 and to the requirements for identification specified in § 114.4.

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 14th day of November 1984.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-30452 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545 and 563

[No. 84-652]

Employment Contracts; Removal of Restrictions

Dated: November 15, 1984.

AGENCY: Federal Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has adopted amendments to its regulations regarding employment contracts that would allow officers of federally chartered associations to enter into employment contracts concerning their employment as officers with entities or persons other than the association, and which would prevent the termination of employment contracts between institutions which are in default, and their officers or employees, if the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") approves the contracts in writing. The amendments are intended to provide greater flexibility to institutions and the Corporation.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377-6434, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552

SUPPLEMENTARY INFORMATION: The Board's regulations governing employment contracts of officers of federally chartered associations provide that an officer may not enter into a

contract of employment regarding his duties as an officer with any entity or person other than the association. 12 CFR 545.122(b) (1984). This regulation was adopted in 1974 at a time when all federal associations were mutual institutions. Since that time a large number of such institutions have chosen to convert to stock form under the Board's Conversion Regulations. 12 CFR Part 563b (1984). Many of these stock institutions are affiliates of holding companies regulated by the Board. Absent amendment, § 545.122(b) could be interpreted to bar officers of a subsidiary association from participating in a parent holding company's pension plan or other legitimate employment contracts. The same problem arises with respect to officers of a federal mutual association who also serve as employees of the association's service corporations or finance subsidiaries. The Board believes that an employment contract between an officer of a federal association and its holding company or subsidiary presents little risk of a conflict of interest on the part of the officer. In addition, § 545.122(b) could be interpreted to prevent the Corporation from securing qualified officers for institutions in unstable financial circumstances. While the Board has determined to rescind the provision, it is mindful that some potential for abuse of employment contracts with third parties may exist in certain circumstances. The Board therefore emphasizes that its conflict-of-interest, corporate-opportunity and management-interlock restrictions will continue to apply to such arrangements. These restrictions impose a high standard of fiduciary duty on corporate officers, and should be scrupulously observed.

In addition, the Board's Insurance Regulations require that any employment contract between an officer or employee and an institution the accounts of which are insured by the Corporation ("insured institution") must provide that "[i]f the institution is in default (as defined in section 401(d) of the National Housing Act), all obligations under the contract shall terminate as of the date of default", excluding vested rights. 12 CFR 563.39(b)(4). This provision was originally added to the Board's regulations in order to "provide further protection to the Federal Savings and Loan Insurance Corporation." 46 FR 9917, 9918 (1981). Although this provision does "protect" the FSLIC insurance fund by terminating possibly overly generous employment contracts entered into by defaulting institutions to which the Corporation might have to provide assistance, this provision may make it difficult for such an institution to secure qualified personnel, and therefore may contribute to the further decline of the institution and an increased need for FSLIC assistance. Thus, in order to more fully protect the FSLIC insurance and to provide insured institutions with additional flexibility with regard to employment contracts, the Board has determined to amend § 563.39(b) to eliminate the required inclusion of § 563.39(b)(4) in employment contracts of institutions in default, if prior written approval has been secured from the Corporation.

The Board has determined that observance of the notice and comment procedure requirements of 5 U.S.C. 552(b) (1982) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) (1982) and 12 CFR 508.14 are unnecessary because the amendments relieve restrictions currently applicable to insured institutions and their officers and employees, and will not adversely affect current practices.

List of Subjects in 12 CFR Parts 545 and 563

Savings and loan associations.

Accordingly, the Board hereby amends Parts 545 and 563 of Subchapters C and D, respectively, of Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

§ 545.112 [Amended]

1. Amend § 545.122 by removing paragraph (b) thereof and removing the designation "(a) *General.*" preceding the remaining text.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

2. Amend paragraph (b)(4) of § 563.39 by changing the period at the end thereof to a colon, and adding the following proviso thereto:

§ 563.39 Employment contracts.

* * * * *

(b) *Required provisions.* * * *

(4) * * *: *Provided*, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Corporation.

* * * * *

(Sec. 5 of the Home Owners' Loan Act, 12 U.S.C. 1464; secs. 402, 403, and 407 of the National Housing Act, 12, U.S.C. 1725, 1726 and 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1071 (1943–1948 Compilation))

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84–30515 Filed 11–20–84; 8:45 am]

BILLING CODE 6720–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–6557; 34–21478; 39–941]

Delegation of Authority to Director of the Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules governing delegation of authority under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Trust Indenture Act of 1939 to delegate authority to the Director of the Division of Corporation Finance to adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia M. Jayne, EDGAR Special Counsel, (202) 272–2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission currently is operating a pilot project for the receipt, processing and dissemination of filings made in an electronic format known as "EDGAR" for Electronic Data Gathering, Analysis and Retrieval. To accommodate the filing and review of documents in an electronic format, the Commission adopted temporary rules and forms.[1] Under the EDGAR temporary rules, the term "received" is defined, for purposes of determining the filing date, as the date that such filing is accepted by the Commission for a document filed in an electronic format.[2] This definition allows the Commission to adjust the filing date in case of any equipment malfunction or technical problem.

The Commission now is amending its rules governing delegation of authority

[1] See Release No. 33–6539 (June 27, 1984), 49 FR 28044 (July 10, 1984).

[2] 17 CFR 230.499(b)(5), 240.12b–37(b), and 260.0–12(b).

to delegate to the Director of the Division of Corporation Finance the authority to adjust the date of filing to a date not earlier than the registrant's initial attempt to file in cases where the Commission's acceptance of a filing submitted in an electronic format is delayed because of equipment malfunction or technical problem. These cases include, but are not limited to, problems with respect to hardware or software, transmission or reception, communication network, line or wire unavailability, or diskette or magnetic tape damage.

The Commission finds that this amendment relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments pursuant to the Administrative Procedure Act (5 U.S.C. 533(b)(3)(B)), are unnecessary.

List of Subjects in 17 CFR Part 200

Reporting and recordkeeping requirements, Securities.

Text of Amendment

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Accordingly, 17 CFR Chapter II is amended by adding new paragraphs (a)(9), (e)(4) and (f)(11) to § 200.30–1 to read as follows:

§ 200.30–1 Delegation of Authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(9) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

* * * * *

(e) * * *

(4) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

(f) * * *

(11) To adjust the filing date of a filing submitted in an electronic format where the acceptance of the filing is delayed because of equipment malfunction or technical problem.

* * * * *

(Pub. L. 87–592, 76 Stat. 394, 15 U.S.C. 78d–1, 78d–2)

By the Commission.

Dated: November 13, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30490 Filed 11–20–84; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 1H5318/R674; PH–FRL 2718–1]

Tolerances for Pesticides in Animal Feeds; O-Ethyl O-[4-(Methylthio) Phenyl] S-Propyl Phosphorodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to increase the established tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the commodity cottonseed hulls from 1.0 part per million (ppm) to 10.0 ppm. This regulation was requested pursuant to a petition by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on November 21, 1984.

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

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 19, 1981, which announced that Mobay Chemical Corp., Agricultural Chemicals Division, Hawthorn Rd., Kansas City, MO 64120, had submitted food/feed additive petition (FAP 1H5318) proposing to amend 21 CFR Parts 193 and 561 by establishing regulations for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities cottonseed hulls and cottonseed oil. The petition was subsequently amended by increasing the tolerance proposal for residues on cottonseed hulls from 4.5 ppm to 10.0 ppm.

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

Elsewhere in this issue of the **Federal Register**, the Agency is issuing related documents establishing a rule increasing the tolerance for *O*-ethyl *O*-[4-methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites on cottonseed from 0.5 ppm to 5.0 ppm, and a proposal that the tolerance for residues of the insecticide on cottonseed oil (21 CFR 193.212) be revoked.

The scientific data and other relevant material considered in support of this regulation are contained and discussed in a related document (PP 1F2561/R673) published elsewhere in this issue of the **Federal Register.**

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

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

The Office of Management and Budget has exempted these rules 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 food or feed additive levels or conditions for safe use of additives, or raising such food or feed additive levels, 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 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1))

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: November 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR Part 561 is amended by revising § 561.233, to read as follows:

§ 561.233 O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate.

A tolerance of 10 parts per million is established for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in cottonseed hulls resulting from application of the pesticide to growing cotton.

[FR Doc. 84-29943 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 41 and 48

[T.D. 7970]

Heavy Vehicle Use Tax; Tax on Diesel Fuel; Tax on the Sale of Piggyback Trailers; Extension of Payment Due Date for Certain Fuel Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 34466 of the temporary regulations which were the subject of Treasury Decision 7970 relating to the imposition of heavy vehicle use tax, the increases of the tax on diesel fuel, the reduction for a one-year period of the tax on the sale of piggyback trailers and semi-trailers, and the extension of the payment due date for certain fuel taxes.

EFFECTIVE DATES: The regulations relating to the heavy vehicle use tax are effective after June 30, 1984. The regulations relating to the tax on diesel fuel are effective after July 31, 1984. The regulations relating to the tax on the sale of piggyback trailers are effective for piggyback trailers sold at retail after July 17, 1984, and before July 18, 1985. The regulations relating to the fuel tax payment date are effective for certain fuel taxes due after March 31, 1983. The corrections are to be effective with respect to the same dates.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Divisions, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, telephone 202-566-3935 (note a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the **Federal Register** published temporary regulations (49 FR 34466) relating to heavy vehicle use tax under sections 4481, 4482 and 4483 of the Internal Revenue Code of 1954, as amended by section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97-424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98-369, 98 Stat. 1003). The document also contained temporary regulations in the form of questions and answers relating to an increase in the tax on diesel fuel under section 4041(a) of the Code, a credit or refund to original purchasers of diesel-powered automobiles and light trucks under section 6427(g) of the Code, and an exemption of certain buses from the diesel fuel tax under section 6427(b)(2) of the Code, as amended by sections 911(a), 911(b), and 915 of the Tax Reform Act of 1984, respectively. Also contained were temporary regulations in the form of questions and answers relating to the reduction in the retailers excise tax on the sale of piggyback trailers and semi-trailers under section 4051(d) of the Code as amended by section 921 of the Tax Reform Act of 1984. Also included were questions and answers relating to an extension of the payment due date for certain fuel taxes under section 518 (a) of the Highway Revenue Act of 1982 as amended by section 734(i) of the Tax Reform Act of 1984.

Need for Correction

As published, Treasury Decision 7970, cites a reference inaccurately in two locations. These errors appear on page 34469. In the middle column, within the section number of the heading "§ 41.4481-1T Special rules for small owner-operators (temporary)" the reference to "§ 41.4481-1T" should read "§ 41.4481-1aT". In the right-hand column, the ninth and tenth lines from the bottom of the page incorrectly includes the references "§ 41.4481-1T"that should read "§ 41.4481-1aT".

The third correction is also required in the right-hand column on page 34469. The sixth line that reads "weight of at leats 55,000 pounds but not" should read "weight of at least 55,000 pounds but not".

The final correction is required in § 48.6427-2T (A-12), middle column, page 34475. The thirteenth line of (A-12) incorrectly includes the word "again" rather than the word "gain".

Correction of Publication

Accordingly, the publication of Treasury Decision 7970 which was the subject of FR Doc. 84-23130 (August 31, 1984), is corrected as follows:

"§ 44.4481-1aT. [Correctly designated, and corrected]

Paragraph 1. On page 34469, in the second column six lines from the bottom, the section number designation "§ 41.4481-1T" is removed and the language "§ 41.4481-1aT" is added in its place.

Par. 2. On the same page, in correctly designated § 41.4481-1aT(a)(2), the language "weight of at leats 55,000 pounds but not" is removed and the language "weight of at least 55,000 pounds but not" is added in its place.

Par. 3. On the same page, in the third column, in correctly designated § 41.4481-1aT(b), in the ninth and tenth lines from the bottom of the page, the language "§ 41.4481-1T" is removed and the language "§ 41.4481-1aT" is added in its place.

§ 48.6427-2T [Corrected]

Par. 4. On page 34475, in the second column, in § 48.6427-2T, in paragraph A-12, in the thirteenth line, the word "again" is removed and the word "gain" is added in its place.

George H. Jelly,

Director, Legislation and Regulations Divison.

[FR Doc. 84-30461 Filed 11-20-84; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300100A; PH-FRL 2718-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules amend 40 CFR 180.1(h) by (1) adding definitions for the

crop categories broccoli, cabbage, caneberries, and squash; and (2) redefining existing crop categories for beans, celery, and tangerines. These amendments were requested by the University of California Cooperative Extension Program at Davis, California, the Interregional Research Project No. 4 (IR–4), and upon the initiative of the Administrator, EPA.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [OPP–300100A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

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

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA issued three proposed rules, published in the Federal Register, which announced that the named agencies had submitted requests to EPA proposing that 40 CFR 180.1(h) be amended, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act as follows:

1. University of California Cooperative Extension Program at Davis, 116 B St., Davis, CA 95616. 49 FR 37809, September 26, 1984. Proposed adding two general crop categories (cabbage and broccoli) to column A, corresponding specific raw agricultural commodities to column B, and adding further definitive crops to column B in the case of "celery" already listed in column A. The requestor indicated the need for clarification of the status of certain specialty crops with respect to existing residue clearances, in order that such crops may be included on pesticide labeling or treated in accordance with existing labeling directions.

2. The Administrator, EPA, 49 FR 37811, September 26, 1984. EPA issued a final rule, published in the Federal Register of Janurary 6, 1982 (47 FR 623), intended to clarify and update the definition of "beans" as it appears in 40 CFR 180.1(h). The revised definition of beans included the names of five genera of beans: *Cicer, Glycine, Phaseolus, Vicia,* and *Vigna* spp.

It was subsequently determined that *Glycine* sp. should not have been included in a broad and general definition of "beans" since soybeans, the predominant species of the genus, is an oil seed and may require oil processing studies before a tolerance can be established. Certain pesticides will tend to concentrate in the oil seed processed products. If residues in processed products exceed those in the raw agricultural commodity, separate food additive regulations would have to be established under 21 CFR Parts 193 and 561. To avoid the possibility of illegal pesticide residues in soybean processed products, "*Glycine* sp. (including soybeans)" needs to be deleted from the definition of "beans" in 40 CFR 180.1(h). The remaining genera of beans are not considered as oil seeds, thus require no oil seed processing studies nor food or feed additive regulations.

In examining the definitions in column B for "Beans (dry)" and "Beans (succulent)" in column A, some ambiguity exists as to what "beans" are intended. To clarify that beans (dry) and beans (succulent) pertain to those bean crops listed in column B, the two definitions are amended by adding the qualifer "above" to the column B definitions.

3. Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. 49 FR 37810, September 26, 1984. Proposed:

a. Revising the current definition of tangerines to include mandarins, tangelos, tangors, tangerines and hybrids of these. Currently tangerines is defined to include only tangelos and tangerines. According to IR–4, tangerines, or mandarins, are characterized by a loose skin that separates readily from the pulp, and by segments which separate readily from each other; they are grown in all citrus areas of the U.S. The tangor is a citrus hybrid resulting from cross-breeding mandarins and sweet oranges and is somewhat intermediate in characteristics. The tangelo is a cross of mandarin and grapefruit or pummelo.

b. Adding the general crop category "Caneberries" to column A and the corresponding specific raw agricultural commodities blackberries, boysenberries, dewberries, loganberries, raspberries, youngberries, and "varieties to these" to column B. The IR–4 supports this request by pointing out that each of these specific crops is a species of the genus *Rubus* in the family Rosaceae and that they are all very similar physiologically and by virtue of cultivation patterns. Canes may be erect, semierect, or trailing. Blackberries are usually heavily-thorned but some thornless varieties are known. Dewberries (sometimes called trailing blackberry) and related varieties (including boysenberry, loganberry, and youngberry) are generally less thorny than blackberries but very similar otherwise. Raspberries are nearly thornless. Fruits are borne in loose clusters on laterals that grow from the canes. They consist of numerous small seeds, each imbedded in a juicy pulp, and all adhering to a fleshy base. The base separates from the plant when the fruit is harvested in all cases except for raspberries, in which the base or receptacle is retained on the plant.

c. Adding the general crop category "squash" to column A and the corresponding specific raw agricultural commodities pumpkins, summer squash, and winter squash to column B. The IR–4 supports this request by pointing out that each of these specific crops is a species of the genus *Cucurbita* in the family Cucurbitaceae and that varieties of several species of *Cucurbita* carry the name "pumpkin." Generally, pumpkin is the edible fruit of cucurbits used for feed or food when ripe, and having somewhat coarse, strongly-flavored flesh; winter squash has finer texture and less strongly flavored flesh. Summer squashes are commonly harvested while the rinds on the fruit are soft and tender; otherwise, the plants are essentially similar to those of winter squash and pumpkin.

There were no comments nor requests for referral to an Advisory Committee received in response to the proposed rules.

The regulations are considered useful for the purpose for which they are sought. The Agency has determined that the establishment of the regulations will protect the public health and are established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1(h) is amended by revising the list of definitive crops in column B for "Beans", "Beans (dry)", "Beans (succulent)", "Celery", and "Tangerines"; adding and alphabetically inserting definitions for "Broccoli", "Cabbage", "Caneberries", and "Squash" in column A and the definitive crops in column B to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Beans	*Cicer arietinum* (chickpeas, garbanzo beans); *Phaseolus* spp. (including kidney beans, lima beans, mung beans, navy beans, pinto beans, snap beans, and wax beans); *Vicia faba* (broad beans, fava beans) *Vigna* spp. (including asparagus beans, blackeyed peas, and cowpeas).
Beans (dry)	All beans above in dry form only.
Beans (succulent)	All beans above in succulent form only.
Broccoli	Broccoli, chinese broccoli (gia lon, white flowering broccoli).
Cabbage	Cabbage, Chinese cabbage (tight-heading varieties only).
Caneberries	Blackberries, boysenberries, dewberries, loganberries, raspberries, youngberries, and varieties of these.
Celery	Celery, Florence fennel (sweet anise, sweet fennel, finochio) (fresh leaves and stalks only).
* * * * *	
Squash	Pumpkins, summer, and winter squash.
* * * * *	
Tangerines	Tangerines (mandarins or mandarin oranges); tangelos, tangors, and other hybrids of tangerine with other citrus.
* * * * *	

[FR Doc. 84-29941 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2561/R673; PH-FRL 2717-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; O-Ethyl O-[4-(Methylthio) Phenyl] S-Propyl Phosphorodithioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity cottonseed. This regulation to establish a maximum permissible level for the insecticide was requested in a petition submitted by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on November 21, 1984.

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

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-577-2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 19, 1981 (46 FR 51283), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, Hawthorn Rd., Kansas City, MO 64120, had filed pesticide petition 1F2561 to EPA proposing that 40 CFR 180.374 be amended by increasing the established tolerance for the combined residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity cottonseed from 0.5 part per million (ppm) to 3.0 ppm. The petition was subsequently amended by increasing the proposed tolerance level of 3.0 ppm to 5.0 ppm.

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

Elsewhere in this issue of the **Federal Register**, the Agency is issuing a related document that proposes that the tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites (21 CFR 193.212) in cottonseed oil be revoked.

Since *O*-ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate is a cholinesterase inhibitor, this chemical is being added to the list under 40 CFR 180.3(e)(5).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding/oncogenicity study which had a no-observed-effect level (NOEL) of 6.0 ppm (0.3 mg/kg/day) for cholinesterase inhibition and was not oncogenic under the conditions of the study at the dose levels tested (6, 60, and 250 ppm (0.3, 3.0, and 12.5 mg/kg/day)); a 2-year dog feeding study which had a NOEL of 10.0 ppm (0.25 mg/kg/day) for cholinesterase effects; a 22-month mouse feeding/oncogenicity study which was negative for oncogenic effects under the conditions of the study at the dose levels tested (2.5, 25, 200, and 400 ppm (0.38, 3.8, 30, and 60 mg/kg/day)); a 3-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg/day) (highest level tested); a rat and rabbit teratology study which were negative for teratogenic effects at 30 milligrams (mg)/kilogram (kg); and a hen neurotoxicity study which demonstrated negative potential. Studies on mutagenicity showed negative potential. Based on the 2-year dog feeding study with a 10 ppm NOEL for cholinesterase effects and using a 10-fold safety factor, the acceptable daily intake (ADI) for man is 0.025 mg/kg bw/day. The theoretical maximum residue contribution (TMRC) from these tolerances and the previously established tolerances for residues in or on cottonseed utilize 0.92 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. The metabolism of the pesticide is adequately understood, and an adequate analytical method, GLC phosphorous mode detection, is available for enforcement purposes. The established meat, milk, poultry, and egg tolerances are adequate to cover secondary residues resulting in these commodities from the proposed use.

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

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 5, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. In § 180.3 by amending paragraph (e)(5) by adding and alphabetically inserting an entry for the insecticide, to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(e) * * *

(5) * * *

* * * * *

O-Ethyl *O*-[4-(methylthio) phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites.

* * * * *

2. In § 180.374 by revising the entry for cottonseed, to read as follows:

§ 180.374 O-Ethyl O-[4-(methylthio) phenyl] S-propyl phosphorodithioate; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cottonseed	5.0
* * * * *	

[FR Doc. 84-29944 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2E2744/R694; FRL 2719-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Chlorothalonil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide chlorothalonil in or on the agricultural commodities cocoa beans and coffee beans. This regulation to establish the maximum permissible levels for residues of the fungicide in or on these commodities was requested by Diamond Shamrock Corp. (now SDS Biotech Corp.).

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [PP 2E2744/R694], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 6, 1982 (47 FR 44153), that Diamond Shamrock Corp. had submitted a pesticide petition (PP 2E2744) to EPA. This petition proposed that tolerances be established for residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodities cocoa beans and coffee beans at 0.05 part per million (ppm). The petition was subsequently amended in the Federal Register of July 13, 1983 (48 FR 32077), by proposing to increase the tolerance on coffee beans from 0.05 to 0.2 ppm.

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data on technical chlorothalonil considered in support of the tolerances include a 2-year dog feeding study with a no-observed-effect level (NOEL) of 60 ppm (1.50 mg/kg body weight); a 2-year rat feeding study with a NOEL of 60 ppm (3.0 mg/kg body weight) with no oncogenic effects observed at any dosage tested under the conditions of the study; a 3-generation rat reproduction study with a NOEL of 15,000 ppm (750.0 mg/kg body weight) for reproduction effects and 1,500 ppm (75.0 mg/kg body weight) for lactation effects; a rabbit teratogenicity study with a NOEL of 62.5 mg/kg body weight (highest dose tested); five mutagenicity studies as follows: cell transformation in newborn rats, negative; mammalian cell gene point mutation, negative; Ames test, negative; *in vitro* mammalian point mutation, negative; and DNA repair, negative (except it may interfere with DNA repair in TA-1538 cells); a National Cancer Institute (NCI) rat oncogenicity study (#NCI-CG-TR-41, 1978), which was positive for neoplasia in male and female Osborne-Mendel rats at 5,063 ppm and 10,126 ppm (759 mg/kg and 1,589 mg/kg body weight respectively) but was not oncogenic in $B_6C_3F_1$ mice at the highest dose tested of 10,126 ppm (1,589 mg/kg body weight); and a 2-year mouse oncogenicity study in male and female CD-1 mice at 0, 750, 1,500, and 3,000 ppm (0, 107, 214, and 430 mg/kg body weight respectively). This second study was suggestive of effects in male mice for tubular adenomas and carcinomas of the kidney and squamous and glandular carcinomas of the gastric mucosa. However, there was no dose-dependent relationship in the occurrence of these lesions.

The toxicology data on the metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, considered in support of the tolerances include a 90-day dog feeding study with a NOEL of less than 50 ppm (1.25 mg/kg body weight); a rabbit teratogenicity study with a NOEL of greater than 5 mg/kg (the highest dose tested); four mutagenicity studies as follows: a host-mediated assay in the mouse, negative; *in vivo* cytogenic in the mouse, negative; dominant lethal in the mouse, negative; but a significant increase in early death at week 3 of mating (spermatid stage) was noted at 6.5 mg/kg body weight/day; and a dominant lethal in the rat, negative at 8 mg/kg weight/day for 5 days; and a 2-year oncogenic study in male and female CD-1 mice at 0, 375, 750, and 1,500 ppm (0, 53.6, 107, and 214 mg/kg body weight respectively). This study was negative for oncogenic effects under the conditions of the study, but no NOEL was established.

Deficiencies have been alleged in the report of the NCI studies, and therefore SDS Biotech Corp. is repeating the 2-year rat study. Their final report is scheduled to be submitted to the Agency in mid-1985. However, the Agency has performed a preliminary risk assessment based on the assumption that the

incidence of renal neoplasia in female rats as reported in the NCI rat study is attributable to chlorothalonil. The method used in calculating the risk was the one-hit model. Based on this information, the preliminary risk calculation for the theoretical maximum residue contribution (TMRC) from tolerances already established in 40 CFR 180.275 is 1.49×10^{-5}. The combined upper limits of preliminary risk calculation associated with these proposed tolerances is about 4.4×10^{-5}.

Based on the 2-year dog feeding study with chlorothalonil, the NOEL is 60 ppm or 1.5 mg/kg body weight. Using a 100-fold safety factor, the acceptable daily intake (ADI) is 0.0150 mg/kg body weight/day, and the maximum permissible intake (MPI) is 0.90 mg/kg for a 60-kg person. The combined tolerances in coffee beans and cocoa beans add 0.0023 mg to the TMRC and use a maximum of 0.26 percent of the ADI. The published tolerances use 0.714 mg or 79.3 of the ADI.

The pesticide is considered useful for the purpose for which the tolerances are sought. As the proposed uses do not involve any items normally used for livestock feed, there is no expectation of secondary residues in meat, milk, poultry, and eggs. It is concluded that the tolerances will protect the public health. An adequate analytical method for determining residues of chlorothalonil and its metabolite is available for enforcement purposes, i.e., gas chromatography with an electron capture detector. Therefore, the tolerances are established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 60-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

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

List of Subjects in 40 CFR Part 180

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

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.275 is amended by adding and alphabetically inserting the following commodities, to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cocoa beans	0.05
Coffee beans	0.20
* * * * *	

[FR Doc. 84-30114 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F2995/R714; PH-FRL 2718-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide permethrin and its metabolites in or on the commodity pistachios. This regulation to establish maximum permissible levels for the combined residues of permethrin was requested pursuant to a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4F2995/R714], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of January 4, 1984 (49 FR 503), which announced that ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted a pesticide petition, PP 4F2995, proposing to establish a tolerance for the combined residues of the insecticide permethrin (3-phenoxyphenyl)methyl(+)-*cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, and its metabolites(+)-*cis, trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (2-phenoxyphenyl) methanol (3-PBA) in or on the raw agricultural commodity pistachios.

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

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance have been discussed in detail in the Federal Register of October 18, 1982 (47 FR 45008).

Granting this tolerance will increase the theoretical maximum residue contribution from 1.0383 to 1.0384 mg/day. This increase is slight, and thus the discussion of the toxicological concerns applies without revision to the newly listed commodity. The percentage of the acceptable daily intake use will remain at 34.61.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, and no other considerations are involved in establishing the tolerance.

The tolerance established by amending 40 CFR 180.378 will be adequate to cover residues in pistachios. There are no feed items associated with pistachios, and a label restriction precludes the grazing of livestock in treated orchards. There is no reasonable expectation of secondary residues in meat, milk, poultry, and eggs as a result of this use.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

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

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 2, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Pistachios	0.1
* * * * *	

[FR Doc. 84-29940 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2874/R721; FRL-2722-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oryzalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide oryzalin in or on the raw agricultural commodities barley grain and wheat grain. The regulation to establish maximum permissible levels for residues of oryzalin was requested pursuant to a petition by the Elanco Products Co.

EFFECTIVE DATE: Effective on November 21, 1984.

ADDRESS: 1Written objections, identified by the document control number [PP 3F2874/R721], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 8, 1983 (48 FR 26535), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis IN 46285, had submitted a pesticide petition (3F2874) that proposed to amend 40 CFR 180.304 by establishing tolerances for residues of the herbicide oryzalin (3,4-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities barley grain at 0.05 part per million (ppm) and wheat grain at 0.05 ppm.

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

The data submitted in the petition and relevant material have been evaluated. The toxicology data evaluated include a 90-day feeding study (rat) with a no-observation-effect level (NOEL) of 750 ppm (37.5 mg/kg/day); a 90-day feeding study (dog) with a NOEL of 750 ppm (18.75 mg/kg/day); a 3-generation reproduction study (rat) with a NOEL of 250 ppm (12.5 mg/kg/day); a teratology study (rat) with NOEL of 2,250 ppm (112 mg/kg/day), the highest dose tested; a teratology study (rabbit) with a NOEL of 125 mg/kg/day (highest level tested); a chronic feeding/oncogenicity study (mouse) with a NOEL of 500 ppm (71.4 mg/kg/day) and no observed oncogenic effects at any level tested (0, 500, 1,350, and 3,650 ppm; equivalent to 0, 71.4, 192.8, and 521.2 mg/kg/day); DNA repair synthesis in rat hepatocyte primary cultures (negative); and a Sister Chromatid Exchange assay in Chinese hamster bone marrow (negative orally, positive intraperitoneally).

A 2-year chronic feeding/oncogenicity study in the rat at dietary doses of 0, 300, 900, and 2,700 ppm demonstrated a dose-related reduction in survival at the high dose. Evaluation of all available data, and in particular tumor-bearing animals, provided evidence that there was a statistical increase in basal cell-type tumors in both sexes, with an earlier incidence in males. These basal cell-type tumors (benign) of the skin were significantly increased at 900 ppm (equivalent to 9 mg/kg/day in the food of the study rats). There were 11/120 basal cell tumors in control rats, 16/120 at 3 mg/kg/day, and 32/120 at 9 mg/kg/day. Examination of the various models for goodness of fit demonstrated that the multi-stage model provided the best fit for the data. The multi-stage model for males or for both sexes lead to approximately the same level of potency as estimated by the 95 percent upper confidence bound on the slope or dose response as indicated by $Q_1^* = 3.75 \times ^{-2}$ both sexes) or $Q_1^* = 4.426 \times ^{-2}$ male data only. The $Q_1^* = 3.375 \times 10^{-2}$ has been used in lieu of the latter figure because it includes a larger sample size. Assuming that 100 percent of the crops are treated and residue levels are at tolerance levels, the upper bound estimate of dietary oncogenic risk from published tolerances is calculated to be 5.11×10^{-6}. However, dietary risk estimates are significantly lower when considering actual residue data which show residues are from nondetectable to values less than published levels. Actual residue data for the proposed wheat and barley uses show no detectable residues (NDR) to less than 0.04 ppm in grains and NDR in process milled fractions. The dietary oncogenic risk for wheat and barley, calculated using the tolerance levels and assuming 100 percent of the wheat and barley crops are treated with oryzalin, is 4.4×10^{-6}. However, the dietary risk estimates

associated with the wheat and barley tolerances based upon expected residues in grain and milled fractions are $< 66 \times^{-1}$. If the percentages of the crop treated are considered, the risk estimates are reduced even further.

Desirable data lacking is a long-term nonrodent (dog) feeding study of at least 1-year duration.

The company has been notified of the deficiency and has agreed to conduct the study and to remove the use from the label should the results of the study exceed the risk criteria for chronic toxicity as stated in 40 CFR 162.11.

The acceptable daily intake (ADI), based on the 90-day dog feeding study (NOEL of 750 ppm (18.75 mg/kg/day)) and a 2,000-fold safety factor, is calculated to be 0.0094 mg/kg/day.The maximum permissible intake (MPI) for a 60-kg human is calculated to be 0.5625 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.0090 mg/day. The current action will utilize an additional 1.38 percent of the ADI. Published tolerances currently utilize 1.61 percent of the ADI.

There are no regulatory actions pending against the continued registration of oryzalin. This product contains a nitrosoamine at levels less than 1 ppm. Based on an Agency policy published in the Federal Register of June 15, 1980 (45 FR 42854), this level of nitrosoamine falls below the currently acceptable risk criteria. The metabolism of oryzalin in plants and animals has been adequately delineated for the uses. An adequate analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes. There is no reasonable expectation of residues occurring in meat, fat, and meat byproducts of cattle, horses, swine, sheep, goats, poultry, milk, or eggs from these tolerances.

The pesticide is considered useful for the purpose for which the tolerances are sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerances will protect the public health and are established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

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

Dated: November 9, 1984.

John W. Melone,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.304 is amended by adding and alphabetically inserting the commodities, to read as follows:

§ 180.304 Oryzalin; tolerances for residues.

Commodities	Parts per million
* * * * *	
Grain, barley	0.05
Grain, wheat	0.05
* * * * *	

[FR Doc. 84-30547 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50-201

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the Walsh-Healey Public Contracts Act regulations to provide an alternative definition for a regular dealer in specialty advertising products bidding on contracts subject to the Act. This alternative definition will relieve potential contractors in the specialty advertising products industry from having to maintain stock in a manner inconsistent with the practice in that industry, will alleviate related Federal procurement problems and will encourage more competition in the procurement process.

EFFECTIVE DATE: December 21, 1984.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8305.

SUPPLEMENTARY INFORMATION: On May 30, 1984, a proposal was published in the Federal Register (49 FR 22502) to add a new paragraph (a)(2)(xi) to section 50-201.101, 41 CFR 50-201, General Regulations Under the Walsh-Healey Public Contracts Act (PCA) to provide an alternative definition for regular dealers in specialty advertising products who bid on Federal contracts subject to the Act.

The General Services Administration (GSA) had requested that a special definition for regular dealers in specialty advertising products be provided because of information that the general definition of a regular dealer contained in the regulations was not appropriate for a regular dealer in specialty advertising products and because failure to provide such a special definition would seriously impair GSA's ability to procure specialty advertising products.

Specialty advertising is a promotional or advertising medium that utilizes products which are custom-imprinted, designed or manufactured with a logo of the name and address of the buyer or an advertising or promotional message, e.g., T-shirts, ball point pens, key tags, and calendars imprinted with advertising or promotional material.

Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or supplied under the contract. A regular dealer is defined in 41 CFR 50-201.101(a)(2) as "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and

required under the contract are bought, kept in stock, and sold to the public in the usual course of business." Furthermore, 41 CFR 50–206.53(b)(2) provides, in part, that the stock maintained by a regular dealer must be a "true inventory from which sales are made."

Information submitted by GSA and the Specialty Advertising Association International (SAAI) who also requested a special definition indicated that few manufacturers in the industry maintain their own sales force and virtually all sell through distributors (dealers).

GSA also found that the stock maintained by most specialty advertising distributors is minimal and generally would not constitute a true inventory from which sales are made. Because the purchases offered for sale are custom-tailored to satisy the needs of the purchaser, the normal method of business in this industry would be for the distributor to order the product from the manufacturer who then would dropship the imprinted product directly to the purchaser. Government purchases of specialty advertising products constitute only a small portion of the industry's total sales, and GSA stated that continued application of the general regular dealer eligibility requirement would severely impair the agency's ability to procure specialty advertising products.

Given these circumstances, the Department of Labor, pursuant to section 4 of the Walsh-Healey Public Contracts Act published a proposal to amend 41 CFR 50–201.101 to provide an alternative definition for regular dealers in specialty products. Interested persons were given 30 days to comment on the proposal.

One hundred and twenty-four comments were received, all in support of the proposed rule. A number of manufacturers of specialty advertising products commented that all of their sales were made through distributors and that the custom nature of their business prohibited their distributors from maintaining stock which is a "true inventory from which sales are made" as required by the PCA regulations. Many distributors commented that the regulatory change would allow them to bid on Federal contracts for specialty advertising products. The Specialty Advertising Association International which represents 3000 firms who manufacture or distribute specialty advertising products expressed strong support for the proposal.

GSA and one Member of Congress also commented favorably on the proposal.

Accordingly, pursuant to section 4 of the Walsh-Healey Public Contracts Act, the alternative definition for regular dealers in specialty advertising products is hereby adopted as proposed without change.

Classification

This rule is not classified as a "major rule" under Executive Order 21191 on Federal Regulations because it 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 consumers, 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 foregin-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

At the time of publication of the proposed rule, the Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the rule would have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)) and therefore no regulatory flexibility analysis was required. This conclusion was reached because the number of affected businesses was not substantial. During the comment period, the Chief Counsel for Advocacy of the SBA expressed disagreement with our conclusion and urged that a regulatory flexibility analysis be prepared for publication with the final rule. That analysis is set forth below.

Final Regulatory Flexibility Analysis

An alternative definition specifically limited to regular dealers in specialty advertising products was proposed in order to relieve potential contractors in the industry from having to maintain stock in a manner inconsistent with the practice in the industry, alleviate Federal procurement problems resulting from the lack of qualified bidders, as well as encourage more competition in bidding on Federal contracts for specialty advertising products.

All manufacturers and distributors of specialty advertising products commenting on the proposal supported its adoption noting that the regulatory change would permit more distributors to qualify to bid on Federal contracts. None of the comments received noted any negative economic or other impact from adoption of the rule.

It is estimated that there are approximately 4,500 distributors (dealers) in specialty advertising products, almost all of which are small businesses. Information available to us indicates that a large percentage of the distributors bidding on Federal contracts for specialty advertising products may have been ineligible to bid on such contracts because the stock maintained by these firms generally would not constitute a true inventory from which sales are made as previously required by the regulations. Accordingly, the only impact of adoption of this alternative definition would be to increase competition by qualifying a significant number of additional distributors to bid for such contracts. Conversely, by increasing competition for such contracts adoption of the alternative definition may result in bidders who qualified under the previous regulations not receiving awards of contracts they otherwise may have obtained.

Paperwork Reduction Act

Section 50–201.104 of the PCA regulations, 41 CFR 50–201, provides that whenever a dealer to whom a contract subject to the Act has been awarded causes a manufacturer to deliver goods directly to the government, the dealer becomes the agent of the manufacturer in executing the contract and as the principal of such agent the manufacturer will be deemed to have agreed to the PCA stipulations contained in the contract. In order to ensure that manfacturers are made aware of their obligations under the Act, the alternative definition for regular dealers in specialty advertising products requires such dealers on all orders for direct shipment to the U.S. government to insert a notice to the manufacturer that the products are being purchased for the U.S. government and that the manufacturer must comply with the PCA. No objections to this notification requirement contained in the proposal were received.

The notification requirement contained in the regulation has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and has been assigned OMB control number 1215–0157.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedure, Child labor, Government

contracts, Government procurement, Minimum wages, Penalties, Recordkeeping requirements, Reporting and recordkeeping requirements, Wages.

Accordingly, Part 50–201 of Chapter 50 of Title 41 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. on this 16th day of November 1984.

William M. Otter,

Administrator, Wage and Hour Division.

PART 50–201—GENERAL REGULATIONS

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended (41 U.S.C. 40, unless otherwise noted).

2. 41 CFR 50–201.101 is amended by adding a new paragraph (a)(2)(xi) to § 50–201.101 as follows:

§ 50–201.101 Manufacturer or regular dealer.

(a) *Definitions.* * * *

(2) * * *

(xi) A regular dealer in specialty advertising products may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which such person maintains samples of the products sold, whose principal business is contracting to sell products that are custom-imprinted to meet the buyer's specific advertising or promotional requirements, who after the sale orders the products from the manufacturer for direct shipment to the buyer, and who sells substantial quantities of such products to the public regularly and in the usual course of business. *Provided,* that on all orders for the United States Government the dealer agrees to insert a notice to the manufacturer to the effect that the products are purchased for the United States Government and that the manufacturer is within the terms of 41 CFR 50–201.104 requiring compliance with the labor standards provisions of the Public Contracts Act. (Approved by the Office of Management and Budget under OMB control number 1215–0157.)

* * * * *

[FR Doc. 84–30513 Filed 11–20–84; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

Admission and Training of Midshipmen at the United States Merchant Marine Academy

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations to change the deadline date by which a candidate seeking admission to the United States Merchant Marine Academy must have attained 17 years of age but not have passed his or her 25th birthday. The purpose of the amendment is to establish for the Academy a deadline date of July 1 which is consistent with all other Federal service academies.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin M. Hackett, Academies Program Officer, Office of Maritime Labor and Training, Maritime Administration—DOT, 400 Seventh Street, SW., Room 7302, Washington, DC 20590, Telephone: (202) 426–5759.

SUPPLEMENTARY INFORMATION: 46 CFR 310.54 establishes general requirements for eligibility for admission to the United States Merchant Marine Academy (USMMA). Paragraph (b) of that section establishes the minimum and maximum age for admission to the Academy. It also establishes a deadline date for reaching the minimum and maximum age, respectively.

The United States Merchant Marine Academy Regulations were amended, effective May 20, 1982, to conform with the regulations to the provisions of the Maritime Education and Training Act of 1980 (Pub. L. 96–453). The deadline date for minimum and maximum age for a candidate seeking admission to the Academy was set at June 15 of the year of admission. It has been determined that June 15 is not consistent with the deadline date set at the other Federal service academies, which is July 1 of the year of admission. By changing the deadline date at the United States Merchant Marine Academy, MARAD is reflecting a policy of adjusting selected provisions in its regulations to accomplish comparability with the other service academies in terms of military service requirements, in particular, the United States Naval Academy. Military active duty upon graduation from the academy is an equal service alternative to serving as a merchant marine officer on vessels of the United States in fulfilling the service obligation established by statute.

Furthermore, a deadline date that is consistent with that for the other Federal service academies would eliminate confusion for Congressional nominating authorities and candidates to the U.S. Merchant Marine Academy who may also be applying to the U.S. Naval Academy or to one of the other service academies.

The required minimum age of 17 years and the maximum age of 25 years shall remain unchanged at the U.S. Merchant Marine Academy. Although the maximum age of 25 years does differ from the maximum age permitted at the other Federal academies (22 years), this greater age permits the widest possible age latitude. Also, USMMA students will still be able to meet the maximum age at graduation set for commissioning in a substantial number of Navy designator areas to which their Academy education has direct relevance.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. This rulemaking will have no economic impact. Accordingly, under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979), a determination has been made that this regulation is nonsignificant and that a full regulatory evaluation is unnecessary. The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). This rule will affect only students and applicants to the USMMA. Since this final rule will have no economic impact, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

It is imperative that this amendment to Subpart C of 46 CFR Part 310 be published as a final rule without any opportunity for public comment. The recruitment cycle has begun for students interested in applying to the class entering July 1985. Publication of a proposed rule with a public comment period probably would create substantial confusion for the Congressional nominating authorities who are responsible for initiating nominations of applicants who meet the precise eligibility requirements by December 31, 1984. Moreover, MARAD views this rulemaking to be

noncontroversial and believes there is no reason to anticipate any reasonable negative public comments, since the changes would benefit some candidates for admission to the USMMA and would penalize nobody.

Therefore, pursuant to provisions of 5 U.S.C. 553, good cause exists for finding notice and public comment procedure is impracticable and unnecessary. In addition, due to the urgency surrounding the candidate selection process, the Maritime Administration finds good cause to make this regulation effective immediately under 5 U.S.C. 553.

List of Subjects in 46 CFR Part 310

Grants programs, Education, Maritime Administration, Schools, Seamen.

PART 310—MERCHANT MARINE TRAINING

Accordingly, Subpart C of 46 CFR Part 310 is amended as follows:

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

§ 310.54 [Amended]

Section 310.54, General requirements for eligibility, is amended by revising paragraph (b) to read:

(b) *Age.* On July 1 of the year of admission to the Academy, a candidate shall be not less than seventeen (17) years of age and shall not have passed his or her twenty-fifth (25) birthday.

Authority: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66.

This regulation is not subject to the requirements of Section 3507 of Pub. L. 96-511, December 11, 1980.

Dated: November 14, 1984.

By Order of the Maritime Administration.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-30511 Filed 11-20-84; 8:45 am]

BILLING CODE 4910-81-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160, 1165, 1168, 1181, and 1182

[Ex Parte No. MC-173]

Codification of Statutory Findings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission is required by certain sections of Title 49, United State Code, to make certain statutory findings when issuing decisions on applications filed by motor carriers, water carriers, brokers, and freight forwarders. At present, these findings are published in full with groups of the applications published in the *ICC Register*. In an effort to economize on publication costs, the Commission is codifying the findings in the Code of Federal Regulations, and will use shortened versions of the preambles with the published applications.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Kathleen King, (202) 275-7429.

SUPPLEMENTARY INFORMATION: Since the rules presented here are procedural in nature we will forgo notice and comment upon them.

This decision is neither a major Federal action significantly affecting the quality of the environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

The Secretary has certified that these rules will have no impact on small entities. The information contained in the findings will not be affected.

We adopt the rules as set forth in the appendix.

List of Subjects in 49 CFR Parts 1160, 1165, 1168, 1181, and 1182

Administrative practice and procedure.

(49 U.S.C. 10922, 10923, 10926, 11301, 11343, 11344, and 11349)

Dated: November 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 Parts 1160, 1165, 1168, 1181, and 1182 of the Code of Federal Regulations are amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

A new § 1160.24 is added to read as follows:

§ 1160.24 Statutory findings for applications filed under 49 U.S.C. 10922 (a) and (b), 10923, and 10924.

The following findings are made for applications seeking permanent authority for motor common and contract carriers of property, freight forwarders, water carriers, and brokers:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is, fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: motor common carrier of property (except fitness-only)that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificates is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property (except fitness-only), freight forwarder, and household goods broker—that the transportation is or will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

2. A new § 1160.88 is added to read as follows:

§ 1160.88 Statutory findings for applications filed under 49 U.S.C. 10922(c)(1) (A) and (B), and (c)(2)(B), and 10923.

The following findings are made for applications seeking permanent authority for motor common carriers of passengers and motor contract carriers of passengers:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS

4. A new § 1165.29a is added to read as follows:

§ 1165.29a Statutory findings for applications filed under 49 U.S.C. 10922(i).

The following findings are made for applications seeking removal of restrictions:

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(i).

PART 1168—RULES GOVERNING THE ISSUANCE OF A CERTIFICATE TO PROVIDE REGULAR-ROUTE TRANSPORTATION OF PASSENGERS ENTIRELY IN ONE STATE UNDER 49 U.S.C. 10922(c)(2)(A)

5. A new § 1168.7 is added to read as follows:

§ 1168.7 Statutory findings for applications filed under 49 U.S.C. 10922(c)(2)(A).

The following findings are made for 90-day intrastate applications filed by motor common carriers of passengers under 49 U.S.C. 10922(c)(2)(A):

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

6. The following text is added as new sections 1181.6, 1181.19a, 1181.27 and 1181.33 as follows:

§ —— Statutory findings are made for applications filed under 49 U.S.C. 10926.

The following findings for applications filed under 49 U.S.C. 10926:

We find, subject to a timely filed petition for reconsideration, that each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

7. A new § 1182.6 is added to read as follows:

§ 1182.6 Statutory findings for applications filed under 49 U.S.C. 11343–11344.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344:

We preliminarily find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

[FR Doc. 84-30492 Filed 11-20-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of surf clam fishery time adjustment.

SUMMARY: NOAA issues this notice to reduce allowable surf clam fishing time from twelve hours per week to six hours every other week by use of a reduced-fishing schedule for vessels harvesting surf clams in the Mid-Atlantic Area of the fishery conservation zone. This action is required to prevent significant overharvest of surf clam allocations and avoid closure of the fishery. The intended effect is to reduce the rate of harvest from the fishery.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, Acting Surf Clam Management Coordinator, 617-281-3600, extension 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(a)(3)(i) a provision for reduction of allowable surf clam fishing time if, on review of available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota for surf clams probably will be exceeded.

Logbooks submitted by fishermen and processors show that during the first four weeks of the final quarter, which began October 1, 1984, surf clam landings for the fishing year exceeded 2,243,000 bushels. Thus, 95 percent of the 1984 2,350,000 bushel quota has been harvested during 83 percent of the fishing year. However, the Mid-Atlantic Fishery Management Council unanimously voted to increase the optimum yield by 200,000 bushels. This additional amount of surf clams increased the total annual surf clam quota to 2,550,000 bushels on November 9, 1984 (49 FR 45164, November 15, 1984).

Examination of 1982 and 1983 weekly surf clam catch rates shows that surf clam catch rates are increasing each year over the previous year. Therefore, even with the increased quota, the potential for a closure in November is imminent unless catch rates decline.

The Regional Director has determined that without a reduction in fishing time for surf clams, the fourth quarterly quota, even with the additional allocation, will be exceeded. Therefore, the Secretary of Commerce reduces fishing time to reduce the possibility that harvests will exceed the quarterly allocation and annual optimum yield.

The reduced-fishing schedule divides the surf clam fleet in half alphabetically, divides the remaining weeks of the fishing year into odd and even weeks and assigns one-half of the fleet to odd weeks and the other half to even weeks. The first letter of a surf clam vessel's name will determine which week the vessel will conduct its six-hour fishing activity. The six-hour period begins at 12:00 noon and ends at 6:00 p.m. Vessels with names beginning with letters A–M will fish during odd weeks. Vessels with names begining with letters N–Z will fish during even weeks. All vessels will fish on their presently scheduled fishing days.

Therefore, the following schedule is in effect:

Week of Nov. 18–24—odd vessels (A–M); may fish the 6-hr period
Week of Nov. 25–Dec. 1—even vessels (N–Z); may fish the 6-hr period
Week of Dec. 2–8—odd vessels (A–M); may fish the 6-hr period
Week of Dec. 9–15—even vessels (N–Z); may fish the 6-hr period

The reduced-fishing schedule will continue until December 15, 1984. The fishery is expected to close at this time.

Further notice of the closure or additional adjustments in the fishing time will be forthcoming after the Regional Director reviews the level of harvest under this revised fishing schedule.

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: November 16, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-30595 Filed 11-18-84; 4:39 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 228
Wednesday, November 21, 1984

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 COMMERCE

Office of the Secretary

15 CFR Part 8c

[Docket No. 40923-4123]

Enforcement of Nondiscrimination on the Basis of Handicap

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of Commerce.

DATES: To be assured of consideration, comments must be in writing and must be received on or before March 21, 1985. Comments should refer to specific sections of the regulation.

ADDRESS: Comments should be sent to: Gerald R. Lucas, Director, Office of Civil Rights, U.S. Department of Commerce, Room H6010, Washington, D.C. 20230. Comments received will be available for public inspection in Room H6010, Department of Commerce, Washington, D.C. 20230, from 8:30 a.m. to 5:00 p.m. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Stearns, Chief, EEO Division, Room 6010, Department of Commerce, Washington, D.C. 20230. TDD/VOICE: 377-5691.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Commerce. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206).

Interested persons are invited to submit written comments on the proposed regulations. All written comments received by the date specified above will be considered in determining whether and what final rule will be issued. After all submitted comments are reviewed, the Deputy Assistant Secretary for Administration will publish in the **Federal Register** the Department's final action on the proposal.

Under Executive Order 12291, the Department must judge whether this proposed regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This proposed regulation is not major because it is not likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or 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. This proposed regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

The General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act that this notice of proposed rulemaking does not have a significant impact on a substantial number of small entities because its effect will be upon individuals, ensuring that no qualified handicapped individual will, on the basis of that handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency and is not expected to significantly impact small entities regarding costs of compliance with the rule, costs of completing paperwork or recordkeeping requests, the competitive positions of small entities in relation to larger entities, cash flow and liquidity of small entities, or the ability of a small entity to remain in the market. As a result, an initial Regulatory Flexibility Analysis was not prepared.

This proposed rulemaking does not contain a collection of information requirements for purposes of the Paperwork Reduction Act.

The Department has determined that this regulation, if adopted, will not

significantly affect the quality of the human environment. Therefore, no environmental assessment of draft or final Environmentnal Impact Statement was or will be prepared.

The Department determined that this proposed rule, if adopted, will not directly affect the coastal zone of any state with an approved coastal zone management program.

Section-By-Section Analysis

Section 8c.1 Purpose.

Section 8c.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in program or activities conducted by Executive agencies or the United States Postal Service.

Section 8c.2 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 8c.3 Definitions.

"Agency." For purposes of this regulation "agency" means Department of Commerce. The Export Administration Review Board (EARB) located in the International Trade Administration's Office of Export Administration is covered by this regulation.

"Assistant Attorney General." Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have a equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 8c.60(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 8c.70(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 8c.50 and 8c.70(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all the customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (1). The language we have proposed comes directly from the Supreme Court's interpretation of section 504. However, so long as the definition of "qualified handicapped persons" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under the first subparagraph, subparagraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 8c.10 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation

process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 8c.11 Notice.

Section 8c.11 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 8c.30 General prohibitions against discrimination.

Section 8c.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 8c.30 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 8c.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 8c.50–8c.51) and communications (§ 8c.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both overtly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons in effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 8c.30(b)(3) to the process of selecting sites for contruction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification.

A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 8c.30).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, an thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 8c.40 Employment.

Section 8c.40 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 8c.70(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1979 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 8c.49 Program accessibility: Discrimination prohibited.

Section 8c.49 states the general nondiscrimination principle underlying the program accessibility requirements of sections 8c.49 and 8c.50.

Section 8c.50 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–58), with certain modifications. Thus, 8c.50 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 8c.50(a)(1)). However, § 8c.50, unlike 28 CFR 41.56–57, places explicit limits on the agency's obligation to ensure program accessibility (§ 8c.50(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 8c.60(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does nor require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Associate* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is a effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This subparagraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 8c.50(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 8c.50 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 8c.70.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provisions of aids. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated settings appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program's accessibility requirement by delivering service at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but

in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement included in § 8c.50(d).

Section 8c.51 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 8c.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 8c.50.

Section 8c.60 Communications.

Section 8c.60 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 8c.60(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency § 8c.60(a)(1)(i). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 8c.60(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 8c.50(a)(3)). Unless not required by § 8c.60(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 8c.60 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 8c.60 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conslusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 8c.70.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ c.60(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 8c.11 is effectively communicated to handicapped persons.

Section 8c.70 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 8c.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 8c.70(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law,

the relief granted if noncompliance is found, and notice of the right to appeal (§ c.70)(g)). One appeal within the agency shall be provided (§ c.70)(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ c.70)(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 15 CFR Part 8c

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, it is proposed that Part 8c be added to Chapter 15, subtitle A of the Code of Federal Regulations to read as follows:

Dated: September 20, 1984.

Otto Wolff,

Deputy Assistant Secretary for Administration.

PART 8c—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF COMMERCE

Sec.

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Authority: 29 U.S.C. 794.

§ 8c.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Services.

§ 8c.2 Application.

This part applies to all programs or activities conducted by the agency.

§ 8c.3 Definitions.

For purposes of this part, the term—

"Agency" means Department of Commerce.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as

amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 8c.4-8c.9 [Reserved]

§ 8c.10 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 8c.11 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 8c.12-8c.29 [Reserved]

§ 8c.30 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide defferent or separate aid, benefits, or services to handicaped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 8c.31-8c.39 [Reserved]

§ 8c.40 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 8c.41-8c.49 [Reserved]

§ 8c.49 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 8c.50 and 9c.51, no qualified handicapped person shall because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 8c.50 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities

accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personal believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 8c.50(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations in existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time Period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8c.51 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR § 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 8c.52–8c.59 [Reserved]

§ 8c.60 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped persons.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 8c.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 8c.61–8c.69 [Reverved]

§ 8c.70 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office for Personnel and Civil Rights, who shall perform, or designate someone to perform, the duties of the agency as set forth in subsections (d) through (h) of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 8c.70(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Assistant Secretary for Administration, who shall perform or designate someone to perform, the duties of the agency as set forth in subsection (j) of this section.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be so delegated.

§ 8c.71–8c.99 [Reseved]

[FR Doc. 84–30522 Filed 11–20–84; 8:45 am]
BILLING CODE 3510–BP–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[OPP–00000/P359; PH–FR 2718–2]

O-Ethyl O-[4-(Methylthio)Phenyl] S-Propyl Phosphorodithioate; Proposed Revocaton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of a food additive regulation for residues of the insecticide *O*-ethyl *O*-[4-(mehtylthio)Phenyl] *S*-propyl phophorodithioate. EPA is initiating this action.

DATE: Written comments, identified by the document control number [OPP–00000/P359], must be received on or before January 22, 1985.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Divivision (TS–757C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to; Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 205, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Agency is issuing a related document that establishes a tolerance for residues of the insecticide *O*-ethyl *O*-[4-(methylthio)phenyl] *S*-propyl phosphorodithioate (also know as Bolstar) (40 CFR 180.374) in or on cottonseed at 5 parts per million (ppm) and a document that establishes a feed additive regulation for this insecticide on cottonseed hulls at 10 ppm (21 CFR 561.233). The regulations pertaining to pesticide chemicals in processed food (21 CFR 170.19) provide, in part, that when pesticide chemical residues occur in processed foods owing to the use of raw agricultural commodities that contained a pesticide chemical in conformity with a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, the processed food will not be regarded as adulterated so long as the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

It has been determined that residues of the insecticide in cottonseed oil, resulting from use of the insecticide on the growing crop cotton, will not exceed the tolerance being established on the raw agricultural commodity. Therefore, a separate food additive regulation for cottonseed oil is not required, nor is it appropriate. Since the 5-ppm tolerance level established in this issue of the **Federal Register** is higher than the existing 1-ppm food additive regulation for this commodity, the existing regulation is no longer necessary and should be deleted from 21 CFR Part 193. Based on the above facts, the Agency is proposing to revoke the food additive regulation 21 CFR 193.212 for the residues of the insecticide at 1 ppm in cottonseed oil.

Any person who has registered or submitted an application under the

Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide that contains *O*-ethyl *O*-[4-(methyl)phenyl] *S*-propyl phosphorodithioate may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the 21 CFR 193.212 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke 21 CFR 193.212. Comments must bear a notation indicating the document control number, [OPP–00000/P359]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause any increase in prices, and will not have an adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164; 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to remove duplicated and therefore unnecessary information from the Code of Federal Regulations, it is expected that little or no economic impact would occur at any level of business enterprises. Accordingly, it is certified that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(h)))

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: November 5, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs

PART 193—[AMENDED]

§ 193.212 [Removed]

Therefore, it is proposed that § 193.212 *O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate* be removed.

[FR Doc. 84–29942 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

VETERANS ADMINISTRATION

38 CFR Part 1

Waiver of Overpayments

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The Veterans Administration proposes to amend 38 CFR 1.962 by clarifying that the term "overpayment" excludes payments received by third parties who are neither payees nor beneficiaries. This situation usually arises when erroneous benefit payments are made shortly after the payee's or beneficiary's death and are received by, or credited to the account of, a non-entitled third party. Title 38, United States Code, section 3102(a) prohibits recovery of an overpayment where recovery would be against equity and good conscience. Currently, 38 CFR 1.963(c) permits waiver consideration of Veterans Administration payments that have come into the possession of a person other than the person entitled. By clarifying that such payments to third parties who are neither payees nor beneficiaries are excluded from the definition of an overpayment, and by deleting § 1.963(c), we will properly limit waiver consideration to deserving veterans and beneficiaries.

DATES: Comments must be received on or before December 21, 1984.

ADDRESSES: Interested persons are invited to send written comments to the Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW. Washington, D.C. 20420. Comments will be available for inspection only at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peter T. Mulhern, (202) 389–3405.

SUPPLEMENTARY INFORMATION: These proposed revisions to regulations will be applicable nationwide. However, for debts which are within the jurisdiction of the Hartford, Connecticut, Regional Office, the Hartford Committee on Waivers and Compromises will continue to consider waiver requests made by non-payees within the Regional Office's jurisdiction who have received compensation or pension benefit payments to which they have no claim of entitlement. This deviation is necessary for the Hartford Regional Office because of a decision rendered on April 11, 1983, by the U.S. District Court for the District of Connecticut. The court order requires that notice and waiver rights be extended to individuals within the jurisdiction of the Hartford Regional Office who are indebted to the U.S. because compensation or pension benefit payments were transferred, subsequent to the death of a beneficiary, into an account which these individuals held jointly with the deceased beneficiary. The U.S. District Court has not rescinded this order. However, in the event modification or recission of the order is obtained, these regulations will be given effect within the jurisdiction of the Hartford Regional Office.

The Administrator hereby certifies that these proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of Section 603 and 604. The reason for this certification is that these proposed rules will affect only a small number of individuals indebted to the U.S. Government. Small entities are not directly regulated or significantly affected. These proposed rules have also been reviewed under E.O.12291. They have been determined to be nonmajor because they will only affect certain individuals requesting waiver of collection of an indebtedness to the U.S.

Government. They will not have a $100 million annual impact on the economy. These rules will not have any adverse economic impact on, or increase costs or prices to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practices and procedures, Veterans.

Approved: August 27, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

38 CFR Part 1, General, is amended as follows:

§ 1.957 [Amended]

1. In § 1.957, paragraph (a)(2)(ii)(B) and the title and introductory text of paragraph (b) are amended by changing the title "Chief, Centralized Accounts Receivable Division" to "Chief, Finance and Centralized Accounts Receivable Division."

2. The introductory paragraph and paragraph (a) to § 1.962 are revised to read as follows:

§ 1.962 Waiver of overpayment.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by the VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term "overpayment" refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable to an indebtedness resulting from work study and education loan default, as well as indebtedness of veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(38 U.S.C. 3102(a))

* * * * *

§ 1.963 [Amended]

3. Section 1.963 is amended by removing paragraph (c).

(38 U.S.C. 210(c))

[FR Doc. 84-30523 Filed 11-20-84 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 53, and 58

[AD-FRL 2722-1]

National Ambient Air Quality Standards for Particulate Matter, Ambient Air Quality Surveillance for Particulate Matter, and Ambient Air Monitoring Reference and Equivalent Methods; Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Extension of Public Comment Periods.

SUMMARY: On March 20, 1984, EPA proposed revisions to the national ambient air quality standards for particulate matter in 40 CFR Part 50 (49 FR 10408), and to EPA's regulations concerning ambient air quality surveillance in 40 CFR Part 58 (49 FR 10435) and ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454). On May 25, 1984, (49 FR 22109) and on September 5, 1984 (49 FR 35029) EPA extended the public comment periods on the three proposals and the deadlines for rebuttal and supplementary information submitted pursuant to section 307(d)(5)(iv) of the Clean Air Act regarding comments received at the April 30, 1984 public hearing. The September 5 notice established November 16, 1984 as the common date for submittal of comments.

Today's notice extends the period for public comment on the Part 50, Part 53, and Part 58 proposals and on the public hearing until the 60th day after EPA proposes the Part 51 and Part 52 requirements for particulate matter. These proposals are expected to be published shortly. This action is being taken in response to public request for additional time to prepare comments on the March 20 proposals.

DATES: Written comments on these proposed rules must be received 60 days after proposal of the Part 51 and Part 52 requirements. The exact date will be announced in the Notice proposing Part 51 and Part 52 requirements.

ADDRESSES: Submit comments (duplicate copies are preferred) on the proposed revisions to the national ambient air quality standards for particular matter to: Central Docket Section (LE-131), Environmental Protection Agency, Attn: Docket No. A-82-37, 401 M Street, SW., Washington, D.C. 20460. Comments on the proposed revisions to EPA's regulations on ambient air quality surveillance for particulate matter should be sent to the same address, Attn: Docket No. A-83-13. Comments on the proposed revisions to the ambient air monitoring reference and equivalent methods should also be sent to the same address, Attn: Docket A-82-43. The dockets are located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD-12, Research Triangle Park, N.C. 27711. Telephone (919) 541-5531 (FTS: 629-5531).

SUPPLEMENTARY INFORMATION: At the time of the March 20 proposals, EPA announced that there would be a special comment period for the limited purpose of allowing comment on the implications, if any, for the air quality standards and the air quality surveillance regulations of EPA's proposals concerning (1) requirements for preparation, adoption and submittal of implementation plans in 40 CFR Part 51 and associated guidelines, and (2) approval and promulgation of implementation plans in 40 CFR Part 52. Today's extension provides for this opportunity to comment. Therefore, public comments relating to the Part 50, Part 53 and Part 58 notices, including any comments on the implication of the Part 51 and Part 52 proposals, must be submitted within the 60 day comment period provided by this notice.

Dated: November 7, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-30546 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-3-FRL-2722-5]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice is to advise the public that additional information is available concerning the State of New York's request to revise its State Implementation Plan to allow Orange and Rockland Utilities, Incorporated (ORU) to reconvert two units at its Lovett Generating Station from oil to coal. This information pertains to proposed requirements under which ORU can reconvert to coal. It consists in part of three documents. These documents describe the conditions under which ORU will be required to monitor the effects on ambient air quality of the reconversion and under which competing air quality dispersion models will be evaluated. It also consists in part of an agreement between the Environmental Protection Agency (EPA) and ORU regarding the coal reconversion.

DATE: EPA is soliciting comments on matters raised in today's notice. The deadline for submitting comments is December 21, 1984.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

Copies of all relevant documents are available for review during normal business hours at the following addresses:

1. Environmental Protection Agency, Region II, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278
2. New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233
3. New York State Department of Environmental Conservation, Region 3 Office, 202 Mamaroneck Avenue, White Plains, New York 10601

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Room 1005, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice published on March 15, 1983 (48 FR 11093), the Environmental Protection Agency (EPA) announced that the State of New York had submitted a request to revise the sulfur dioxide (SO_2) portion of its State Implementation Plan (SIP). The revision is in the form of an order for a "special limitation" which would allow Orange & Rockland Utilities, Inc. (ORU) to reconvert units 4 and 5 at its Lovett Generating Station in Stony Point, New York, from oil to coal provided that either of the following SO_2 emission limitations are met:

1.0 pound SO_2 per million British thermal units (lb/MMBtu) heat input (equivalent to the use of 0.7 percent sulfur content coal) for units 4 and 5 if both are operated on coal; or

1.5 lbs SO_2/MMBtu heat input (1.0 percent sulfur content coal) for one unit if the other unit is operated on fuel oil (at 0.37 percent sulfur content, by weight) or natural gas or is not operated.

The current federally approved SIP contains a 0.2 lb sulfur/MMBtu (equivalent to 0.25 percent sulfur, by weight) sulfur content limitation for a coal fired facility in this part of New York State.

The State of New York has determined that the existing stacks for units 4 and 5 are less than "good engineering practice" (GEP) height. Therefore, the State's emission limitations are based on the premise that the stacks for units 4 and 5 will be combined and raised from a height of 206 and 239 feet, respectively, to a height of 475 feet. This will prevent high ground level concentrations due to disturbed wind flow around the power house building at the plant (downwash).

The State's submittal included an air quality dispersion modeling analysis of the Lovett coal conversion. However, the Lovett power plant is located in an area defined as having "complex" terrain and EPA's *Guideline on Air Quality Models* (EPA-450/2-78-078) does not identify a "refined" model to be used in such areas. The State's analysis utilized a nonguideline, unvalidated model. This analysis indicated that the proposed revision would not cause or contribute to a violation of the national ambient air quality standards (NAAQS) for SO_2.

The State also evaluated the proposed project using the Complex I dispersion model. The EPA considers the Complex I model the preferred screening technique for complex terrain areas. The results of this analysis, utilizing the Complex I model, conflicted with the earlier State modeling analysis. Thus, in its March 15, 1983 **Federal Register** proposal, EPA solicited public comment on whether or not New York's SIP revision met the requirements of Section 110 of the Clean Air Act. A complete discussion of the proposed revision is contained in EPA's March 15, 1983 **Federal Register** notice and will not be presented here. Also, public comments received on that notice will be addressed in a future **Federal Register** publication.

The purpose of today's action is to present a discussion of recent developments relating to the proposed reconversion at the power plant, and inform the public of the availability of documents entitled "Protocol for the Evaluation and Comparison of Air Quality Models for the Lovett Generating Station," "Quality Assurance Plan for the Lovett Sulfur Dioxide Monitoring Network," and "Quality Assurance Plan for the Lovett Meteorological Monitoring Network" and of an agreement between EPA and ORU regarding the reconversion.

Air Quality Dispersion Modeling

Due to the technical questions associated with the dispersion modeling analyses performed by the State of New York, EPA recommended that a study be performed of the actual air quality impacts in the area that result after units 4 and 5 are reconverted to coal in conformance with the State's order. The findings of this study would be used to evaluate three dispersion models to determine which is the most accurate predictor of air quality in the Lovett area. The model ultimately selected will be used to evaluate the SO_2 emissions limit for the plant. New York will then have to submit to EPA any needed modifications of its current order. The EPA, the State of New York Department of Environmental Conservation (NYSDEC) and ORU have agreed that the ORU will perform the study. The protocol documents mentioned earlier have been developed to guide this effort. They are available for public inspection at the addresses presented earlier. The following is a brief summary of their provisions.

1. ORU will install and operate 11 continuous SO_2 monitors and five meteorological stations at locations defined in the protocol.

2. Ambient air monitoring will be conducted for a minimum of 12 months prior to coal-burning at either unit in order to determine existing background SO_2 concentrations.

3. Ambient data will be collected for a minimum of 12 months after the reconversion shakedown period.

4. The reconversion shakedown period will last no longer than six months after coal burning is initiated at either unit.

5. These data will be used as input to the three contending dispersion models. The contending models are Complex I, NYSDEC, and modified NYSDEC.

6. Within 18 months following the reconversion shakedown period, ORU is to submit a new dispersion modeling analysis and appropriate emissions limits determined through use of the highest scoring model as determined through the protocol's evaluation system and in accordance with current EPA modeling procedures.

7. The schedule for execution of the protocol and any SIP revision which appears necessary after the application of the chosen model, will extend for 36 months from the time that shakedown is complete.

Stack Height

As mentioned earlier, this reconversion includes replacement of two existing stacks, having heights of 206 feet and 239 feet, with a single stack serving both units 4 and 5. This single stack, 475 feet high, would be designed with two flues, each serving one of the units. The height of the stack was determined by the State on the basis of the EPA stack height regulations using a refined formula. New York's conclusion regarding GEP was based on the application of an engineering formula which gave credit for the height of the power house structure plus 1.5 times the lesser of the height or width of the structure.

Since that time, portions of EPA's stack height regulations which formed the basis for Lovett's proposed stack modification were overturned by the U.S. Court of Appeals for the District of Columbia Circuit *Sierra Club* v. *EPA*, 719 F. 2d 436 (1983), *cert. denied*, 52 U.S.L.W. 3929 (U.S. July 2, 1984). In response EPA published proposed revised stack height regulations on November 9, 1984 (49 FR 44878).

EPA has reviewed the results of a preliminary analysis conducted for ORU using one of the contending dispersion models. The model was run to determine what effect, if any, the combining of flues into a single stack has on the location of maximum predicted SO_2 concentrations and, thus, on the design of the model evaluation study. The results show that, under worst case plant conditions, the same receptors are calculated to record the maximum 3-hour and 24-hour average concentrations for one single and two colocated stacks. Therefore, any enhanced dispersion due to combining of stacks does not move the predicted area of highest concentrations, and the same monitoring network can be assumed valid for both plant configurations.

EPA's new proposed stack height rules will authorize for cases like the Lovett Generating Station reliance on the GEP formula described earlier. While EPA believes that this proposal is consistent with the Court's decision in *Sierra Club* v. *EPA*, supra, the terms of the Lovett reconversion will be reviewed for consistency when EPA's new stack height regulations are promulgated. This may result in revised SO_2 emission limits.

The ORU has acknowledged these conditions in an agreement that is part of the rulemaking docket. This agreement is also available for public inspection at the addresses cited earlier. The major provisions of this agreement concern:

1. Procedures describing how the model of choice will be applied to determine the final SO_2 emission limit;

2. Assurance that the modeling protocol is executed to completion;

3. ORU's commitment that the final emission limits for Lovett station will be developed according to EPA's revised stack height regulations.

Limited Duration of Emission Limits

The EPA proposes to limit the term of its approval of the emission limits proposed for Lovett's units 4 and 5 to a period of 42 months from the start of shakedown of the affected units. The EPA anticipates that evaluation of the SO_2 emission limits for units 4 and 5 will be calculated by ORU in accordance with the schedule set forth in the agreement discussed earlier in today's notice. It will then be up to New York State to submit any necessary revisions to EPA for approval as a permanent part of its SIP. Also, it should be noted that EPA will reevaluate, and may revoke or revise its interim approval prior to the expiration of this 42 month period if ORU fails to: (1) Follow the modeling protocol described earlier or (2) submit a new dispersion analysis and final emission limits on the schedule outlined in its agreement with EPA.

Summary

The EPA is today making all relevant documents available for public inspection. The EPA is soliciting comments on matters raised in this notice for 30 days. A rulemaking notice taking final action will be published soon thereafter.

Under 5 U.S.C. 605(b), the Regional Administrator has certified that SIP approvals do not have 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.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide.

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: September 24, 1984.

Christopher Daggett,

Regional Administrator.

[FR Doc. 84-30558 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 152, 157, 158 and 162

[OPP-30071; FRL 2604-1(b)]

Pesticide Registration and Classification Procedures

Correction

In FR Doc. 84-25226 beginning on page 37916 in the issue of Wednesday, September 26, 1984, make the following corrections:

1. On page 37916, first column, **ADDRESS,** fourth line, "(TS-757C0" should read "(TS-757C)".

2. On page 37917, third column, first complete paragraph, fifth line, "pesticidal" should read "pesticide".

3. On page 37918, third column, second complete paragraph, seventh line, "§ 162.6(b)1)" should read "§ 162.6(b)(1)".

4. On page 37931, first column, Distribution Table, entry 162.3(q), second column, "152.2(b)" should read "156.2(b)"; and entry 162.3(s), second column, "152.2(c)" should read "156.2(c)".

5. On the same page, first column, Distribution Table, second line from the bottom should have appeared as:

DISTRIBUTION TABLE

Old section	New section
• • • • •	
(c)(1)-(5)	152.8 and 152.10.
(6)	(Deleted).

6. On the same page, second column, Derivation Table, last line, entry 152.20(a), second column, "162.(c)" should read "162.5(c)".

7. On the same page, third column, Derivation Table, entry Subparts N through Q [Reserved], second column, "162.15" should be removed.

§ 152.100 [Corrected]

8. On page 37940, third column, § 152.100, tenth line, "CFR 164.13" should read "CFR 164.130".

BILLING CODE 1505-01-M

40 CFR Part 271

[A-5-FRL-2721-8]

Minnesota: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of Minnesota for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Minnesota has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Minnesota's application and has made the tentative decision that Minnesota's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, the U.S. EPA intends to grant final authorization to the State to operate its program in lieu of the federal program. Minnesota's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

DATE: A public hearing is scheduled for 7:00 p.m., December 27, 1984. The U.S. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to the U.S. EPA be telephone or in writing by December 19, 1984. The U.S. EPA will determine by December 21, 1984, whether there is significant interest to hold the public hearing. Minnesota will participate in any public hearing held by the U.S. EPA on this subject. All written comments on the Minnesota final authorization application must be received by the close of the public hearing on December 27, 1984.

ADDRESSES: Copies of Minnesota's final authorization application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying:

Minnesota Pollution Control Agency, 1935 West County Road B–2 (2nd Floor), Roseville, Minnesota 55113. Contact: Ms. Karen Ryss (612) 297–1793

U.S. Environmental Protection Agency, Waste Management Division, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604. Contact: Lillian Bagus (312) 886–4158

U.S. Environmental Protection Agency, Headquarters Library, PM–211A, 401 M Street, SW., Washington, DC 20460, (202) 382–5926

Written comments on the application and written or telephone communication of interest in holding a public hearing on the Minnesota application must be sent to Lillian Bagus, Minnesota Regulatory Specialist, Waste Management Branch, Waste Management Division, U.S. EPA, 320 South Dearborn, Chicago, Illinois, 60604, (312) 886–4158.

If you wish to find out whether or not the U.S. EPA will hold a public hearing on the Minnesota application based on the U.S. EPA's decision that there was significant public interest in such a hearing, write or telephone after December 21, 1984, the U.S. EPA contact person listed below.

If significant public interest is expressed, the U.S. EPA will hold a public hearing on Minnesota's application for final authorization on December 27, 1984, at 7:00 p.m. at the Minnesota Pollution Control Board, Main Board Room, 1935 West County Road, B–2 (1st Floor), Roseville, Minnesota, 55113.

FOR FURTHER INFORMATION CONTACT: Lillian Bagus, Minnesota Regulatory Specialist, Waste Management Branch, Waste Management Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 886–4158.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the U.S. EPA to authorize the State hazardous waste program to operate in the State in lieu of the federal hazadous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if the U.S. EPA determines that the State program is "substantially equivalent" to the federal program (Section 3006(c), 42 U.S.C. 6226(c)). The U.S. EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the U.S. EPA regulations in 40 CFR Parts 260–263, and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II, covering the U.S. EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of incinerator facilities, and Phase II C addresses permitting of landfills, surface impoundments, wastepiles, and land treatment facilities. By statute, all interim authorizations expire on January 26, 1986. Responsibility for the hazardous waste program returns (reverts) to the U.S. EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by the U.S. EPA if the Agency finds that the State program: (1) Is "equivalent" to the federal program (2) is consistent with the federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. The U.S. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. Minnesota

On May 30, 1984, Minnesota submitted a draft application for final authorization. The complete application for final authorization was submitted on July 26, 1984. Prior to submission of the application to the U.S. EPA, Minnesota solicited public comments from June 18, 1984, through July 20, 1984, and held a public hearing on July 20, 1984. The State received no written comments, and no comments were presented at the public hearing. The Minnesota Pollution Control Agency (MPCA) received six telephone requests for copies of the State's application and additional information. The State satisfactorily addressed all requests.

On September 7, 1984, the U.S. EPA transmitted to Minnesota consolidated comments on the State's complete application for final authorization. The U.S. EPA identified a number of areas that required further clarifications and

additional information. The comments are summarized as follows: 1. The U.S. EPA requested Minnesota to submit copies of the State's proposed manifest form and rules with the official response to the U.S. EPA's consolidated comments; 2. The State was asked to revise its permit strategy to correct a discrepancy regarding the number of permit applications called in and the number of permit applications remaining to be called in; 3. In addition, the State was asked to clarify that the MPCA and the Minnesota Pollution Control Board (MPCB) both represent the State as parties to the Memorandum of Agreement (MOA); and, 4. The U.S. EPA's comments also included a request for further clarifications and additional information in several areas of the Attorney General's Statement.

Minnesota responded satisfactorily to the U.S. EPA's comments in a letter dated September 26, 1984. The State submitted a copy of its proposed manifest form and rules and corrected the discrepancy in the permit strategy. The Office of the Attorney General of the State of Minnesota provided the requested clarifications and additional information, including the clarification on the signatories to the MOA.

The U.S. EPA evaluated the Solid and Hazardous Waste Division of the MPCA to determine its capability to conduct a quality hazardous waste management program. Minnesota has received outstanding ratings for overall program management and implementation for both FY 1983 and FY 1984. The Minnesota permitting program has shown initiative, aggressiveness, and a high degree of quality. The State has the enforcement authority necessary for conducting an effective compliance and enforcement program. The State's management practices reflect sound planning and execution. The program staff has the technical experitise, the training, and the will to control hazardous waste in Minnesota.

Region V's capability assessment was transmitted to the State on October 9, 1984, together with a Letter of Intent. The Letter of Intent highlights the status of the groundwater monitoring program in Minnesota and incorporates the following agreements: 1. Minnesota agrees to conduct a Comprehensive Groundwater Monitoring Evaluation at one of the State's four Subpart F facilities during FY 1985. In addition, the State agrees to conduct Compliance Evaluation Inspections at the three remaining Subpart F facilities during FY 1985; and, 2. The U.S. EPA agrees to provide training for the State staff before the staff conducts the above evaluations/inspections.

The U.S. EPA has reviewed Minnesota's application, and has tentatively determined that the State's program meets all the requirements necessary to qualify for final authorization. Consequently, the U.S. EPA intends to grant final authorization to Minnesota. Copies of Minnesota's application are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

The U.S. EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Minnesota. The U.S. EPA expects to make a final decision on whether or not to approve Minnesota's program by January 26, 1985, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Regulatory Flexibility Act

Pursuant to the provisions of 5.U.S.C. 605(B), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 Executive Order 12291.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8–7.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–30557 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84–904; RM–3975; FCC 84–444]

Frequency Reallocation Making Additional Portions of the 470–512 MHz Band Available for Police use in Los Angeles County

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission proposes to make Channel 19 frequencies available for immediate use by the Sheriff's Department in Los Angeles County. The Los Angeles County Sheriff has requested immediate relief because his present system is inadequate to serve needs which must be met while the Commission considers the general issue of long-term nationwide requirements of public safety users.

EFFECTIVE DATE: Comments must be submitted on or before December 20, 1984 and replies on or before January 4, 1985.

ADDRESS: Federal Communications Commission, 1919 "M" Street, NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Don Precure, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653–8170.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 73

Television.

47 CFR Part 90

Public Safety Radio Services.

Proposed Rule Making

In the matter of amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470–512 MHz for Public Safety Services; GEN. Docket 84–902, RM–3975.

Adopted: September 26, 1984.
Released: October 11, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement.

I. Introduction

1. The Los Angeles County Sheriff's Department (the Sheriff) filed a petition asking that the 470–512 MHz frequency band comprising UHF television channels fourteen through twenty be

reallocated for land mobile radio use and that two of those channels be specifically set aside for the Public Safety Radio Services. More recently, the Department has filed a "Supplement to Petition for Rule Making" to amend its request. In this Supplement the Sheriff asks that two channels be made available for public safety use in each of our largest cities and that, in the interim, television Channel 19 (500–506 MHz) be reallocated for public safety use in Los Angeles. The Sheriff bases his need for immediate relief in Los Angeles on two problems. One is congested channels that result in excessive time delays in gaining access to channels by patrol officers. The other is an insufficient amount of spectrum that is appropriate to support a system using portable hand-held units.

2. In this Notice we address only the Sheriff's narrow request, as set forth in his Supplement to Petition, for reallocation of Channel 19 to solve his need for immediate relief in Los Angeles County. PR Docket No. 84–232 addresses the more general concern of accommodating public safety communications requirements on a nationwide basis.[1] In this Notice, we propose to make Channel 19 frequencies available, by rule making or waiver, for public safety use in the Los Angeles area.

3. In reviewing the Sheriff's request for spectrum relief and in making these proposals, we recognize that we have been given specific guidance in allocation matters relating to public safety radio users by two recent amendments to the Communications Act and their accompanying legislative histories. In adopting the 1982 amendments to the Communications Act, for example, Congress reiterated the Commission's basic responsibility to "promote the safety of life and property" and made it clear that we should be "ever vigilant to promote the private land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public." [2] In adopting the FCC Authorization Act of 1983, Congress made clear its intention that "public safety consideration should be a top priority when frequency allocation decisions are made." [3]

4. The D.C. Circuit recently recognized our public safety responsibilities in *National Association of Broadcasters v. Federal Communications Commission, et al.*, No. 82–1926, (D.C. Cir. July 24, 1984). In that case, the Court stated that the Congressional reference to giving public safety a "top priority" does not grant public safety users an absolute right to a particular spot on the spectrum, but it does require the Commission to give public safety needs priority over those of commercial broadcasters. *Id.*, slip op. at 42. Of course, this does not mean that all public safety spectrum requests must be granted. In *Neighborhood TV Company, Inc. v. FCC*, No. 83–1635, slip op. at 29 (D.C. Cir. August 17, 1984), the Court specifically rejected that notion, finding that the Commission did not run afoul of the Congressional mandate to give public safety top priority in spectrum decisions by not giving some of the spectrum allocated for low power television to public safety. Nor do we suggest by our institution of this proceeding that any public safety organization will be granted new or different spectrum whenever it so requests. In general, we do not look favorably upon spectrum change requests. Where, however, a public safety organization makes such a request, we believe it is our statutory obligation to examine whether the request is necessary for furthering the safety of life and property.

5. As explained more fully below, the unique circumstances of Los Angeles County lead us to an affirmative response to the Sheriff's request. Specifically, we believe the Sheriff's difficulties in equipping his officers with portable hand-held radios endangers the safety of both the officers and the public they are trying to protect. This problem is exacerbated by the large geographic area (approximately 4,000 square miles) and the diverse topography (from mountains to deserts to coastal lands) over which the Sheriff has jurisdiction. The general spectrum congestion that is present in the Los Angeles Basin further heightens the problem.

II. Procedural Background

6. The Sheriff's "Petition for Rule Making" was filed on September 1, 1981, and placed on Public Notice on September 21.[4] Comments were due by October 21, and replies by November 5, 1981. Comments and replies were filed for some time after those dates although no requests for time extensions were received or granted.

7. The Sheriff's "Supplement to Petition for Rule Making" was filed on November 4, 1983, and was put on Public Notice on November 17 with comments due December 17.[5] Upon review of the Supplement, the Chief Scientist determined that there was a need for additional information and on December 2 posed a number of questions to the Sheriff's Department. Answers were received on December 8, 1983. Both the comment and reply periods were extended; the latter ended February 16, 1984.

8. During December 1983 and January 1984 the Field Office Bureau monitored use of the Sheriff's channels and released its findings in a report.[6] In June 1984 the Sheriff filed extensive comments on the monitoring report.[7]

III. Discussion

9. The Los Angeles County Sheriff's Department is the nation's sixth largest law enforcement agency.[8] It has staff of 7,800 personel and a fleet of over 1,200 vehicles. For communications, the Sheriff operates two separate radio systems. His "patrol radio system" for basic vehicular patrol services operates on thirty-eight frequencies in the 39 MHz band.[9] Twenty-six of these are used for thirteen dispatch frequency pairs, three are used for simplex dispatch operation, six are for simplex tactical and command post "talk around" channels, and three are for sensitive operations. The Sheriff's "investigative radio

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[1] Future Public Safety Telecommunications Requirements, Notice of Inquiry, 49 FR 9754 (1984).

[2] 47 U.S.C. 332(a); House Report No. 97–765, 97th Cong., 2nd Sess. 52 (1982).

[3] House of Rep. No. 98–350, 98th Cong., 1st Sess. 21 (1983).

[4] In his original petition, the Sheriff asked the Commission to reallocate 7 UHF television channels to the land mobile services, move stations operating on those channels to other channels and provide federal funding or compensation, establish more realistic television receiver standards so "taboos" based on these standards could be relaxed, permit large land mobile system operators to reserve spectrum, base channel loading standards on monitoring rather than number of mobile units, and immediately reallocate Channels 15 and 16 to public safety use in the Los Angeles area.

[5] With his Supplement, the Sheriff focused his petition on creating more UHF channels through adoption of more efficient spectrum utilization techniques such as changes in the taboos, allocating unused and new UHF channels to land mobile services, reserving at least 12 MHz of spectrum (the equivalent of two television channels) for public safety land mobile use, and assigning Channel 19 for public safety use in the Los Angeles area.

[6] FCC Field Operations Bureau Report 84–01, "Limited Spectrum Occupancy Study", February 1984 (FOB Report).

[7] Los Angeles County Sheriff's Department, "Response to Field Operations Bureau Limited Spectrum Occupancy Study FCC/FOB 84–01," (filed June 25, 1984) (Response).

[8] Los Angeles County Sheriff's Department, Supplement to Petition for Rule Making, RM–3975 (filed Nov. 4, 1983), page 17 (Supplement).

[9] Response at 20, 22, 23. At the time the Supplement was filed, the Sheriff operated with 35 frequencies: 20 were used for 10 duplex pairs and 15 were for simplex channels. Supplement at 19. The Sheriff has recently acquired additional 39 MHz frequencies for a total 40.

system" consists of portable and mobile units on ten freqency pairs in the 470 MHz band.[10] These are used for detective operations.

10. The Sheriff reports congestion on his radio systems in both the 39 and 470 MHz bands. The more serious problem, however, is with his patrol radio system in the 39 MHz band. As described by the Sheriff:

> *During busy periods, requests for emergency assistance [by patrol officers using their car radios] often are lost (unheard) or unreasonably delayed.* Waiting time to access a radio channel during average busy periods ranges from 1 minute 26 seconds to 3 minutes 46 seconds (a system utilization factor of 98%). Peak busy hour waiting is a maximum of 7.9 minutes.[11]

The Sheriff also reports that congestion results in delays in dispatching personnel in response to citizens' requests for service, failures to report arrivals at and departures from dispatch locations, and delays in communicating about other Sheriff's Department activities.

11. Because these congestion levels were significant enough to cause concern, the Chief Scientist asked the Sheriff for additional information about his system and about the studies on which he based his conclusions of system congestion.[12] The Commission's Field Operations Bureau also undertook to gather its own information on the usage of the Sheriff's frequencies.

12. The Field Operations Bureau's study, which involved periodic monitoring of fifty-nine of the Sheriff's frequencies in the 39 and 470 MHz bands from several different monitoring sites, provided data relating to the amount of time that the monitored channels registered voice or tone use. Our Field Operations Bureau and the Sheriff have applied different analytic techniques to this data and have reached conflicting conclusions about the occupancy rate of the monitored channels. The Sheriff has also used different testing methodology and reached different usage results for the same channels that were monitored by FOB. In addition the Sheriff has provided information about delays his officers experience in gaining access to channels, *viz.*, waiting time, a factor not measured in the FOB study. The Sheriff asserts that it is waiting time, not occupancy, that is critical.

13. We are not prepared at this time to make a judgment about what the Sheriff's loading is or ought to be. Nor can we define at this time what delays are tolerable for different public safety uses. As the Sheriff has pointed out, there are no definitive standards against which to measure the Sheriff's occupancy levels. There is also no model of how an ideal public safety radio system should be configured. These have been controversial points within the land mobile community in the past and, because developments in radio technology and uses are not static, agreement on appropriate standards has not been reached. With data available to us in this proceeding from only one system in one market, we, too, are reluctant to articulate standards.

14. Because the Sheriff's spectrum request is not based on congestion alone, we need not reach the issue of the acceptable usage levels for either the Los Angeles County Sheriff or public safety in general. We go forward with this proceeding on another basis, *i.e.*, the Sheriff's need for hand-held radios. When coupled with the unique and aggravating factors present in the Los Angeles Basin—the expansive geography, diverse topography and general spectrum congestion—the need for hand-held portables is a sufficient basis for our initiating this Notice of Proposed Rulemaking.

15. In his Supplement, the Sheriff has described his need for a communications system using portable hand-held units. We note that police departments in most major cities use communications systems with small portable radios carried by the officers, rather than rely solely on larger, more powerful units which must be vehicularly mounted. Portable units are vital to an officer's ability to use radio for back-up assistance or emergency help when away from his car. In subsequent contacts with the Commission, the Sheriff has emphasized the problem he faces in implementing a portable radio system with the frequencies now assigned to him at 39 MHz. The ambient noise present in major metropolitan areas, the propagation characteristics of 39 MHz frequencies, and system design considerations make their use impractical for meeting the Sheriff's portable radio requirements.

16. For these reasons, we agree that the Sheriff's need for a portable communications system is real and cannot realistically be met with the spectrum now available to him at 39 MHz. Although the Sheriff's spectrum at 470 MHz is compatible with portable equipment, the Sheriff has only ten channel pairs there, which are currently used by detectives. The Sheriff does not have enough spectrum at 470 MHz to accommodate his patrol use in addition to investigative use if equipment is used that is currently commercially available in this country. Because of assignments to others, sufficient land mobile channels suitable for portable radios are not available to meet the Sheriff's need in the Los Angeles area.[13]

17. In light of the Sheriff's need for portable radios and his inability to satisfy the need with spectrum already allotted for use in the Los Angeles area, the question before us is whether a suitable solution can be found. We have considered whether technology could offer relief by enabling the Sheriff to increase sufficiently the communications capacity of his 470 MHz band frequencies, the only band the Sheriff has that would permit portable radios to be used. Both narrowband technology, which can multiply the channel of a given amount of spectrum, and trunking, which makes better traffic management possible, may provide future relief to spectrum problems like the Sheriff's. However, these technologies do not provide a current solution in this case, given the Sheriff's need to improve his communications system immediately and at costs comparable to those of the commercial marketplace. Neither narrowband nor trunked system portable radios are currently manufactured or available in this country for public safety systems in the 470 MHz band.[14] These technologies may, therefore, be more appropriate as solutions to future rather than current spectrum inadequacies.[15] Moreover,

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[10] This spectrum was reallocated from television Channel 14 to land mobile use in Los Angeles with the Commission's decision in Docket 18261. *Land Mobile Use of TV Channels, First Report and Order*, 23 FCC 2d 325 (1970).

[11] Supplement at 20 (emphasis in original).

[12] Letter from Robert S. Powers, Chief Scientist, to Sheriff Sherman Block, December 2, 1983; letter from John D. Lane, Esq., Attorney for the Los Angeles County Sheriff's Department, to Robert S. Powers, December 7, 1983 (with enclosures).

[13] Spectrum released from the 800–900 MHz band reserves, for example, has already been assigned to others in the Los Angeles area. Land mobile spectrum at 150 MHz, 450 MHz, and 470 MHz has also been assigned to others.

[14] ACSB and narrowband FM systems are being developed for the 400 MHz and 900 MHz regions of the spectrum, and 400 MHz narrowband FM equipment is available outside the United States. ACSB production equipment is available for the 150 MHz band. On July 16, 1984, Sideband Technology, Inc., filed a petition for reallocation of the 216–222 MHz band to the private land mobile radio services for exclusive use by narrowband systems (RM-4831).

[15] We note that the Sheriff is planning to increase his communications capacity with digital equipment.

even if portables were available for a trunked system in the 470 MHz band, the Sheriff would still have insufficient spectrum in the 470 MHz band to handle his growing needs.

IV. Proposal

18. Because no technological solution is commercially available now for the 470 MHz channels available to the Sheriff, we are proposing to make spectrum available in the UHF television band to satisfy the Sheriff's compelling need for a public safety communications system that accomodates portable radios. Specifically, we are proposing to make frequencies available from Channel 19.

19. The Sheriff has proposed reallocation of Channel 19 from television broadcasting to public safety use in Los Angeles County. The Sheriff has stated his intention to conduct tests demonstrting that this reallocation is feasible and will not cause interference to television station KSCI–TV, which is licensed in San Bernardino and operates on Channel 18 from a transmitter site located between San Bernardino and Los Angeles. The station places a predicted Grade B or better contour over populated parts of Los Angeles County. Accordingly, a rule change to reallocate Channel 19 presents a viable solution only if the Sheriff's tests show that use of Channel 19 will not cause harmful interference to reception of the Channel 18 signal of Station KSCI–TV.

20. We find use of Channel 19 by the Sheriff to be an attractive solution for meeting the Sheriff's public safety spectrum needs because, if technically and operationally feasible, the Sheriff's needs can be met without any loss of television service.[16] Because channel 18's signal covers much of the Los Angeles area, Channel 19 cannot be used for television in Los Angeles. At the same time, Channel 19 spectrum can solve the Sheriff's needs. First, Channel 19 frequencies are compatible with portable communications; indeed, portable equipment is commercially available. Second, there are sufficient channels available to avoid congestion. Finally, the spectrum is adjacent to the Channel 20 frequencies used by the City of Los Angeles Police Department (L.A.P.D.), thereby permitting the L.A.P.D. and the Sheriff to use radios that can tune across both Channel 19 and Channel 20 frequencies. Such mutual aid compatibility is an important asset, given the unique configuration of Los Angeles County and the interlocking jurisdictions of L.A.P.D. (within the incorporated city limits) and the Sheriff (all unincorporated areas of the county). There are areas of the county, for example, where one side of a street is under L.A.P.D. authority and the other is side under the Sheriff's jurisdiction. It is not uncommon in a vehicular pursuit for the pursued car to cross jurisdictions several times. The ability of the two departments to communicate by radio (at present they can only communicate by telephone) would thus promote their ability to foster public safety.

21. We are also cognizant, however, that reallocation of Channel 19 for public safety use in Los Angeles County would require modification of the television/land mobile sharing rules adopted in Docket 18261. The rules adopted in that docket preclude the operation of land mobile systems within the service area of a television station operating on an adjacent channel.[17] Because KSCI-TV is licensed to operate on channel 18 from a location between San Bernardino and Los Angeles, land mobile use of Channel 19 in the Los Angeles area does not meet the minimum separation distance for interservice sharing provided in Docket 18261 and would ordinarily not be permitted.

22. The Sheriff asserts, however, that a system can be engineered to meet his needs without causing interference to television reception.[18] He has filed an engineering statement claiming that the sharing criteria adopted in Docket 18261 are overly restrictive and that mobile use of Channel 19 in Los Angeles is feasible under certain conditions. To demonstrate that Channel 19 can be used without causing television interference, the Sheriff started tests in early September. According to his draft test plan, submitted to the Commission's staff on July 9, 1984.

The testing program will establish technical criteria for design and development of a Land Mobile radio system in the 500–506 MHz band in a manner which will not cause interference to the reception of KSCI, Channel 18.

The procedure, as briefly outlined in the draft test plan and as elaborated to the Commission's staff on August 7, 1984, will commence with laboratory work to establish criteria for land mobile use of Channel 19. This is expected to be followed by field tests and measurements at specific frequencies. The Sheriff has stated that he will advise the licensee of Channel 18 of his test plan and invite the licensee's representatives to observe the actual field studies. We expect that these test results will be submitted to the Commission as soon as they are completed and in no event later than the deadline for filing comments in this proceeding.

23. Obviously, we are concerned whether general land mobile operation on Channel 19 might cause harmful interference to reception of Station KSCI-TV, Channel 18, within its service area. For this reason, we will give careful consideration to the results of the Sheriff's test and any others that might be conducted before considering adoption of any final rules to permit land mobile use of Channel 19.

24. We note, moreover, that while harmful interference to Channel 18 might result if we reallocate Channel 19 for land mobile use in Los Angeles County without any restrictions, a carefully engineered system might be able to avoid this problem. The Sheriff maintains that he could carefully engineer a system using portions of Channel 19 spectrum to avoid any such interference. Should the Sheriff's test show that Channel 19 is usable, but only with restrictions, we will consider waiving our rules to allow operation of a specific system carefully designed to avoid interference to reception of Channel 18, rather than changing our rules to reallocate Channel 19 in the Los Angeles area. We note, however that dependency on careful engineering to avoid interference to Channel 18 might restrict the Sheriff's ability to modify or expand his system once it is built. Additionally, the licensee of Channel 18 might be limited in its ability to modify its facilities in a way which would change the interference relationship between its signal and any authorized public safety mobile system using Channel 19 frequencies. Both the Sheriff and KSCI-TV are therefore urged to

[16] We refer to existing or potential full power television. We are not considering the loss of potential low power service in our analysis. Currently, a number of LTV applications are pending for use of Channel 19 in Southern California. Some pending applications propose to serve various communities north of Los Angeles County, while the rest propose to serve various communities in and around the San Diego area. Thus, while it appears that some of these would not be foreclosed, the use of Channel 19 by the Sheriff could preclude the licensing of some of these applications. Where there is such a conflict, however, we believe we should give priority to the Sheriff. *See Neighborhood TV Company, Inc. v. FCC, supra* at 29. A list of potentially affected low power applicants is contained in the attached Appendix.

[17] 47 CFR Part 90, Subpart L: *First Report and Order, Docket 18261*, 23 FCC 2d 323 (1970).

[18] While we do not believe that definitive conclusions can be drawn, we note that the Sheriff has advised us that he received no interference complaints during the 1984 Summer Olympics, when Channel 19 was temporarily used for land mobile communication. Our Field Operations Bureau also received no complaints.

address these matters in their comments.

25. We also note the possibility that Channel 18 might receive harmful interference even from a carefully engineered land mobile system. In that event, we may have to make a public interest determination that balances the level of interference to Channel 18 against the public safety need for spectrum by the Los Angeles County Sheriff's Department. Accordingly, in this proceeding, we might take action that results in an order of modification of KSCI-TV's license in order to permit the Sheriff's use of some Channel 19 frequencies in the Los Angeles area. Pursuant to section 316 of the Communications Act, as amended, KSCI-TV has an opportunity in this proceeding to protest the proposed modification. 47 U.S.C. 316(a). We invite all interested parties to comment on this balancing.[19] We also invite comment on what effect the congressional mandate that we give public safety use of spectrum top priority in spectrum allocation decisions should have on our decision.

26. Finally, we note that low power television station K2OAA, Bear Valley Springs, California, operates on Channel 20 with a transmitter approximately 23 miles north of the northern border of Los Angeles County. While we have not addressed the general question of land mobile interference to low power television stations in our rules,[20] we have considered whether such interference might be a problem here and have concluded that it is not.[21] We invite K2OAA to comment on our analysis here and on any impact the proposed land mobile operation may have on its service. If there is any conflict, however, we believe priority should be given to the Sheriff.

V. Conclusions

27. We are proposing, by rule making or waiver, to reallocate or otherwise allow use of Channel 19 or some frequencies thereof, it there will be no undue interference to Channel 18. We believe that such reallocation is warranted in order to permit the Sheriff to construct a modern communications system, compatible with operation of portable handheld radio units, which can adequately serve the Sheriff today and for the next several years. We believe that allowing use of frequencies from Channel 19 would achieve this goal without disrupting or eliminating television service. We ask interested persons to comment on our proposal and to address how we should weigh and balance the advantages and disadvantages in light of the Sheriff's need for an improved communications system, the potential impact on broadcasting, statutory guidance in 47 U.S.C. 332(a) and section 9 of the Federal Communications Commission Authorization Act of 1983, Pub. L. 98–214, 97 Stat. 1467, and the recent court decisions in *National Association of Broadcasters* v. *Federal Communications Commission, et al., supra,* and *Neighborhood TV Company* v. *FCC, supra.* In reaching a decision in this proceeding, we will consider the test to be conducted by the Sheriff, the resulting reports, comments regarding this and any other tests which may be conducted, and comments associated with this Notice.[22] We also invite parties to suggest any alternatives that they believe present a better solution. In doing so, we ask such commenters specifically to discuss why Channel 19 is not viable or desirable in their opinion, how their suggested alternative would meet the Sheriff's needs, and whether other services would be disrupted.

VI. Procedural Matters

28. Authority for issuance of this Notice of Proposed Rule Making is contained in sections 4(i), 302, 303 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303, and 316. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before December 20, 1984 and reply comments on or before January 4, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

29. The Secretary is directed to serve a copy of this Notice by Certified Mail to Bear Valley Property Owners Association, the licensee of K20AA, Channel 20, Bear Valley Springs, California, and by First Class Mail to those applicants for low power television stations listed in the attached Appendix.

30. The Secretary is further directed to serve a copy of this Notice by Certified Mail on Global Television, Inc., the licensee of KSCI–TV, Channel 18, San Bernadino, California.

31. Global Television, Inc., is hereby made a party to this proceeding and is afforded an opportunity to submit comments on the relevant proposals contained herein within the comment and reply period specified above and specifically to state reasons why such actions should not be taken, if it has any objection.

32. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission Public Reference Room at its headquarters, Room 239, 1919 "M" Street, NW., in Washington, D.C.

33. For further information concerning this proceeding, contact Don Precure, Office of Science and Technology (202) 653–8170. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte,* contacts are prohibited in Commission proceedings such as this one, which involve channel assignments and potential modifications to outstanding broadcast licenses. *See,* 47 CFR § 1.1207(d). An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially

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[19] Should there be interference complaints resulting from the Sheriff's use of Channel 19, if such use is subsequently authorized, we would expect the Sheriff to correct any reported interference problems involving the Sheriff's operation that exceed any interference we may define as acceptable at the conclusion of this proceeding. We would not expect to provide relief from any interference within the range we may conclude is acceptable.

[20] In *Low Power Television Service,* 47 FR 21468, 21479, 51 RR2d 476, 499 (1982), the Commission provided that low power stations would be authorized on a secondary basis to stations in primary allocations existing at that time. *See Neighborhood TV Company, Inc. v. FCC, supra.*

[21] In reaching this conclusion, we assumed that a land mobile base station using the maximum power and height permitted by our rules would be located along the Los Angeles County border at the point nearest K2OAA's transmitter. Applying the field strength curves in 47 CFR 73.699, fig. 10b, to this hypothetical base station, we have concluded that its interference contour would fall several miles short of K2OAA's 74 dBu service contour calculated on the basis of K2OAA's actual antenna height, a calculation more advantageous to K2OAA than the height above average terrain provided by 47 CFR 74.707(a). In making this analysis, we used the same O dB desired to undesired signal ratio as was used in developing the sharing criteria for full service television stations and land mobile operations in Docket 18261, *Notice of Proposed Rule Making,* 14 FCC 2d 297, 300 (1968), *adopted in First Report and Order,* 23 FCC 2d 325 (1970). In addition, consideration shielding can be expected from the mountain range between K2OAA's transmitter site and the Los Angeles County border.

[22] As stated above, we expect the Sheriff to file his test results no later than the date he files his comments in this proceeding.

filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not to be considered in the proceeding.

34. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96–354, we find that the proposed action herein would not have, if adopted, a significant economic impact on a substantial number of small businesses. At most, this proposed action would not have an impact on more than 45 small businesses (primarily low power TV applicants). Moreover, it does not propose to displace anyone currently assigned to any of the bands being considered in this proposal. Any allocation alternative being considered herein would only provide spectrum, which is currently unused by its assigned service, for shared use by public safety users.

35. It is ordered that a copy of this Notice of Proposed Rule Making be served upon the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix—LPTV Applications Possibly Affected by LM Use of Channel 19 in Los Angeles County

The following applications to operate low power television stations on channel 19 may be affected by this proposed land mobile use of channel 19 in Los Angeles County:

LPTV applicant	Distance from Los Angeles (miles)	City to be served
Blacks Desiring Media, Inc	64	Edwards, CA northeast of L.A.
Howard LP Television, Inc	91	Escondido, CA southeast of L.A.
Broadcast Data Corp	96	San Diego, CA.
Carter Broadcasting Corp	96	Do.
Connecticut Home Theater	96	Do.
Echonet Corp	96	Do.
Figgie Communications	96	Do.
George Fritzinger	96	Do.
Minority Communications	96	Do.
N & K LPTV Inc	96	Do.
Wade Comm. Group Inc	96	Do.
Baby Boom Broadcasting	103	Escondido, CA.
Amer. Television Network	103	Rancho Santa Fe, CA S.E. of L.A.
Catholic Views Broadcasting	103	San Diego, CA, etc.
Tel-Radio Comm. Properties	110	San Diego, CA.
High Desert Broadcasting	112	Ridgecrest, CA northeast of L.A.
Arnold N. Applebaum	113	Ridgecrest, CA.
Evangelina Garcia Garza	113	Do.
Evarista Romero	113	Do.
Jo Ann's Balloon Boutique	113	Do.
Juan Ramon Ortiz	113	Do.
Juan Villareal	113	Do.
Lidia Rodriguez	113	Do.
Mike A. Mendoza	113	Do.
Minerva Rodriguez Frias	113	Do.
Latin America, TV Ltd	113	San Diego, CA.
Austin B. Petersen	117	Do.
Bernard Q. Petersen	117	Do.
Debra M. Kamp	117	Do.
Gregory A. Petersen	117	Do.
Kurt J. Petersen	117	Do.
Quentin L. Breen	117	Do.
Theresa P. Miller	117	Do.
Cassidyne Productions Inc	120	Do.
Charles Billings	120	Do.
Metro TV	120	Do.
Media Properties	120	Do.
Millard V. Oakley	120	Do.
Northcoast Broadcast Corp	120	Do.
Vistacom	120	Do.
Hi-Desert Publishing Co	135	Bagdad, CA northeast of L.A.
Arnold N. Applebaum	164	Paso Robles, CA northwest of L.A.
Marie G. Bernier	164	Paso Robles, CA.
Response Broadcasting Corp	164	Do.
Eddie Robinson	164	San Luis Obispo, northwest of L.A.

Concurring Statement of Commissioner James H. Quello

In re: Notice of Proposed Rule Making proposing interim relief requested by the Los Angeles County Sheriff in his petition, RM–3975.

I relunctantly concur because I believe that this Notice of Proposed Rulemaking is premature. The record is far from convincing that interim relief is required and it is far from clear that the relief proposed in the Notice is appropriate.

The Sheriff began by insisting that the spectrum assigned to him was insufficient for his needs, that his radio channels were very congested and that communications supporting his public safety mission were inadequate. After the Commission's Field Operations Bureau attempted to confirm channel congestion and found, as a preliminary matter, that the channels appeared to be lightly loaded, the Sheriff attacked the Bureau's study and then hastened to assert that the "real problem" was that he needed hand-held units for his patrol force to be used outside of vehicles. Hand-held units for use at 39 MHz, it was further asserted, were unwieldy and of too limited range. Hand-held units are available at 39 MHz albeit with longer antennae and shorter range than UHF.

The licensee of Channel 18 is alerted by this Notice that he may be subject to significant interference and that his license may be subject to modification to accommodate such interference. Should such interference require a significant modification, it can only increase the burden of proof that the Sheriff has yet to meet.

While I believe this document should properly be captioned a Notice of Inquiry, I reluctantly support it as characterized only to invite public comment on the unresolved questions which remain. First, I invite comment on the need for additional spectrum. Second, assuming that need can be established, I am interested in alternatives to the solution proposed.

I share my colleagues' concern that this Commission give special attention to the communications needs of the public safety services. The simple assertion of such a need, however, requires a leap of faith that I am not yet ready to make. Should the comments prove convincing, I will support this significant policy change.

Therefore, I concur.

[FR Doc. 30495 Filed 11–20–84; 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; Proposed Endangered Status for Two Kinds of Northern Flying Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for two kinds of northern flying squirrel found in the Appalachian Mountains of North Carolina, Tennessee, Virginia, and West Virginia. Both are evidently very rare and jeopardized by habitat loss, human disturbance, and competition with, and the transfer of a lethal parasite from, the more common southern flying squirrel. This proposal, if made final, would extend the protection of the Endangered Species Act of 1973, as amended, to these two kinds of northern flying squirrel. The Service seeks data and comments from the public.

DATE: Comments from the public and the States of North Carolina, Tennessee, Virginia, and West Virginia must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. Comments and materals received will be available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The so-called flying squirrels do not actually fly, but are capable of extensive and maneuverable gliding by means of a furred, sheetlike membrane along the sides of the body, between the fore and hind limbs. There are 35 species, most of them in the forested parts of Eurasia (Nowak and Paradiso 1983). Only two species occur in North America: The southern flying squirrel (*Glaucomys volans*), found in extreme southeastern Canada, the eastern half of the United States, Mexico, and Central America; and the northern flying squirrel (*Glaucomys sabrinus*), found mainly in Canada, Alaska, and the western and northern parts of the conterminous United States (Hall 1981).

Until well into the 20th century, *G. sabrinus* was not known to occur in the eastern United States to the south of New York. Then, Miller (1936) described the subspecies *G. s. fuscus*, based on specimens collected in the Appalachian Mountains of eastern West Virginia, and Handley (1953) described *G. s. coloratus* from specimens taken in the Appalachians of eastern Tennessee and western North Carolina. Subsequently, *G. s. fuscus* was found also in the southwestern part of Virginia (Handley 1980). For purposes of convenience, *G. S. coloratus* may be referred to as the Carolina northern flying squirrel, and *G. S. fuscus* as the Virginian northern flying squirrel.

According to Handley (1953), seven specimens of *G. s. Coloratus* averaged 286 millimeters (11¼ inches) in total length and 134 millimeters (5¼ inches) in tail length, and five specimens of *G. s. fuscus* averaged 266 millimeters (10½ inches) in total length and 115 millimeters (4½ inches) in tail length. The coloration of both subspecies is generally brown above and buffy or orange white below. *G. s. coloratus* is the darker of the two, but both are considerably darker than the subspecies of *G. s. sabrinus* found farther to the north in the eastern U.S.

There has long been recognition that *G. s. coloratus* and *G. s. fuscus* are rare and that their survival might be in jeopardy. Since their original discovery, only about 30 specimens are known to have been collected, dead or alive, and at only about 8 localities. Recent efforts have failed to find these squirrels at most of these same localities. There are numerous actual or potential problems. Both subspecies may have been declining since the Pleistocene, along with the contraction of suitable boreal forest habitat. That now have relictual distributions in widely scattered areas at high elevations. Their decline has probably been accelerated through clearing of forests and other disturbances by people. They apparently are being displaced in at least some areas by the more adaptable and aggressive southern flying squirrel (*G. volans*). In addition, there is growing evidence that the nematode parasite *Strongyloides*, which is carried without obvious harm by *G. volans*, is being transferred to *G. sabrinus* with lethal effect.

Handley (1980) classified *G. s. fuscus* as "endangered" in Virginia. The West Virginia Department of Natural Resources includes this subspecies in its list of animals of special concern, and refers to it as being of "scientific interest." Weigl (1977) classified *G. s. coloratus* as "threatened" in North Carolina. Kennedy and Harvey (1980) indicated that *G. s. coloratus* is considered to be "deemed in need of special management" by the Tennessee Wildlife Resources Agency and to be of "special concern" by the Tennessee Heritage Program. In a report published by the U.S. Forest Service, Lowman (1975) stated that *G. s. coloratus* and *G. s. fuscus* are "threatened" in Virginia, North Carolina, and Tennessee.

In its Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (48 FR 58454–58460), the U.S. Fish and Wildlife Service placed both subspecies in category 2, meaning that a proposal to list as endangered or threatened was possibly appropriate, but that substantial data were not then available to biologically support such a proposal. Subsequently, the Service received a report from Dr. Donald W. Linzey (1983), who had been contracted more than three years earlier to investigate the status of the two flying squirrels. The data in Dr. Linzey's report, along with other new information assembled by the Service, show that a proposal to list both squirrels as endangered is now warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.* and regulations promulgated to implement the listing provisions of the Act (to be codified in 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the two northern flying squirrels, *Glaucomys, sabrinus coloratus* and *G. s. fuscus*, are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to Professor Peter D. Weigl of Wake Forest University (1977, and pers. comm., March 2, 1984), *G. s. coloratus* and *G. s. fuscus* occur primarily in the ecotone, or vegetation transition zone, between the coniferous and northern hardwood forests. Both forest types are used in the search for food, while the hardwood areas are needed for nesting sites. As these squirrels are adapted to cold, boreal conditions, their range has probably been contracting since the end of the Pleistocene (Ice Age). They now have a relictual distribution, restricted to isolated areas at high elevations, separated by vast stretches of unsuitable habitat. In these last occupied zones, the squirrels and their habitat may be coming under increasing pressure from human disturbance, such as logging and development of skiing and other recreational facilities. Handley (1980) stated that while the range of *G. s. fuscus* had probably

already been fragmented prior to the arrival of European settlers, its decline has undoubtedly been accelerated by the clearing of forests during the past 200 years, and that it must be on the verge of extinction in Virginia. Lowman (1975) considered both subspecies to be threatened "due to reduction of habitat by logging and other land use."

Available evidence indicates that *G. s. coloratus* and *G. s. fuscus* are rare and that their historical decline is continuing. The two subspecies are represented by only 28 specimens in museum collections (Linzey 1983; West Virginia Department of Natural Resources, pers. comm., April 25, 1984). A few other individuals have been captured alive and then released. The museum specimens were taken in 7 separate areas of North Carolina (Yancey County), Tennessee (Carter and Sevier Counties), Virginia (Smyth County), and West Virginia (Pocahontas and Randolph Counties). Weigl (1977), in a paper prepared for a symposium in 1975, stated that in the previous 10 years the two subspecies had been captured only in 2 of these areas—the Roan Mountain vicinity of Carter County, Tennessee, and Whitetop Mountain, Smyth County, Virginia. He noted that 8 weeks of trapping in 1965–1966 in the Mount Mitchell area of Yancey County, North Carolina, the type locality of *G. s. coloratus*, had failed to find a single individual. Weigl (pers. comm., March 2, 1984) added that during the past few years he had failed to find *G. s. coloratus* in the Roan Mountain area.

Linzey (1983) reported the results of a 40-month search for *G. s. coloratus* and *G. s. fuscus* throughout their range. During this investigation, he placed 490 nest boxes at 35 sites in Maryland, North Carolina, Tennessee, Virginia, and West Virginia, including 6 of the 7 areas in which the subspecies had been previously collected. The boxes were checked at regular intervals, and any occupants were captured and identified. Only 3 individual northern flying squirrels were found in the course of the study. In April 1981, a pair of *G. s. coloratus* was caught in the Mount Mitchell area of North Carolina, and in May 1981 an adult female *G. s. fuscus* was taken in an area of Pocahontas County, West Virginia, from which the subspecies was not previously known. All 3 individuals were marked and released. This investigation thus showed that both subspecies still exist, but that they are very rare and perhaps no longer present in much of their former range.

B. *Overutilization for commercial, recreational, scientific, educational purposes.* The subject subspecies are not known to be jeopardized by human utilization. Nonetheless, flying squirrels are highly desirable as pets to some persons, and collecting for such purposes is at least a potential threat to the already rare *G. s. coloratus* and *G. s. fuscus*.

C. *Disease or predation.* Weigl (pers. comm., March 2, 1984) suggested that increasing human recreational use of northern flying squirrel habitat might result in predation of *G. s. coloratus* and *fuscus* by pets, especially cats.

D. *Other inadequacy of existing regulatory mechanisms.* Not now known to be applicable.

E. *Other natural or manmade factors affecting its continued existence.* According the Handley (1980), logging and other clearing activity has not only reduced the original habitat of the northern flying squirrel (*G. sabrinus*), but resulted in an invasion of this zone by the southern flying squirrel (*G. volans*). Regrowth in cleared areas, if any, tended to be deciduous forest favored by *G. volans*, and hence the way was opened for the spread of that species.

Weigl (1978) pointed out that originally there was apparently little overlap between the ranges of the two species, with *G. sabrinus* found in the higher elevations of the Appalachians and *G. volans* in the lower. When *G. volans* began to expand into the habitat of *G. sabrinus*, however, it seems to have successfully competed with and displaced the latter species. Weigl's studies of captive animals have demonstrated that *G. volans*, though smaller than *G. sabrinus*, is more aggressive, more active in territorial defense, and dominant in competition for nests. When the two species meet in an ecotone betweeen coniferous and deciduous forest, *G. volans* would be expected to force *G. sabrinus* out into the purely coniferous zone, which lacks favorable nesting sites, and thus the breeding level of the latter species would be reduced.

In addition to its success in direct confrontations, *G. volans* has evidently employed a more subtle, but deadly, biological mechanism against *G. sabrinus*. Weigl (1975, and pers. comm., March 2, 1984) maintained captive colonies of the two species in adjacent outdoor aviaries. All the *G. sabrinus* weakened and died within three months, and this mortality was associated with heavy infestations of the nematode parasite *Strongyloides*. All the *G. volans* also carried the parasite, but they remained in apparent good health and continued to breed. Subsequently, *Strongyloides* was found in five wild populations of *G. volans* in North Carolina, but never in wild *G. sabrinus*. Experiments in captivity, however, demonstrated that *Strongyloides* could be transferred from *G. volans* to *G. sabrinus*. Apparently, *G. volans* is the natural host of this parasite and has developed an immunity to its ill effects. Under original conditions, with the two squirrel species occupying largely separate ranges, there would have been little interchange. When contact between the two was increased through habitat disruption, *Strongyloides* could spread to *G. sabrinus*, which lacked any immunity, and thus could serve as a powerful competitive weapon for *G. volans*.

Because of its ability to displace *G. sabrinus* by the means described above, *G. volans* seems to have taken over much of the former's range in the Appalachians. Handley (1980) reported that in Virginia *G. volans* now occurs to the tops of the highest mountains and occupies the best remnants of habitat that is suitable for *G. sabrinus*. Weigl (pers. comm., March 2, 1984) stated that he has failed to trap *G. sabrinus* at Roan Mountain, Tennessee during the past few years, but at the same time has found *G. volans* to be more abundant at higher elevations in this area. As noted above, Linzey (1983) captured only 3 specimens of *G. sabrinus* during 40 months of study, and yet an effort had been made to place the nest boxes in areas that appeared to have habitat suitable for the species, including most of the localities from which it had previously been recorded. In these same nest boxes, Linzey captured at least 29 individual *G. volans*.

The decision to propose endangered status for the Carolina and Virginia northern flying squirrels was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. Critical habitat is not being proposed, because it would be imprudent to do so. A decision to take no action would exclude the two flying squirrels from needed protection pursuant to the Endangered Species Act. A decision to propose only threatened status would not adequately express the evident rarity and multiplicity of problems of these animals. Therefore, no action or lising as threatened would be contrary to the intent of the Act.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the

determination that a species is endangered or threatened. The Service finds that designation of critical habitat for the Carolina and Virginia northern flying squirrels is not prudent at this time. Flying squirrels in general are popular as pets (see, for example, Lowery 1974). Although the two subject subspecies are not now known to be collected for this purpose, publication of a precise critical habitat description and map could expose these rare and vulnerable animals to increased disturbance and taking. Moreover, the nest boxes placed during the recent status survey are still present and being used for study. These boxes are readily visible and flying squirrels may be easily trapped therein during their diurnal period of inactivity. Any publicity regarding the location of these boxes should be avoided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with the States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29989). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No specific Federal activities that may be affected in this regard, with respect to the proposed listing of the Carolina and Virginia northern flying squirrels, are known at this time. Much of the region that these squirrels may inhabit, however, is within national forest land. Therefore, certain actions by the U.S. Forest Service, such as timber sales, establishment of recreational facilities, and spraying of insecticides, may become subject to conferral and/or consultation.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife species. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any Carolina or Virginia northern flying squirrel. It would also be illegal to possess, sell, deliver, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will now review the Carolina and Virginia northern flying squirrels to determine whether they should be placed on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, or considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any rules finally adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the Carolina and Virginia northern flying squirrels;

(2) The location of any additional populations of these species and the reasons why any of their habitat should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible impacts on the Carolina and Virginia northern flying squirrels.

Final promulgation of the regulations on the Carolina and Virginia northern flying squirrels will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Director (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240.

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endanged Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References

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Weigl, P.D. 1975. Parasitism as a possible biological weapon affecting the ranges and interactions of the flying squirrels, *Glaucomys volans* and *Glaucomys sabrinus*. Paper presented at 55th Annual Meeting, Amer. Soc. Mammalogists, Univ. Montana, 6 pp.
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Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: 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 [16 U.S.C. 1531 *et seq.*].

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		*
Squirrel, Carolina northern flying.	*Glaucomys sabrinus coloratus.*	U.S.A. (NC, TN)	Entire	E		NA	NA
Squirrel, Virginia northern flying.	*Glaucomys sabrinus fuscus.*	U.S.A. (VA, WV)	do	E		NA	NA
*	*	*	*	*	*		*

Dated: October 31, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–30475 Filed 11–20–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Hoffmanseggia Tenella To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine endangered status for a plant, *Hoffmanseggia tenella* (slender rush-pea). Historically, this plant has been reported from three localities in Nueces and Kleberg Counties, Texas. Currently, only one population is known to exist and it is threatened by the encroachment of King Ranch bluestem and bermuda grass. There is no current management plan for slender rush-pea, nor is there State or Federal protection. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Hoffmanseggia tenella*. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) [505/766–3972, FTS 474–3972].

SUPPLEMENTARY INFORMATION:

Background

Historically, this plant has only been known from two Texas counties. It was first collected by Mrs. F. E. Clements between Robstown and Alice, Nueces County, Texas on November 22, 1931. Tharp and Williams described the plant as *Hoffmanseggia tenella* (Williams 1936). Another collection was made in 1964 from the King Ranch in Kleberg County. The only other known records were collections from Nueces County by Mary Johnson in 1976 and Geyata Ajilvsgi in 1982. A field survey of the area, conducted in 1982, resulted in only one population (with only three individual plants) being found in Nueces County. This population was found near Petronilla Creek and State Highway 70 in an eroded area and along the highway in a gravel dump. Two plants in the existing population are located on private property, and one plant is located on adjacent State Highway right-of-way (Ajilvsgi, pers. comm., 1984).

Hoffmanseggia tenella is a perennial in the bean family with stems 8 to 15 centimeters (cm) tall terminating in a 3-5-flowered inflorescence without glands. The flowers are orange and approximately 5 millimeters (mm) long with 10 stamens. The leaves are bipinnately compound; petioles are up to 13 cm long, leaflets are in 5 or 6 pairs on each of 3 to 7 pinnae, are oblong, 2 to 4 mm long and 1 to 2 mm broad. The legumes are 12 to 15 mm long, 4 to 6 mm broad, and contain from 2 to 4 seeds. Flowering usually occurs from early March to June, sporadically thereafter depending upon the rainfall.

The one known population of *Hoffmanseggia tenella* occurs in the Blackland Prairie Area of the Gulf Coastal Prairie. The habitat of this plant is the hard clay soil of creek banks and associated barren areas where King Ranch bluestem is absent (Mahler 1982).

The surrounding vegetation consists largely of two grasses, King Ranch bluestem and bermuda, which have been introduced into the area for roadside management and range improvement. Observation of this taxon shows that it occurs in the lower seral stages of succession, and may possibly be a pioneer species. *Hoffmanseggia tenella* is an invader species of highly disturbed soils where it persists until it is crowded out by competition from other encroaching species. The population biology and ecology of this species are relatively unknown and additional studies are needed.

This first Federal action involving this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)A); and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Hoffmanseggia tenella* was included in the 1975 Smithsonian report, the July 1, 1975 notice, and the June 16, 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979 Federal Register (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals which had expired. A revised notice for plants was published in the December 15, 1980 Federal Register (45 FR 82480) and included *Hoffmanseggia tenella* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980 Notice of Review were considered to be petitioned, and the deadline for a finding on those species including *Hoffmanseggia tenella* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hoffmanseggia tenella* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(ii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

A status report compiled by Dr. W.F. Mahler in 1982 and investigations carried out by Service botanists and others have provided new biological data which are included in this proposal. These new data include recent documentation of low numbers of plants and threats to the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 3890, to be codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hoffmanseggia tenella* Tharp & L.O. Wms. (slender rush-pea) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the continued existence of *Hoffmanseggia tenella* is the alteration of this species' habitat. The single known population in Nueces County was found growing in an eroded area, which indicates that this plant demands an ecological niche in one of the lower seral stages of succession (Mahler 1982). However, the habitat for *Hoffmanseggia tenella* in the Texas Gulf Coastal Prairie has been severely limited because non-native, introduced grasses, such as King Ranch bluestem and bermuda, have escaped into uncultivated areas. As a result, the native grasses and forbs are being eliminated from the natural vegetation. In addition, private and public land owners have altered the natural habitat to prevent soil erosion, to improve rangeland, and to control prairie fires. Roadside management practices have diminished the waste areas along public roads and highways by seeding the area with King Ranch bluestem and bermuda. Private land owners have also adopted the practice of planting King Ranch bluestem to preserve rangeland from possible soil erosion, or to increase usable rangeland. These practices have destroyed the natural system of the Texas Gulf Coastal Prairie, which provided disturbed habitat for *Hoffmanseggia tenella*. The result of these practices has been that the habitat for *Hoffmanseggia tenella* on the Texas Gulf Coastal Prairie has been severely limited because the introduced grasses have escaped into uncultivated areas. Therefore, the native grasses and forbs are being eliminated from their natural habitat. With only one population in Nueces County, this species is extremely vulnerable, and is subject to complete elimination if there is any more modification to its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist; however, critical habitat is not being proposed because of the potential for collecting and vandalism. The existing population is not located on Federal lands and therefore would not be protected from taking by the Endangered Species Act. Excessive recreational and scientific use is not known or anticipated.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hoffmanseggia tenella* is not protected by either Federal or State laws.

E. *Other natural or manmade factors affecting its continued existence. Hoffmanseggia tenella* is in a particularly precarious situation because it is limited to one known population. The seriousness of this problem is compounded by this population consistency of only three plants. This species' genetic variability is severely limited and therefore less able to accommodate the stress of changes in its physical environment. With ony one population known to exist, this taxon is especially vulnerable to minor artificial or natural disturbances (Mahler 1982).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hoffmanseggia tenella* as

endangered without critical habitat. Endangered status seems appropriate because there is only one known population of this species with three individual plants, and the habitat that this plant must have to exist is rapidly decreasing because of the introduction of King Ranch bluestem. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Act does not protect endangered plants from taking or vandalism on lands which are not under Federal jurisdiction. This would result in an especially severe problem for *Hoffmanseggia tenella*, whose habitat is located along a state highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hoffmanseggia tenella* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery action, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existance of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existance of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hoffmanseggia tenella* is not known to occur on Federal lands, and there are no known Federal actions that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hoffmanseggia tenella*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Hoffmanseggia tenella*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Hoffmanseggia tenella* occurs primarily on private land. At present, no populations are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hoffmanseggia tenella;*

(2) The location of any additional populations of *Hoffmanseggia tenella* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hoffmanseggia tenella.*

Final promulgation of the regulation on *Hoffmanseggia tenella* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differes from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed withing 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Mahler, W. F. 1982. Status report on *Hoffmanseggia tenella.* U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 10 pp.

Williams, L. O. 1936. Field and Herbarium Studies, IV. Annals of the Missouri Botanical Garden 23:451–452.

Author

The Primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Alburquerque, New Mexico 87103 (505/766–3972, FTS 474–3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 FTS 235–1975). Status information was provided by Dr. W. F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692–2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: 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 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Legume family						
Hoffmanseggia tenella	Slender rush-pea	U.S.A. (TX)	E		NA	NA

Dated: November 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30474 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposal to designate critical habitat for the Key Largo woodrat and Key Largo cotton mouse is reopened. Both of these federally-listed endangered species are native to Key Largo, Monroe County, Florida.

DATES: The comment period reopens on November 21, 1984. Comments must be received by May 8, 1985.

ADDRESSES: Comments and materials should be sent to the Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals native to the tropical hardwood forests of Key Largo, Monroe County, Florida. The range of both species on Key Largo has been reduced by commercial and residential development, and projected future development jeopardizes much of the remaining habitat of these rodents.

In the **Federal Register** of September 21, 1983 (48 FR 43040), the Service issued an emergency rule determining endangered status for the Key Largo woodrat and cotton mouse, pursuant to the Endangered Species Act of 1973, as amended. The emergency designation expired on May 18, 1984. On February 9, 1984 (49 FR 4951), the Service proposed permanent endangered status and critical habitat for both species. A public hearing on the proposal was held April 24, 1984, in Tavernier, Monroe County, Florida. On August 31, 1984 (49 FR 34504), the Service published a final rule determining permanent endangered status for the Key Largo woodrat and cotton mouse. The critical habitat designation was deleted from the final rule to expedite the listing process, as provided for by section 4(b)(6)(C) of the Act, as amended in 1982. Section 4(b)(6)(C) requires, however, that critical habitat be designated within 2 years of its proposal, if not designated concurrently with the final regulation listing the species.

On July 20, 1984, Mr. Lindell Marsh, an attorney representing several landowners on north Key Largo, requested the Service to attend a meeting to begin development of a habitat conservation plan pursuant to section 10(a) of the Act. The purpose of the plan would be to resolve conflicts between development and endangered species on north Key Largo. Participants in the plan would include appropriate State and local agencies, landowners, and conservation groups. The approval of a permit pursuant to section 10(a) of the Act would allow incidental take of federally endangered species on north Key Largo, provided that such take was mitigated by conservation measures and would not appreciably reduce the likelihood of the survival and recovery of any such species in the wild.

Section 4(b)(2) of the Act requires that economic and other impacts be taken into consideration when specifying critical habitat. Since development of a conservation plan for north Key Largo would be likely to generate considerable additional data on the economic and other impacts of critical habitat designation for the Key Largo woodrat and cotton mouse, the Service desires to

provide an opportunity for these data to be analyzed before designating critical habitat for these species. The comment period on the proposal of critical habitat for the Key Largo woodrat and cotton mouse is therefore reopened. All interested parties, whether or not involved with the conservation plan, are invited to submit comments and substantive information concerning impacts of critical habitat designation for the Key Largo woodrat and cotton mouse. Comments may be submitted until May 8, 1985, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

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: October 25, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-30479 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

South Atlantic Fishery Management Council

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

ACTION: Swordfish Fishery Management Plan; Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council will hold a public hearing in conjunction with their upcoming Council meeting to allow for input on the changes to the draft Swordfish Fishery Management Plan.

DATES: The hearing will be held on November 27, 1984, from 1:30 p.m. until 5:00 p.m. in Marathon, Florida. Written comments will be accepted until December 17, 1984.

ADDRESSES: Send comments to: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, or Jack T. Brawner, Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

The hearing will take place at Hawk's Cay, Market 61, Marathon, Florida.

FOR FURTHER INFORMATION CONTACT: David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 803–571–4366; or Jack T. Brawner, Regional Director, Southeast Region, 813–893–3141.

SUPPLEMENTARY INFORMATION: The hearing will deal with a fishery management plan which establishes a management regime for swordfish in the fishery conservation zone from Maine through Texas, including Puerto Rico and the U.S. Virgin Islands. Measures to be discussed include:

1. Restriction of domestic catches of small fish by variable season closures with certain exemptions for the five council areas. The calculation of closed days takes into account seasonal landings patterns in each Council region.

2. Incorporation of the Preliminary Fishery Management Plan for Billfish and Sharks into the plan and a cap on swordfish bycatch for foreign fishermen.

For more information, please see the notice of public hearing published in the **Federal Register** October 17, 1984, 49 FR 40621.

Dated: November 16, 1984.

Richard B. Roe,

Director, Office of Protective Species and Halibut Conservation, National Marine Fisheries Service.

[FR Doc. 84-30597 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Member of Performance Review Boards; Amended List

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 48 FR 24910.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202/447–6905).

The membership of the Department of Agriculture's Performance Review Boards is amended by adding the name of Merritt W. Sprague.

Done this 16th day of November 1984.

John R. Block,

Secretary.

[FR Doc. 84-30555 Filed 11-20-84; 8:24 am]

BILLING CODE 6116-01-M

Forms Under Review by Office of Management and Budget

November 16, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Food and Nutrition Service
Reporting Illegal Aliens to INS
On occasion
Individuals or households, State or local governments; 34,932 responses; 3,699 hours; not applicable under 3504(h)
Mildred Kriegel, (703) 756–3429.

Jane A. Benoit,

Acting Departmental Clearance Officer.

[FR Doc. 84-30553 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Small Business Timber Set-Aside Program; Proposed Changes

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: The Forest Service is proposing changes in the operation of the Small Business Timber Set-Aside Program. The proposed policy changes, which will be implemented through revision of the Forest Service Manual, would change: (1) The method of establishing and changing the small business share in each marketing area, (2) selection of set-aside sales, (3) manufacturing requirements for logs harvested from set-aside sales, and (4) operation of the Special Salvage Timber Sale Program.

DATES: Comments must be received by January 22, 1985.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: The Small Business Act (15 U.S.C. 631 et seq.), as amended, establishes the policy that Federal Agencies shall ensure that a fair proportion of the sales of Government property are made to small business concerns. For purposes of Federal timber sale programs, small businesses are defined as those firms primarily engaged in the forest products industry that have 500 or fewer employees.

Currently, the Forest Service operates a set-aside program under the terms of a 1971 agreement between the Department of Agriculture and the Small Business Administration (SBA). Policy and procedures for the program are set forth in SBA regulations at 13 CFR Part 121, in Forest Service regulations at 36 CFR Part 223, Subpart B and Forest Service Manual Chapter 2430.

The current program provides for the establishment of small business shares for each market area. Market areas generally coincide with National Forests. Small business shares are recomputed at 5-year intervals based on the proportion of the sale program which is purchased by small business firms in the preceding 5 years. Following establishment of shares, a record of volumes purchased by small business firms is maintained by 6-month periods. If the proportion of volume purchased by small business falls below the small business share by 10 percent or more, sales are set-aside for preferential bidding by small business firms. Small business purchasers of set-aside sales must manufacture or sell to other shall business firms at least 70 percent of the volume of the sale (50 percent in Alaska).

The Forest Service and Small Business Administration (SBA) conducted a joint review of the

operation of the set-aside program in 1982 and 1983. This review, as well as reviews by other Agencies, identified a number of areas of concern about program operations. The following proposals deal with these concerns and are the result of extensive discussions between the Forest Service and SBA, discussions with representatives of associations representing both small business and large business segments of the industry, and discussions with representatives of individual firms. Following these discussions it appears that there is a substantial amount of agreement among the interested parties. It now appears to be timely to make a formal proposal and publish it for public comment.

Proposed Policy Changes

A. Establishment of Small Business Shares

Currently, shares for all market areas are recalculated at 5-year intervals based on the small business purchase history during the preceding 5 years, that is, small business purchases as a percent of total purchases. This procedure has provided an incentive in some areas for purchasers to bid for timber to influence the share rather than to bid on the basis of need for timber. It has also led to an increase of shares in some areas will beyond harvest levels of small business firms. The proposed revision of the program recognizes Regional differences in relation to timber supply and demand, dependence on National Forest timber, and market fluctuations in recent years.

1. *All Regions.* Under the proposed policy, the small business share would be calculated as follows: (a) No market area would have a small business share which exceeds 80 percent of the sale program. (b) No market area would have its small business share reduced below 50 percent of the original base share established in 1971.

2. *Region 8 (Southern), Region 9 (Eastern), and Region 10 (Alaska).* Current procedures for establishing small business shares would remain in effect, subject to the upper limit of 80 percent. Shares in Regions 8 and 9 would be recomputed in 1986, based on the small business purchase history for FY 1981–1985.

3. *Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), and Region 4 (Intermountain).* New small business shares would be calculated during FY 1985 based on the average of the small business harvest history for 1975–1984 and the small business purchase history for the same period. The calculation would use an arithmetic average giving equal weight to purchase and harvest history.

The Forest Service anticipates that harvest and purchase histories for the 1975–1984 period will be available for market areas in Regions 1–4 shortly in order to facilitate evaluation of the proposals.

4. *Region 5 (Pacific Southwest) and Region 6 (Pacific Northwest).* Shares established in 1981, based on the small business purchase history for 1976–1980 would be maintained, except in market areas where the small business harvest history for 1975–1979 differs from the established share by more than 10 percent. Where such a difference exists, the new small business share would be set halfway between the current share and the small business harvest history for that period. Structural changes in the industry since 1980 would be reflected as discussed in B(2) below.

B. Future Share Changes

1. *Regions 8, 9, and 10.* The current system of establishing shares would be continued in the future; however, the Forest Service and SBA have agreed to study the implementation of the revised program nationally to determine whether it would be appropriate to change the program in Regions 8 and 9. This study should be completed within 2 years.

2. *All Other Regions.* No further regular recomputations of small business shares will be scheduled. Shares would be changed based on structural changes in the industry, i.e. a mill either changes size class or ceases operations. Any such structural changes would be reflected by a change in the small business share at the start of the 6-month period beginning at least 12 months after the change occurs. The basis of the change would be the average of the purchase history (percent) and the harvest history (percent) for the 5-year period prior to the structural change.

C. Purchases by Non-manufacturers

(Firms that do not process most of the logs they cut.)

1. *Regions 8, 9, and 10.* Current procedures for allocating purchases by non-manufacturers to large or small businesses based on anticipated size of the firm that will process the timber will be followed.

2. *Regions 1–6.* Open sales purchased by non-manufacturers would not be credited to purchase history or the 6-month purchase analysis until the volume is harvested. At that time, the actual volumes would be credited to the size class of the firms where the logs are delivered for manufacture.

D. Triggering of Set-Aside Sales

1. Following current procedures, a set-aside program would be initiated whenever small business firms fail to purchase the small business share by 10 percent or more. However, if it is determined that the program has been triggered by only a fractional amount, set asides may not be offered in the following period.

2. When a set-aside program is triggered on a market area, a volume of timber equalling the deficit in small business purchases plus the small business share would be set-aside in the next period; however, at least 20 percent of the timber volume offered in any 6-month period would be open non-set-aside sales.

E. Selection of Set-Aside Sales

The current joint sale selection process will be continued. Proposed set-aside sales would be identified by the Forest Supervisor subject to concurrence by the local SBA representative. The tentative selection of sales to be set-aside, if the SBA set-aside program is triggered, would be completed and announced 60 days prior to the start of the next 6-month period.

F. Manufacturing Requirements on Set-Aside Sales

1. In all Regions, except Regions 8 and 10, the 70/30 rule would be enforced. This means that the timber sale contract would require that at least 70 percent of the advertised volume of a set-aside sale be processed in a small business manufacturing facility.

2. In Region 10 a 50/50 rule would be enforced. This means that the timber sale contract would require that at least 50 percent of the advertised volume of a set-aside sale be processed in a small business manufacturing facility.

3. In Region 8, the timber sale contract would require that 100 percent of the softwood sawtimber from set-aside sales would be processed in a small business manufacturing facility. Hardwood sawtimber in this Region would be subject to the 70/30 rule.

Implementation of the preceding changes in manufacturing requirements will require revision of the SBA Size Standard Regulations. It is anticipated that SBA will initiate appropriate rulemaking to accommodate these changes.

The Forest Service will explore revisions of contract damage provisions, cancellation regulations, and debarment regulations to ensure that adequate

authorities are available to ensure strict compliance with the new manufacturing requirements.

G. Special Salvage Timber Sale Program

The Special Salvage Timber Sale Program (SSTS) provides for the set-aside of small salvage sales for preferential award to firms with 25 or fewer employees. The Small Business Administration is developing a proposal to revise the size standard regulation for this program to remove the 70/30 manufacturing requirement from sales set-aside under this program. When this change is made, it is proposed that timber volume from SSTS set-aside sales be separate from all consideration under the regular timber set-aside program.

Dated: November 15, 1984.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 84-30510 Filed 11-20-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

DEPARTMENT OF LABOR

Steel Advisory Committee; Meeting

On December 6, 1983, five subcommittees we established to serve the Steel Advisory Committee. Those subcommittees were: Subcommittee on the State of the Industry, Subcommittee on Trade Issues, Subcommittee on Capital Formation Issues, Subcommittee on Industry Rationalization Issues, and Subcommittee on Employment, Productivity and Adjustment Issues.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Subcommittee on Trade Issues and Industry Rationalization Issues will meet on November 28, 1984 at 9:00 a.m. and 10:00 a.m., respectively. These meetings will be held in Room 4830, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington D.C.

These meetings are notices under exceptional circumstances. The Steel Advisory Committee has noticed a full Committee meeting for November 28, 1984 (49 FR 45205 (1984)). The membership of these subcommittees intend to review and forward, if appropriate, consensus findings and recommendations to the full Committee for consideration. To permit review by the Steel Advisory Committee, these subcommittees will meet under an expedited public notice.

The purpose of these meetings is to present these Subcommittee's consensus findings and recommendations. For further information regarding these Subcommittees' agenda, meeting schedules, objectives or structure, please contact Dr. Timothy P. Roth, Executive Director, Steel Advisory Committee, whose mailing address is: Room 6324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; or telephone (202) 377-0703. With regard to general questions relating to the Administration of these Subcommittees as required by the Federal Advisory Committee Act, please contact Robert H. Brumley, II, Special Assistant to the General Counsel, U.S. Department of Commerce (202) 377-4772.

The public is welcome to attend these meetings and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Exectuve Director of the Committee in advance of this meeting. The Subcommittee Chairs retain the prerogative to place limits on the duration of oral statements and discussions. Written Statements may be submitted before or after each session.

Dated: November 19, 1984.

Timoth P. Roth, Ph.D.,

Executive Director, Steel Advisory Committee.

[FR Doc. 84-30697 Filed 11-19-84; 2:23 pm]

BILLING CODE 3510-BP-M; 4510-23-M

DEPARTMENT OF COMMERCE

International Trade Administration

Disposition of Application for Duty-Free Entry of Scientific Instrument; Bituminous Coal Research, Inc.

Processing of the Bituminous Coal Research, Inc., application (Docket Number 83-349) has been discontinued. The U.S. Customs Service has denied this application because the instruments are not being imported for scientific purposes.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30611 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Brookhaven National Laboratory

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-164. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Double Monochromator and Remote Control Filter Assembly for Neutron Spectrometer. Manufacturer: Franke & Heydrich KG, West Germany. Intended use: See notice at 49 FR 19563.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for an instrument previously imported for the use of the applicant. The instrument and accessories were made by the same manufacturer. The National Bureau of Standards advises in its memorandum dated September 26, 1984 that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 30614 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Loss Spectrometers; Iowa State University

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-235. Applicant: Iowa State University, Ames, IA 50011. Instrument: Low Energy Electron Loss Spectrometer with Accessories. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 49 FR 30984.

Docket No.: 84-248. Applicant: Lehigh University, Bethlehem, PA 18015. Instrument: Electron Loss Spectrometer,

Model ELS 22. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 49 FR 32638.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide the applicants with the capability of determining (1) low energy electron loss and (2) measuring the nature and orientation of adsorbed species. The National Bureau of Standards advises in its memorandum dated October 18, 1984 that (1) the capability of the foreign instruments described above is pertinent to the applicants' intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30613 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; National Bureau of Standards

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-231. Applicant: National Bureau of Standards, Washington, DC 20234. Instrument: Photoelectron Spectrometer, Model ESMKII. Manufacturer: V.G. Instruments, Inc., United Kingdom. Intended use: See notice at 49 FR 32638.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) vacuum to 1×10^{-10} torr, (2) sample heating and cooling from 120 to 900 degrees kelvin and (3) a low energy ion scattering system. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30616 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Pennsylvania Hospital

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-207.

Applicant: Pennsylvania Hospital, Philadelphia, PA 19107. Instrument: NMR Pulsed Spectrometer, Model CPS-2 with Accessories. Manufacturer: Spin-Lock, Ltd., Canada. Intended use: See notice at 49 FR 24912.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The instrument is capable of measuring T_1, $T_{1\rho}$, T_{1D} and various T_2 of water protons in cell and model systems at 36 megahertz. The National Institutes of Health advises in its memorandum dated September 6, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30605 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Smithsonian Institution

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-246. Applicant: Smithsonian Institution, Washington, DC 20560. Instrument: Gas Chromatograph Mass Spectrometer Data System, Model 8230. Manufacturer: Finnigan MAT, GmbH, West Germany. Intended use: See notice at 49 FR 30985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) high resolution (50 000 10% valley), (2) a mass range of 2100 atomic mass units at full acceleration voltage and (3) multiple ion selection. The National Institutes of Health advises in its memorandum dated September 6, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30607 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Disposition of Applications for Duty-Free Entry of Scientific Instrument; University of California

Processing of the following applications has been discontinued pursuant to Customs Service rulings that the articles are components ineligible for duty-free entry 15 CFR 301.2(k):

Docket No.: 83–204. Applicant: University of California, Livermore. Article: Nb_3Sn Superconductor for 2 High Field Magnets.

Docket No.: 83–223. Applicant: Brookhaven National Laboratory. Article: 4m Spherical Diffraction Gratings.

Docket No.: 83–294. Applicant: University of California, San Diego. Article: Superconducting Magnet System, Model 100/110.

Docket No.: 83–300. Applicant: Georgia Institute of Technology. Article: Extended Interaction Oscillator, Model VKT 2458T1.

Docket No.: 83–356. Applicant: NASA/Jet Propulsion Laboratory. Article: Prisms for Interferometer.

Docket No.: 84–113. Applicant: University of California, Santa Barbara. Article: 500 Quad Hybrid Microstrip Preamplifiers, Model MSD2.

Docket No.: 84–123. Applicant: Research Foundation of the State of New York. Article: Scintillating Crystals (10 each).

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30612 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Michigan

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84–233. Applicant: The University of Michigan, Ann Arbor, MI 48109. Instrument: Evacuable Fourier Transform Infrared Spectrometer. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 49 FR 30986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Foreign article provides a spectral range of 10 to 500 cm^{-1} with a minimal resolution of 0.04 cm^{-1}. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30609 Filed 11-20-84 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Veterans Administration Medical Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–242. Applicant: The Veterans Administration Medical Center, Wood, IL 53193. Instrument: Particle Zeta Meter (Particle Electrophoresis Apparatus), Model Mark II. Manufacturer: Rank Brothers, United Kingdom. Intended use: See notice at 49 FR 30984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of providing accurate measurements at high ionic strength such as with physiological levels of salinity. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of not other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Fee Educational and Scientific Materials)

Frank W. Creel

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30608 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Veterans Administration Medical Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–215. Applicant: Veterans Administration Medical Center, Long Beach, CA 90822. Instrument: Cylindrical Microelectrophoresis Apparatus, Model Mark I. Manufacturer: Rank Brothers Scientific Instruments, United Kingdom. Intended use: See notice at 49 FR 28426.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufacturted in the United States.

Reasons: The foreign instrument uses thermostating to provide precise temperature control and uses an immersible microscope objective to provide three-dimensional focusing on single cells. The National Institutes of Health advises in its memorandum dated September 13, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-30610 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, VA 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-620, 815
Device for Simulating Stress on Packages During Coupling of Railcars
SN 6-650, 739
Method For Screening Bacteria and Application Thereof for Field Control of Pythium Spp. on Small Crops
SN 6-651, 563
Nonabsorbent Roller Applicator

Department of Health and Human Services

SN 6-321, 689 (4, 476, 462)
Use of Context to Simplify Two-Dimensional Computer Input
SN 6-380, 471 (4,475,401)
Vibration Dosimeter
SN 6-585,333
T-Cell Receptor/Specific for Antigen Polypeptides and Related Polynucleotides
SN 6-632,726
Monoclonal Antibody Against Human Blood group H Type 1 Antigen
SN 6-639,673
Hydrophobic Dental Composites Based on a Polyfluorinated Dental Resin
SN 6-647,728
Improved Toposcopic Catheter and Method of Fabrication
SN 6-654,213
Synthetic Peptides for the Production of Specific Keratin Proteins

Department of the Air Force

SN 6-051,315 (4,441,312)
Combined Cycle Ramjet Engine
SN 6-329, 560 (4,442,513)
Security System Signal Processor
SN 6-331,750 (4,442,523)
High Power Metal Vapor Laser
SN 6-339,257 (4,443,059)
High Energy Laser Mirror
SN 6-347,383 (4,442,453)
Photo Reconnaissance System
SN 6-356,576 (4,442,293)
Di-Acetylenyl-Substituted 2-Phenylbenzothiazoles
SN 6-366,745 (4,440,687)
Azido Nitramino Ethers
SN 6-370,232 (4,442,776)
Detonator Block
SN 6-417,931 (4,443,349)
Fluorinated Aliphatic Polyalkylether Lubricant with an Additive Composed of an Aromatic Phosphine Substituted with Perfluoroalkylether Groups
SN 6-431,866
Sensor System
SN 6-620,211
Fly's Eye Sensor Nonlinear Signal Processing
SN 6-620,212
Solar Cell Coverslide Extraction Method and Apparatus
SN 6-624,568
Adaptive Mutual Interference Suppression Method
SN 6-627,699
Magnetostiatic Wave Frequency Analyzer Apparatus
SN 6-629,862
High or Low-Side State Relay with Current Limiting and Operational Testing
SN 6-629,926
Phase Only Adaptive Nulling In A Monopulse Antenna
SN 6-634,247
Direct View Helmet Mounted Telescope
SN 6-634,345
Thermally Stable Thermoset Resin Compositions
SN 6-634,346
Thermosetting Arylether Compounds and Their Synthesis
SN 6-635,393
LPE Semiconductor Material Transfer Method
SN 6-636,454
Safing and Arming Mechanism
SN 6-640,636
Propellant Tank Resupply System
SN 6-958,920 (4,443,766)
Precision Digital Sampler

Department of the Army

SN 6-311,369 (4,447,427)
Method for Treating Bacterial Infections with 2-Acetyl and 2-Propionylpyridine Thiosemicarbazones
SN 6-323,626 (4,453,768)
Portable Reclining Examination Chair
SN 6-338,695 (4,439,012)
Dual-Secondary Mirror Cassegrain Optical System
SN 6-348,462 (4,440,771)
2-Acetyl Quioline Thiosemicarbazones Useful in Treatment of Gonorrhea, Malaria or Bacterial Infections
SN 6-348,539 (4,447,395)
Sampling Device
SN 6-394,566 (4,444,119)
Fast Response Impulse Generator
SN 6-423,574 (4,463,680)
Method of Generating Single-Event, Unconfined Fuel-Air Detonation
SN 6-455,366 (4,441,942)
Embedment System for Ultrahigh-Burning Rate Propellants of Solid Propulsion Subsystems
SN 6-624,564
Immunologically Active Peptides Capable of Inducing Immunization Against Malaria and Genes Encoding Therefor
SN 6-635,072
Vehicle Anchoring System
SN 6-646,535
Fuse Status Indicator System
SN 6-646,536
Chemical Sensor Matrix
SN 6-647,767
A Single Optical Fiber Telephone System
SN 6-891,255 (4,239,063)
Manifold Insulated with Knitted Impregnated Sleeve
SN 6-971,459 (4,220,297)
Finlet Injector
SN 6-972,303 (4,214,156)
Gyrodynamic Fixture for Measuring Thrust Force Components

[FR Doc. 84-30473 Filed 11-20-84; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, December 12, 1984 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also

matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566–1066.

Dated in Washington, D.C. November 14, 1984.

Charles H. Atherton,

Secretary.

[FR Doc. 84–30487 Filed 11–20–84; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirement To Include Certain Man-Made Fiber Luggage Produced or Manufactured in the Republic of Korea

November 16, 1984.

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 December 3, 1984. For further inforamtion contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the Governments of the United States and the Republic of Korea, have agreed to amend the existing export visa requirement to include man-made fiber luggage in Category 670pt. (only T.S.U.S.A. numbers 706–4144 and 706–4152), which will be visaed as "670–L." This coverage is in addition to the coverage of cotton, wool and man-made fiber textiles and textile products described in the CITA directive of May 19, 1972, as amended. The visa stamp is not being changed and the official of the Government of the Republic of Korea authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective for Category 670pt. (TSUSA numbers 706.4144 and 706.4152), produced or manufactured in Korea and exported on and after September 1, 1984. Merchandise in this category exported before September 1, 1984 will not be denied entry for lack of a visa.

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), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 16, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 19, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products produced or manufactured in the Republic of Korea.

Effective on December 3, 1984, man-made fiber textile products in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152), produced or manufactured in the Republic of Korea and exported on and after September 1, 1984, will be required to be visaed as Category 670–L. Merchandise in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152) which has been exported before September 1, 1984 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–30514 Filed 11–20–84; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of a Blue Ribbon Panel On Sizing DoD Medical Treatment Facilities

Under the provisions of Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby givern that the Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

This Blue Ribbon Panel is being established to review the criteria for sizing military hospitals and to determine if expanded use of available civilian facilities could be cost-effective. Nominees for the Panel are being identified to ensure that its membership will be balanced by the inclusion of distinguished representatives from all of the relevant health-related disciplines—clinical medicine, hospital administration, health policy, health planning, economics, and engineering.

The expected duration of the Panel's work is ten months. During that period, the Panel will meet monthly, and will conduct such site visits as are necessary to familiarize the members with the physical details of specific construction projects.

Dated: November 15, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–30554 Filed 11–20–84; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Coastal Engineering Research Board; Meeting

In accordance with sec. 10. (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Coastal Engineering Research Board (CERB).

The meeting will be held at the Hotel Continental, 505 North Michigan Avenue, Chicago, Illinois, from 8:30 a.m. to 5:00 p.m. on December 11, from 8:00 a.m. to 4:30 p.m. on December 12, and from 8:00 a.m. to 11:00 a.m. on December 13, 1984.

The December 11 session will be devoted to presentations on a review of CERB business, fiscal year 1985 Corps/Coastal Research and Development programs, Coast of Florida Erosion and Storm Effects Study; research needs of Pacific Ocean and North Atlantic Divisions; North Central Division activities in wave gaging; Presque Isle, Pennsylvania Shore Protection Study; Illinois Beach State Park Study; Great Lakes shore protection projects; nourishment activities at New Buffalo, St. Joseph, and Indiana National Lakeshore; major Great Lakes harbor rehabilitations; monitoring of Cattaraugus and Cleveland Harbors; and a brief update of the change in 17 Lake Michigan profiles monitored since the mid-70's.

December 12 will be devoted to a field trip inspection flight for the Board members viewing various shorelines along Illinois, Wisconsin, Michigan, and Indiana. A bus tour is planned traveling around the coast to several beach sites.

returning to the Illinois coastline with stops at various lakefront projects.

Time on the morning of December 13 will be used to discuss the field inspections, presentations on North Central Division research needs, and recommendations by the Board.

Participation by the public is scheduled for 9:00 a.m. on December 13. Members of the public may attend the field inspection but must provide their own transportation. The entire meeting is open to the public subject to the following:

a. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

b. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

c. Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robert C. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director, Civil Works.

[FR Doc. 84–30545 Filed 11–20–84; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics (ACES); Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 13 and 14, 1984.

ADDRESS: 1200 19th Street NW., Room 823, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John W. Christensen, Executive Director, 1200 19th Street NW., (Brown Building) Room 717–C, Washington, DC 20208. Telephone—(202) 254–8227.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 98–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) and is responsible for establishing standards to insure that statistics and analyses disseminated by the center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A discussion of program direction and priorities for the National Center for Education Statistics.

The effects of electronic communication on the quality and timeliness of data.

An update on the evaluation of NCES.

An update on the *Private School Survey.*

An update on vocational education data collection.

A discussion of the tenth annual ACES report to the Congress.

Such old business and new business as the Chairman or membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW., (Brown Building) Room 717–C, Washington, DC 20208.

Dated November 15, 1984.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 84–30468 Filed 11–20–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Govenment of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer:

RTD/EU(CA)–8, from Atomic Energy of Canada, Ltd., Chalk River, Canada, to Nukem, Hanau, the Federal Republic of Germany, 50 kilograms of urainium, enriched to 93.15% in U–235, in the form of uranium-aluminum cold scrap, for purification and subsequent return to Canada for fabrication of fuel for the NRX and NRU reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 19, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84–30759 Filed 11–20–84; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Publication of Alternative Fuel Price Ceiling and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective December 1, 1984. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-

034, Washington, D.C. 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.10
Arizona	4.10
Arkansas [1]	4.10
California	4.15
Colorado [2]	4.21
Connecticut [1]	4.48
Delaware [1]	4.39
Florida	4.30
Georgia [1]	4.39
Idaho [2]	4.21
Illinois	4.08
Indiana [1]	4.14
Iowa [1]	4.11
Kansas [1]	4.11
Kentucky [1]	4.14
Louisiana	4.04
Maine [1]	4.48
Maryland [1]	4.39
Massachusetts	4.28
Michigan [1]	4.14
Minnesota	3.98
Mississippi [1]	4.39
Missouri [1]	4.11
Montana [2]	4.21
Nebraska [1]	4.11
Nevada [1]	4.28
New Hampshire [1]	4.48
New Jersey [1]	4.39
New Mexico	3.72
New York	4.35
North Carolina [1]	4.39
North Dakota [1]	4.11
Ohio	3.83
Oklahoma [1]	4.10
Oregon [1]	4.28
Pennsylvania	4.39
Rhode Island [1]	4.48
South Carolina [1]	4.39
South Dakota [1]	4.11
Tennessee	4.31
Texas	3.85
Utah [2]	4.21
Vermont [1]	4.48
Virginia [1]	4.39
Washington [1]	4.28
West Virginia [1]	4.14
Wisconsin	4.13
Wyoming [2]	4.21

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during September 1984 was $32.54 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective December 1, 1984, is $7.29 per million BTU's.

Section III—Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of July 1984, August 1984, and September 1984.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective December 1, 1984, (shown in Section I) are based on the reported price on No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, July 1984, August 1984, and Septement 1984. Reported prices for sales in July 1984 were adjusted by the percent change in the nationwide volume-weighted average price from July 1984 to September 1984. Prices for August 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from August 1984 to September 1984. The volume-weighted 3-month average of the adjusted July 1984 and August 1984, and the reported September 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downerd by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to detemine the State's average low price. The adjusted weighted average price (as calculated in Section III.B. (2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each state. For those States which had not reported sales during one or more months of the 3-month period, the approriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon)

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of July 1984, August 1984, and September 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending November 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of September 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	

Region C	*Region D*
Alambama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	

Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	

Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., November 19, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-30760 Filed 11-20-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Alabama-Tennessee Natural Gas Co.; Application

[Docket Nos. CP84-709-000 and CP84-709-001]

November 15, 1984.

Take notice that on September 12, 1984, Alabama-Tennessee Natural Gas Company (A-T), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP84-709-000 an application, as amended November 2, 1984, in Docket No. CP84-709-001, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a realignment of maximum contract volumes among several of its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, A-T seeks authority to increase the maximum daily contract quantities presently authorized for delivery by a total of 3,222 Mcf of gas to seven of its resale customers which A-T asserts have indicated an immediate need for additional peak day supply during the upcoming 1984-85 winter heating season.

A-T proposes to increase the maximum contract volumes to the following customers by the corresponding volumes:

Names of customer	Proposed increase (Mcf)
Russellville, AL	1,000
North Alabama Gas District	853
Hardin County Gas District	69
Iuka, MS	199
Tishimingo, MS	102
Lawrence Colbert Counties Gas District	372
North Mississippi Natural Gas Company	627
Total increase	3,222

A-T states that all seven of the customers have signed precedent agreements for these additional volumes. A-T also indicates that the gas to be made available for these increases is a total of 4,900 Mcf per day previously covered by long-term direct sales contracts which have expired.

A-T indicates that approval of its proposal would enable the seven customers to receive the additional supplies through the year 2000. A-T indicates that no construction of facilities would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30496 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-22-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc., Tariff Filing

November 14, 1984.

Take notice that on November 8, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc., (Arkla) tendered the following tariff sheets for filing in its FERC gas tariff:

(1) First Revised Sheet No. 12J superseding Original Sheet Nos. 12J through 12M in Arkla's FERC Gas Tariff First Revised Volume No. 1, being a Notice of Cancellation of tariff provisions having to do with the Louisiana First Use Tax Adjustment; and

(2) First Revised Sheet No. 188D superseding Original Sheet Nos. 188D through 188G in Arkla's FERC Gas Tariff Original Volume No. 3, being a Notice of Cancellation of tariff provisions having to do with the Louisiana First Use Tax Adjustment; and

(3) Second Revised Sheet No. 221 superseding First Revised Sheet No. 221 in Arkla's FERC Gas Tariff First Revised Volume No. 2, being a change in the availability clause for Arkla's ECOSHARE Transportation Rate Schedule.

The change in the availability clause for Arkla's ECOSHARE Transportation Rate Schedule is to reduce the 5,000 MMBtu per day threshold eligibility volume for ECOSHARE transportation to 1,5000 MMBtu's per day. Applicant states that the reason for the change is to add flexibility to its ECOSHARE transportation program by extending eligibility for participation in the program to certain smaller industrial customers which may require the service in order to remain competitively viable.

Arkla proposes an effective date for these tariff sheets of 30 days after they are filed and requests such approvals and waivers as may be necessary to permit this to be done.

Any person desiring to be heard or to protest said filing should file a petition to intervene or 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30497 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-68-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc., Request Under Blanket Authorization

November 14, 1984.

Take notice that on October 26, 1984, Arkansas Louisiana Gas Company, a divison of Arkla, Inc. (Arkla) P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-68-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of International Paper Company (IPC) under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Arkla proposes to transport up to 18,000 Mcf of gas per day for use in IPC's industrial plant in Pine Bluff, Arkansas, until the earlier of the following dates occurs: (1) One year from the date of commencement of transportation service; (2) September 1, 1985; (3) the date on which prior notice authorization under 18 CFR § 157.209(b)(2) and (e)(2) ends, which date, as to the date of this request, is 11:59 p.m. on June 30, 1985; or (4) the date that Arkla receives and accepts certificate authorization for the long-term transportation of gas for IPC as requested in Arkla's application filed with the Commission in Docket No. CP85-54-000. It is stated that the gas to be transported would be purchased from Vesta Energy Company (Vesta) and would be used for the production of paper products and plant protection.

Arkla indicates that it has released certain gas supplies which IPC has purchased from Vesta and that these supplies are subject to the ceiling price provisions of Sections 102 and 103 of the Natural Gas Policy Act of 1978. It is indicated that Arkla would receive the gas at existing interconnections with Vesta in Johnson and Pope Counties, Arkansas, and Custer and Pontotoc Counties, Oklahoma.

Arkla states that it would charge the currently applicable transportation rate in accordance with its ECOSHARE Transportation Rate Schedule, FERC Gas Tariff, First Revised Volume No. 2. It is explained that if any part of the revenues payable to Arkla for this transportation service is required to be credited to Arkla's Account 191, an added incentive charge of $0.05 per million Btu is payable by IPC, and in such event, the transportation rate is the applicable rate under Arkla's ECOSHARE-AIC Rate Schedule on file as Substitute Sheet No. 223 of Arkla's FERC Gas Tariff, First Revised Volume No. 2.

Arkla also requests flexible authority to add and/or delete sources of gas and/or receipt of delivery points. With respect to such flexible authority Arkla states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt of delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and the end-user;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement as to whether the gas is committed or dedicated within the meaning of NGPA Section 2(18);

(5) If the new source of supply involves released gas which is committed or dedicated as defined in No. 4, reference the suppliers' Natural Gas Act Section 7(b) abandonment authorization;

(6) Location of the receipt/delivery points being added or deleted;

(7) Identify of any other pipeline involved in the transportation.

Arkla submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the daily and annual volumes levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30498 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 85-1-32-002]

Colorado Interstate Gas Co.; Compliance Filing

November 14, 1984.

Take notice that on October 29, 1984, Colorado Interstate Gas Company (CIG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in compliance with ordering paragraphs (C), (D) and (F) of the Federal Energy Regulatory Commission's (Commission) September 28, 1984 order in this docket: Substitute Nineteenth Revised Sheet No. 7; Substitute Nineteenth Revised Sheet No. 8.

These tariff sheets indicate a reduction in rates. CIG asserts the reduction is an insignificant amount and it proposes to maintain its existing rates accepted by the Commission on September 28, 1984. CIG believes its proposal to maintain its existing rates in effect is in the public interest, because it would save CIG and its customers administrative expenses and regulatory burdens. CIG states that any overcollection, including interest, will be flowed through to its customers by means of its PGA Account No. 191. CIG requests any waivers that are deemed necessary to accept this filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 835.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30499 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-47-000]

Columbia Gulf Transmission Co.; Application

November 15, 1984.

Take notice that on October 18, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-47-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 3,000 Mcf of natural gas per day for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to implement the terms of a transportation agreement between Columbia Gulf and Natural dated August 3, 1984, whereby Columbia Gulf has agreed to transport on a contract demand basis, up to 3,000 Mcf of natural gas per day for Natural for a term of five years and year to year thereafter. Columbia Gulf proposes a contract demand charge of $4.94 per Mcf of gas and 16.24 cents per Mcf for excess volumes received for transportation.

Columbia Gulf states that the gas to be transported has been purchased by Natural from Diamond Shamrock Corporation and Santa Fe Energy in Vermilion Block 57, offshore Louisiana. It is explained that this gas would be received by Columbia Gulf for Natural's account at a point in Vermilion Block 57 and that Columbia Gulf would redeliver the gas to Natural at the outlet of Texaco's Henry Plant, Vermilion Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30500 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-166-004]

Columbia Gulf Transmission Co. and Transcontinental Gas Pipe Line Corp.; Petition To Amend

November 15, 1984.

Take notice that on October 19, 1984, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-166-004 pursuant to Section 7 of the Natural Gas Act a joint petition to amend the Commission's order issued July 7, 1983, in Docket No. CP83-166-000 so as to authorize an additional point of receipt for exchange gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Columbia Gulf and Transco are currently exchanging thermally equivalent quantities of natural gas produced from certain sources of supply offshore, Louisiana. It is asserted that the gas exchange and transportation agreement dated November 10, 1981, which forms the basis for the July 7, 1983, certificate, provides for a gas-for-gas exchange with

no monetary compensation to either party unless the quantity of gas provided by Transco exceeds that provided by Columbia Gulf. It is explained that in the event Transco delivers more gas than Columbia Gulf, such quantities would be redelivered at two existing points of interconnection between Columbia Gulf and Transco; at Evangeline Parish, Louisiana, and Terrebonne Parish, Louisiana. It is further explained that for such transportation, Transco pays to Columbia Gulf a service charge as follows: (1) Gas delivered at Terrebonne, 6.42 cents per Mcf of gas plus fuel; and (2) gas delivered to Evangeline, 16.03 cents per Mcf of gas plus fuel.

It is stated that, currently, Columbia Gulf's gas is delivered to Transco by or for the account of Columbia Gulf from West Cameron Blocks 426 and 427 and delivered to the existing platform in West Cameron Block 480. Petitioners state that Transco's gas delivered to Columbia Gulf by or for the account of Transco from (1) West Cameron Blocks 624 and 625 and delivered at an existing underwater side tap on the 24-inch pipeline jointly-owned by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and Columbia Gulf in West Cameron Block 624 and (2) Vermilion Block 57 and delivered at an existing underwater side tap on the 36-inch pipeline jointly-owned by Columbia Gulf and Tennessee in Vermilion Block 46.

By joint petition to amend, Columbia Gulf and Transco request authority to include Vermilion Block 45, offshore Louisiana, as an additional source of supply for Transco. It is asserted that the Vermilion Block 45 gas is 100 percent committed to Transco pursuant to a gas purchase agreement with Kerr McGee Corporation (Kerr McGee) and that such gas would be delivered by Kerr McGee to Transco at Vermilion Block 57 and Transco would deliver such gas to Columbia Gulf at the above-listed point of delivery in Vermilion Block 46.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30501 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-23-000]

East Tennessee Natural Gas Co.; Tariff Filing

November 14, 1984.

Take notice that on November 9, 1984 East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective on December 1, 1984: Original Sheet No. 53; Original Sheet Nos. 54 Through 103; First Revised Sheet No. 1.

East Tennessee states that the sole purpose of these tariff sheets is to implement the ETS Rate Schedule, applicable to transportation of gas on behalf of East Tennessee's system sales customers pursuant to § 157.45 *et seq.* which gas has been purchased from East Tennessee. The proposed effective date is December 1, 1984.

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30502 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-87-000]

Florida Power Corp.; Filing

(November 15, 1984)

The filing Company submits the following:

Take notice that on November 1, 1984 Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the Sebring Utilities Commission. Florida Power states that Service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the Sebring Utilities Commission designated as Florida Power's Rate Schedule FERC No. 90.

Florida Power requests that Service Schedule F be permitted to become effective November 1, 1984, and therefore requests waiver of the sixty day notice requirements.

Copies of this filing have been served upon the Sebring Utilities Commission and the Florida Public Service Commission.

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 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 November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30503 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-83-000]

Kanawha Valley Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Kanawha Valley Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements with Appalachian Power Company (Appalachian) providing for the supply of power and energy from Kanawha's

Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydroelectric plants, respectively, to be effective January 1, 1985.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by $342,880 based on the twelve-month period ended June 30, 1984.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the last rate modification in 1982. The rates under the proposed modification are designed to provided Kanawha with the opportunity to earn an 11.89% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha proposes an effective date of January 1, 1985.

According to Kanawha copies of the filing have been served upon Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

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 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 November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30504 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-631-001]

Lawrenceburg Gas Transmission Corp.; Amendment

November 15, 1984.

Take notice that on November 2, 1984, Lawrenceburg Gas Transmission Corporation (Lawrenceburg), 230 West High Street, Lawrenceburg, Indiana 47025, filed in Docket No. CP 84-631-001 an amendment to its pending application filed in Docket No CP84-631-000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect a revision in the billing demand language of its Rate Schedule CDS-1 all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Lawrenceburg states that it has traditionally sold interruptible volumes to its affiliate Cincinnati Gas and Electric Company (CG&E) at levels in excess of the contract demand of 3,000 Mcf of gas per day, pursuant to the "more than or less than" provisions of Lawrenceburg's Rate Schedule CDS-1. Lawrenceburg states that its commodity rates under Rate Schedule CDS-1 were designed on the basis of both the firm and interruptible volumes sold and that the calculation of billing demand under Rate Schedule CDS-1 has also been based upon both firm and interruptible volumes sold.

Lawrenceburg states that the Commission, in its June 29, 1984 order in Docket No. CP84-209-000 (27 FERC 61,488), limited its deliveries to CG&E to an average of 3,000 Mcf of gas per day. Lawrenceburg submits that it filed its application in Docket No. CP84-631-000 for authorization to establish a new excess gas rate schedule, Rate Schedule XS-1, in order to permit it to continue its historic interruptible service to CG&E up to the level of Lawrenceburg's contract demand with its pipeline supplier. Lawrenceburg states that it intends that the calculation of billing demand under Rate Schedule CDS-1 would reflect both the level of firm service rendered under Rate Schedule CDS-1 as well as the interruptible service rendered under proposed Rate Schedule XS-1. Lawrenceburg proposes to revise the billing demand language of Rate Schedule CDS-1 to reflect this intent. Lawrenceburg avers that it would file the revised tariff sheet reflecting the change in tariff language upon Commission authorization of service under Rate Schedule XS-1.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30505 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-44-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

November 13, 1984.

Take notice that on October 18, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-44-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Bethlehem Steel Corporation (Bethlehem) under the certificate issued in Docket No. CP82-402-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport up to a maximum of 25 billion Btu of natural gas per day for Bethlehem from Custer and Woodward Counties, Oklahoma, to Cook County, Illinois, for which it would charge a transportation fee of 57.2 cents per million Btu of gas received for transportation, plus an added incentive charge of 5.0 cents per million Btu of gas received for transportation during the term of Natural's Rate Schedule AIC. In addition, Bethlehem would pay the Gas Research Institute's surcharge funding unit per million Btu as shown on Sheet No. 5 of Natural's FERC Gas Tariff.

Additionally, Natural proposes flexible authority to add and/or delete sources of gas and/or receipt or delivery points in performance of this transportation service for Bethlehem. The term of the transportation service is through June 30, 1985, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30506 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-679-001]

Public Service Company of New Mexico; Amendment

November 15, 1984.

Take notice that on October 19, 1984, Public Service Company of New Mexico (PSC), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-679-001 an amendment to its pending application filed August 31, 1984, in Docket No. CP84-679-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect the establishment of San Juan Interstate Gas Co. (San Juan Interstate), a subsidiary of Sunbelt Mining Company, Inc. (Sunbelt), as the company which would be the certificate holder under the proposals in Docket No. CP84-679-000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

PSC, an electric utility operating in New Mexico, sought Commission authorization in Docket No. CP84-679-000, to acquire a certain interstate natural gas pipeline and related New Mexico facilities of Western Gas Interstate Company (WGI) in order to operate WGI's facilities designated as the Antelope Ridge facilities. PSC also stated that WGI requested Commission approval in Docket No. CP84-623-000 to abandon these facilities pursuant to section 7(b) of the Natural Gas Act. PSC proposed in Docket No. CP84-679-000 that a subsidiary, to be created by Sunbelt, would operate the Antelope Ridge facilities in the same manner and perform the same transportation and sales services as WGI had. PSC asserted that the proposed abandonment, purchase, and sale arrangements resulted out of an April 12, 1984, settlement and agreement of the "New Mexico Natural Gas Antitrust Litigation," MDL No. 403 (N. Mex.).

PSC, in the amended Docket No. CP84-679-001, proposes the establishment of San Juan Interstate as the certificate holder and operator of the Antelope Ridge facilities. PSC requests that any certificate to be issued in these proceedings to be in the name of San Juan Interstate.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30507 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-28-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

November 15, 1984.

Take notice that on October 12, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-28-000 an application pursuant to Section 7(c) of the Natural Gas Act for a cetificate of public convenience and necessity authorizing Tennessee to install a 3,450 horsepower compressor and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that its mainline system operates at near capacity during winter periods when withdrawing gas from Bear Creek storage and that should Tennessee require maximum deliverability from its gas supplies in Texas at maximum withdrawal from Bear Creek storage, Tennessee's mainline system would be unable to move these volumes beyond Station 47, Ouachita Parish, Louisiana. Tennessee herein proposes to install a 3,450 horsepower compressor and appurtenant facilities enabling Tennessee to divert up to 197,500 Mcf of gas per day from Tennessee's Texas mainline system through Tennessee's Kinder-Natchitoches line to Kinder, thus enabling Tennessee to route the gas from Kinder to either the Kinder-Portland system or the Delta-Portland System. It is stated that both the Kinder-Portland and Delta-Portland systems have excess capacity. Tennessee states that the direct cost of the facilities is estimated to be $4,313,000.

It is explained that the diversion of gas on Tennessee's system, which would be effectuated by the proposal herein, would provide greater operational flexibility and would enable Tennessee to alleviate capacity problems which may arise on Tennessee's mainline system. It is further explained that such diversion would allow for greater utilization of the more modern facilities on Tennessee's Kinder-Portland and Delta-Portland systems. Tennessee further states that the installation of the 3,450 horsepower compressor would minimize, if not eliminate, Tennessee's need for additional mainline capacity in the near future.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Tennessee to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30508 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-210-001]

Texas Eastern Transmission Corp.; Petition To Amend

November 15, 1984.

Take notice that on October 19, 1984, Texas Eastern Transmission Corporation (Petitioner), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP84-210-001 a petition to amend the Commission's order issued on April 12, 1984, in Docket No. CP84-210-000 pursuant to Section 7(c) of the Natural Gas Act so as to authorize an extension of the term of the transportation service presently being provided to Carnegie Natural Gas Company (Carnegie) until October 31, 1985, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that Carnegie requested Petitioner to continue to deliver up to 55,900 dt equivalent of natural gas per day for Carnegie's account to Columbia Gas Transmission Corporation (Columbia). It is explained that Carnegie would deliver the gas to Petitioner by displacement. Petitioner states further that it began transportation of gas on May 2, 1984, pursuant to the terms of a May 1, 1984, service agreement between Petitioner and Carnegie. Petitioner explains that it would receive the gas from Carnegie at Petitioner's M and R Station Nos. 1275 and 008 located in Greene County, Pennsylvania; and Petitioner would then transport and redeliver the gas to Columbia, for the account of Carnegie, at a point of interconnection between Petitioner and Columbia, M and R Station No. 077, located in Fairfield County, Ohio. It is explained that Columbia would then transport the gas to Columbia Gas of Ohio, Inc., which would in turn transport and deliver the gas to Carnegie at four M and R stations located in Lorain and Scioto Counties in Ohio. Carnegie would then deliver the gas to United States Steel Corporation, it is stated.

The present certificate authorization expires on February 13, 1985. Petitioner states that the extended service would be pursuant to the terms and conditions of a September 24, 1984, letter agreement between Petitioner and Carnegie.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30509 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3273-002, et al.]

Hydroelectric Applications (Chittenden Falls Hydro Power Inc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 3273-002.

c. Date Filed: December 27, 1983.

d. Applicant: Chittenden Falls Hydro Power, Inc.

e. Name of project: Chittenden Falls.

f. Location: Kinderhook Creek at Rossman, Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. P. S. Eckhoff, Chittenden Falls Hydro Power, Inc., Box 806, Melville, Long Island, New York 11747.

i. Comment Date: December 20, 1984.

j. Description of Project: This amendment was filed in accordance with Article 25 of the license for Project No. 3273, which required the Licensee to conduct a feasibility analysis of installing additional capacity. The Licensee has determined that the addition of 500 kW to the existing 550-kW project is economically feasible. Proposed additions include: (1) reactivation of an existing 4-foot-by 8-foot headgate on the West end of the dam; (2) a new 62-foot-long, 6-foot-diameter penstock; (3) a new 500-kW turbine; (4) three, 400-foot-long transmission lines; and (5) appurtenant facilities. The average annual generation would be increased from 2,500 MWh to 3, 940 MWh.

k. Purpose of Project: Project energy would continue to be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, & D1.

2 a. Type of Application: Amendment of License—New Transmission Line.

b. Project No.: 3816-003.

c. Date Filed: December 30, 1983.

d. Applicant: Energenics Systems, Inc.

e. Name of Project: Southside Canal.

f. Location: Mesa County, Colorado, on the United States Bureau of Reclamation's 32.8-mile-long Southside Canal.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Gransville J. Smith, President, Energenics Systems, Inc., 1100 17th Street, NW., Suite 1109, Washington, D.C. 20036.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed amendment would revise the licensed location of the project transmission line to consist of a new 12.47-kV transmission line 3.3 miles in length which will run from a proposed electrical substation next to the powerhouse for Project No. 3816 to a 138-kV transmission line owned by Colorado Utility Company. A new substation occupying a space of approximately 40 feet by 40 feet will be constructed at the point of interconnection with the Colorado Utility Company. Approximately 2.2 miles of the transmission line will cross lands under the management of the Bureau of Land Management, and the remaining 1.1 miles of line will cross private land.

k. Purpose of Project: The proposed transmission line would convey power generated at the Southside Canal Project No. 3816 to a transmission line owned by Colorado Utility Company.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

3 a. Type of Application: License (5MW or less).

b. Project No.: 6167-004

c. Date Filed: September 11, 1984.

d. Applicant: Ronald E. Rulofson.

3e. Name of Project: Eltapom Creek Hydroelectric.

f. Location: On Eltapom Creek, partially within the Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ronald E. Rulofson, P.O. Box 108, Hyampom, California 96046.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2,200 feet; (2) a 42-inch-diameter, 3,000-foot-long low pressure pipe; (3) a 24-inch-diameter, 700-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,490 kW, operating under a head of 440 feet; and (5) a 12-kV, 2-mile-long transmission to connect the project with an existing Pacific Gas and Electric Company (PG&E) line north of the powerhouse.

k. Purpose of Project: The estimated annual generation of 4.8 million kWh would be sold to GP&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

4 a. Type of Application: Major License.

b. Project No: 7042–001.

c. Date Filed: March 7, 1984.

d. Applicant: Cities of Minden, Natchitoches, and Ruston, Louisiana.

e. Name of Project: John H. Overton Lock and Dam Hydro.

f. Location: Red River mile 89, in Rapides Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Vice President Forte & Tablada, Inc., P.O. Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed run-of-river project would utilize the U.S. Army Corps of Engineers John H. Overton Lock and Dam, as well as the Corps intake and outflow channels. These facilities are presently under construction. The project would consist of the following: (1) A new concrete powerhouse, approximately 160 feet long, 140 feet wide, housing three turbine-generator units with a total installed capacity of 25,500 kW. The powerhouse would be located adjacent to and integral with the Corps' structure; (2) approximately 11.74 miles of new transmission line at 138–kV; (3) a new substation located at the power plant; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 104,089 MWh. The license application was filed during the term of the Applicants' preliminary permit for Project No. 7042–000.

k. Purpose of Project: Energy produced at the project would be utilized in the Applicants' municipal electrical systems for distribution to their customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

5 a. Type of Application: License (Over 5MW).

b. Project No.: 7396–001.

c. Date Filed: March 30, 1984.

d. Applicant: The Incorporated County of Los Alamos.

e. Name of Project: Abiquiu Water Power Project.

f. Location: On Rio Chama in Rio Arriba County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—835(r).

h. Contact Person: Mr Ronald C. Jack, County Administrator, Incorporated County of Los Alamos, 2300 Trinity Drive, P.O. Box 30, Los Alamos, New Mexico 87544.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Abiquiu Dam, Reservoir and outlet works and would consist of: (1) A new 11-foot, 2-inch-diameter steel liner to be installed in the outlet works and a bifurcation; (2) a new 11-foot, 2-inch-diameter steel penstock, about 120 feet long, and a bypass facility encased in concrete; (3) a new powerhouse, at elevation 6,029 feet (NGVD), to contain 2 turbine-generator units rated at 5,500 kW each for a total rated capacity of 11,000 kW; (4) a tailrace returning flow to the river immediately downstream of the dam; (5) a new 69-kV transmission line about 0.2-mile-long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 43,500,000 kWh. Project energy would be utilized by the Applicant. The application was filed during the term of Applicant's preliminary permit for Project No. 7396.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

6 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8022–000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project. Uncompahgre Valley Hydroelectric Project No. 1.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: December 27, 1984.

j. Competing Application: Project No.: 8035–000, Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately .6 mile downstream of the Gunnison Tunnel West Portal; (2) a proposed 120-inch-diameter penstock, approximately 1,600 feet long; (3) a proposed powerhouse with a single 3,500-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed ½-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 23,651,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7 a. Type of Application: License (Major less than 5 MW).

b. Project No.: 8026–000.

c. Date Filed: February 2, 1984.

d. Applicant: West Slope Hydro Partners.

e. Name of Project. Uncompahgre Valley Hydroelectric Project No. 5.

f. Location: U.S. Bureau of Reclamation's South Canal, Montrose County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Douglas A. Spaulding, INDECO of Minnesota, Inc., 1500 South Lilac Drive, 351 Tyrol West Building, Minneapolis, Minnesota 55416.

i. Comment Date: December 27, 1984.

j. Competing Application: Project No.: 8039–000, Date Filed: February 2, 1984.

k. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's South Canal and would consist of the following: (1) A proposed intake headworks located at an existing canal drop, approximately 9.4 miles downstream of the Gunnison Tunnel West Portal; (2) a proposed 78-inch-diameter penstock, approximately 900 feet long; (3) a proposed powerhouse with a single 2,000-kW capacity generating unit; (4) a proposed short powerhouse discharge channel leading to the adjacent South Canal; (5) a proposed 5-mile-long 34.5-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The estimated average annual generation of 10,592,000 kWh would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8 a. Type of Application: Exemption (5MW or Less).

b. Project No: 8066–001.

c. Date Filed: April 26, 1984.

d. Applicant: American Hydro Power Company.

e. Name of Project: Warrior Ridge Project.

f. Location: On the Juanita River in Huntingdon County, Pennsylvania.

g. Filed Pursuant to: 16 U.S.C., 2705 and 2708.

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 4026 Chestnut Street, Philadelphia, Pennsylvania 19104.

i. Comment Date: December 24, 1984.

j. Description of Project: The proposed project would consist of: (1) the existing Warrior Ridge Dam which consists of three sections, (a) A 374.5-foot-long, 27-foot-high overflow section with a crest elevation at 658.0 feet MSL, (b) and approximately 51-foot-high, 300-foot-long powerhouse section, and (c) a 136-foot-long auxiliary spillway with a crest elevation of 662.0 feet MSL; (2) the re-installation of 1.5 feet of flashboards; (3) a 65-acre reservoir which impounds 400 acre-feet of gross storage at top of flashboards; (4) an existing powerhouse to contain an installed generating capacity of 2.85 MW; and (5) appurtenant facilities.

The dam and appurtenant facilities are owned by the Pennsylvania Electric Company. The Applicant estimates the average annual energy production to be 12,191,200 kWh.

k. Purpose of Project: The Applicant intends to sell the total output generated to General Public Utilities/Penelec.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority, of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8395–000.

c. Date Filed: June 26, 1984.

d. Applicant: F. & T. Energy Corporation.

e. Name of Project: David D. Terry L & D No. 6.

f. Location: On Arkansas River in Pulaski County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: January 11, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' David D. Terry Lock and Dam No. 6 and would consist of: (1) A new 1,500-foot-long intake channel at the right river bank; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 32,000 kW; (3) a tailrace channel returning flow to the river about 2,500 feet downstream from the dam; (4) a new 5.2-mile-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 165,000,000 kWh. Project energy would be sold to the Arkansas Power and Light Company or to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

10 a. Type of Application: 5 MW Exemption.

b. Project No: 8423–000.

c. Date Filed: July 11, 1984.

d. Applicant: City of Granite Falls, Minnesota.

e. Name of Project: Granite Falls Hydro.

f. Location: On the Minnesota River in Yellow Medicine and Chippewa Counties, Minnesota.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Richard Voller, City Manager, 885 Prentice, Granite Falls, Minnesota 56241.

h. Contact Person: Mr. Richard Voller, City Manager, 885 Prentice, Granite Falls, Minnesota 56241.

i. Comment Date: December 31, 1984.

J. Description of Project: The proposed project would consist of: (1) An existing concrete overflow spillway about 250 feet long and 18 feet in height; (2) the removal of the contiguous existing 74-foot-long flood gate structure, which will be replaced by three concrete Tainter gate bays with a gate height of 14 feet; (3) an existing powerhouse structure integral with the dam, 28 feet by 40 feet, housing two existing turbine-generator units with a total installed capacity of 470 kW; (4) the addition of a new powerhouse, adjacent to the existing powerhouse which will house a third turbine-generator unit with an installed capacity of 710 kW; (5) a reservoir 3.5 miles in length and water surface area of approximately 60 acres at normal maximum water surface elevation of 900.74 feet, m.s.l.; (6) a proposed 4.16–kV transmission line approximately 100 feet long; and (7) appurtenant facilities. The applicant estimates that the average annual energy for all three units would be 4,360,000 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be utilized within its municipal utility system.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

11 a. Type of Application: Exemption from Licensing (5MW or less).

b. Project No.: 8450–000.

c. Date Filed: July 20, 1984.

d. Applicant: Small Hydro East.

e. Name of Project: Stoney Brook.

f. Location: Stoney Brook in Oxford County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: James D. Sysko, Small Hydro East, Star Route 240, Bethel, Maine 04217.

i. Comment Date: December 31, 1984.

j. Description of Project: The existing project consists of: (1) An existing 12-foot-high, 16-foot-long concrete dam with earthen abutments; (2) an existing 12-acre reservoir at an elevation of 1,240 feet m.s.l.; (3) a concrete inlet structure at an elevation of 1,210 feet m.s.l.; (4) a 4,800-foot-long, 6-inch-diameter underground penstock; (5) a 12-foot by 8-foot powerhouse containing a turbine/generator unit with an installed capacity of 17 kW; (6) a 5,000-foot-long, 7.2–kV transmission line; and (7) appurtenant facilities.

Proposed improvements include: (1) proposed gate works at the dam; (2) a proposed 4,800-foot-long, 6-inch-diameter under ground penstock; (3) a proposed 800-foot-long, 10-inch-diameter pipeline; (4) rebuilding the existing turbine/generator unit to increase the capacity to 35 kW; (5) a proposed 5,600-foot-long, 7.2–kV transmission line; and (6) appurtenant facilities. The average annual generation would increase from 72 MWh to 240 MWh.

k. Purpose of Project: Project energy will continue to be sold to Central Maine Power Company. In addition, a

portion of the power will be supplied to the Applicant's home.

l. This notice also consists of the following standard paragraphs: A1, B, C, D3a, A9.

m. Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

12 a. Type of Application: Preliminary Permit.

b. Project No: 8532–000.

c. Date Filed: August 16, 1984.

d. Applicant: Juniper Ridge Ranches, Inc.

e. Name of Project: Juniper Ridge.

f. Location: On Pit River in Lassen County, California; partially within U.S. lands administered by U.S. Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Thomas Vestal, P.O. Box 250, Fall River Mills, California 96028.

i. Comment Date: December 31, 1984.

j. Competing Application: Project No. 8296. Date Filed: May 5, 1984.

A public notice was issued on July 17, 1984 and expired September 17, 1984.

k. Description of Project: The proposed project would consist of: (1) a 15-foot-high, 320-foot-long, diversion structure at elevation 4,095 feet; (2) a 15-foot-high, 250-foot-long intake structure containing trash racks and fish screen facilities; (3) a 14-foot-diameter, 25,950-foot-long diversion tunnel; (4) two 102-inch-diameter, 3,950-foot-long penstocks; (5) a powerhouse with a total installed capacity of 45 MW; and (6) a 69-kV, 9,920-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The estimated 123.5 million kWh generated annually by the proposed project would be sold to PG&E.

l. Purpose of Project: The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project. The estimated cost of conducting these studies is $490,000. No new roads would be constructed to conduct these studies.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8541–000.

c. Date Filed: August 21, 1984.

d. Applicant: Palisade Associates.

e. Name of Project: Grand Valley.

f. Location: On the Colorado River in Mesa County, Colorado and occupying lands administered by the Bureau of Reclamation.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Joel Kirk Rector, Attorney at Law, 8 Peabody Terrace #32, Cambridge, Massachusetts 02138.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed would utilize the existing Grand Valley Diversion Dam and Reservoir owned by the Bureau of Reclamation and would consist of: (1) A proposed penstock 10 feet long, approximately 3 meters in diameter; (2) a proposed powerhouse 40 feet wide and 80 feet long containing a proposed turbine/generator with a total rated capacity of 1.6 MW; (3) a proposed tailrace 80 feet wide and 80 feet long; (4) a new 12.5-kV transmission line 50 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 11.0 GWh operating under a net hydraulic head of 14 feet. Project power would be sold to the Public Service Company of Colorado or to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 8576–000.

c. Date Filed: September 4, 1984.

d. Applicant: PRODEK, Inc.

e. Name of Project: Stillhouse Hollow Dam Water Power.

f. Location: On the Lampasas River in Bell County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Flake H. Wells, III, P.O. Box 12608, El Paso, Texas 79912.

i. Comment Date: January 28, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers Stillhouse Hollow Dam, Reservoir, and outlet works and would consist of: (1) about 540 feet of new 11-foot-diameter steel tunnel liner to be installed inside the existing outlet works; (2) a proposed closure gate; (3) a proposed 11-foot-diameter branch penstock about 70 feet long; (4) a proposed 54-inch bypass valve; (5) a proposed concrete powerhouse about 180 feet by 40 feet, housing turbine-generators with a total installed capacity of 7500 kW; (6) a new tailrace channel about 200 feet long; (7) about 600 feet of transmission line at 25-kV; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 13,000,000 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be marketed to an established operating electric utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $55,000.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 8580–000.

c. Date Filed: September 4, 1984.

d. Applicant: Breck Richards.

e. Name of Project: Calamity Draw Water Power.

f. Location: Montrose County Colorado on a tributary of the San Miguel River, and occupying Bureau of Land Management lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Martin A. Jones, P.E., 0171 Ute Way, Silt, Colorado 81652.

i. Comment Date: January 14, 1985.

j. Description of Project: The proposed project would consist of: (1) A 9.5 foot high and 50 foot wide earthfill dam including a spillway at elevation 5520 feet USGS datum; (2) a 0.8 acre reservoir with a proposed storage capacity of 3.0 acre-feet at surface elevation 5530 feet; (3) a proposed penstock 8,800 feet long approximately 18 inches in diameter; (4) a proposed powerhouse 24 feet long and 16 feet wide containing two proposed turbine/generators with a rated capacity of 100 kW each; (5) a tailrace; (6) an existing transmission line 4.0 miles long; and (7) appurtenant facilities. The

estimated average annual energy produced by the project would be 500,000 kWh operating under a net hydraulic head of 260 feet. Project power would be sold to Colorado-Ute, a utility company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $6,450.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8582–000.

c. Date Filed: September 4, 1984.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Quayle Creek Hydroelectric Power.

f. Location: On the Quayle Creek in Clear Creek County, Colorado on lands within the Arapaho National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert E. Stout, 6941 S. Cherokee Street, Littleton, Colorado 80120.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4 to 6-foot high and 20-foot-long proposed dam including a spillway at elevation 10,160 feet USFS datum; (2) a reservoir of negligible size and storage capacity; (3) a proposed penstock 3,500 feet long, aproximately 3 feet in diameter; (4) a proposed powerhouse made of prefabricated corrugated steel, 15 feet long and 15 feet wide; (5) a proposed turbine/generator with a rated capacity of 700 kW; (6) a proposed tailrace 4 feet in diameter and 20 feet long; (7) a new three-phase 25-kV transmission line 1,600 feet long; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 2.5 million kilowatthours operating under a net hydraulic head of 280 feet. Project energy would be sold to the Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7,A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 8585–000.

c. Date Filed: September 5, 1984.

d. Applicant: Rivers Electric Company.

e. Name of Project: Little Falls.

f. Location: On the Passaic River in Passaic County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Charles R. Pepe, 120 North Pascack Road, Spring Valley, New York 10977.

i: Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) The existing Beatties Mill Dam, which has an overall length of aproximately 267 feet and a height of 20 feet to spillway crest elevation 161.1 feet M.S.L.; (2) the exising 350-acre reservoir which has a storage capacity of 1,435 acre-feet; (3) a proposed powerhouse which will contain an installed generating capactiy of 3 MW; and (4) apurtenant faciliities. The project would generate up to 12,000,000 kWh annually.

k. All existing project facilities are currently owned by: Beattie Manufacturing Co., 242 Main Street, Little Falls, New Jersey; and Passaic Valley Water Commission, Box 230, Clifton, New Jersey.

l. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the Public Service Electric Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, finanical feasibility, environmnental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8589–000.

c. Date Filed: September 10, 1984.

d. Applicant: Triple Star Hydro Ltd.

e. Name of Project: Triple Star Hydroelectric Project.

f. Location: On Soldier Creek, near Junction City, within Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 40-foot-long diversion dam at elevation 2,430 feet; (2) a 36-inch-diameter, 6,250-foot-long diversion pipeline; (3) a 30-inch-diameter, 3,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 1,770 kW operating under a head of 680 feet; and (5) a 1-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 11.6 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs; A6, A7, A9, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No: 8591–000.

c. Date Filed: September 10, 1984.

d. Applicant: Boise Canyon Hydro Ltd.

e. Name of Project: Boise Canyon Hydroelectric Project.

f. Location: On Boise Creek, near Orleans, with the Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 18-foot-long diversion dam at elevation 1,325 feet; (2) a 36-inch-diameter, 23,000-foot-long diversion pipeline; (3) a 30-inch-diameter, 1,560-

foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,600 kW operating under a head of 925 feet; and (5) a 0.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 10.7 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $70,000.

k. This notice also consists of the following standard paragraphs; A6, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8602–000.

c. Date Filed: September 17, 1984.

d. Applicant: Robert W. Compton.

e. Name of Project: Deadwood River.

f. Location: In the Boise National Forest, on Deadwood River, near Lowman, in Boise County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Larry J. Hellhake, 809 N. Liberty St., Boise, Idaho 83704.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high check dam at elevation 4,250 feet with fish screens and controls to provide minimum flows downstream; (2) a 28,300-foot-long, 66-inch-diameter buried steel penstock; (3) a powerhouse at elevation 3,750 feet containing a single generator with a rated capacity of 9.65 MW and an annual energy production of 24.78 CWh; (4) a tailrace, and (5) a 1-mile-long transmission line to an existing Idaho Power Comapany line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 24-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construction and operate the project. Applicant has state that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities is $10,000.

k. Purpose of Project: Power may be marketed to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 8603–000.

c. Date Filed: September 17, 1984.

d. Applicant: Streamline Hydro, Inc.

e. Name of Project: Herman Gulch.

f. Location: On the Herman Gulch Creek in Clear Creek County, Colorado on lands within the Arapaho National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert E. Stout, 6941 S. Cherokee Street, Littleton, Colorado 80120.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4 to 6 foot high and 25-foot-long proposed dam including spillway at elevation 10,890 feet USGS datum; (2) a reservoir of negligible size and storage capacity; (3) a proposed penstock 3,200 feet long approximately 3 feet in diameter; (4) a proposed powerhouse made of corrugated steel 15 feet long and 15 feet wide; (5) four turbine/generators with a total rated capacity of 1000 kW; (6) a proposed tailrace 20 feet long and 5 feet in diameter; (7) an existing 25-kV transmission line 200 feet in length; and (8) appurtenant facilities. The estimated average annual energy produced by the project would be 4 million kWh operating under a net hydraulic head of 435 feet. Project power would be sold to the Public Service of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 8619–000.

c. Date Filed: September 27, 1984.

d. Applicant: Doe Run Creek Hydro Rehabilitation Association.

e. Name of Project: Doe Run Creek.

f. Location: On Doe Run Creek in Meade County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Daniel Swan, Power Development Systems, Inc., 140 Outer Loop, Louisville, Kentucky 40214.

i. Comment Date: January 18, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 15-foot-high and 75-foot-wide dam including spillway at elevation 520 feet USGS datum; (2) a reservoir of negligible size and storage capacity; (3) an existing penstock 120 feet long with a 3-foot-diameter; (4) a proposed powerhouse 10 feet square containing a new generator with a rated capacity of 35 kW; (5) a proposed afterbay; (6) a proposed 480-volt transmission line 600 feet in length; and (7) appurtenant facilities. The dam is owned by Ms. Dorothy Smith. The estimated average annual energy produced by the project would be 140,000 kWh operating under a net hydraulic head of 15 feet. Project power would be sold to the Louisville Gas and Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $3,000.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 8676–000.

c. Date Filed: October 22, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: McMillan No. 2.

f. Location: On Little Cow Creek, near Round Mountain, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002, (916) 222–1414.

i. Comment Date: January 22, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) an intake structure on Little Cow Creek at elevation 3,860 feet msl; (2) a 27-inch-diameter, 7,900-foot-long diversion conduit; (3) an 24-inch-diameter, 17,500-foot-long penstock; (4) a powerhouse located at elevation 2,120 feet msl with a total installed capacity of 2,707 kW, and (5) a 21,000-foot-long, 12-kV transmission line to interconnect to an existing Pacific Gas and Electric

Company line. Applicant estimates the average annual energy generation at 6.35 GWh using 1,650 foot of head and 18 cfs of flow. Project power would be sold to a public utility.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $75,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Competing Applications

A1. Exemption for Small Hydroelectic Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectic Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption, application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License of Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exempton application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial licenses, small hydroelectric exemption or conduit exemption application. No competing applications or notices or intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular applications (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a

competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agancy does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 16, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30562 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–77–000]

Allegheny Power Service Corp.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, Allegheny Power Service Corporation (Allegheny) tendered for filing a Notice

of Cancellation of the Monogahela Power Company Rate Schedule FPC No. 33, the Potomac Edison Company Rate Schedule FPC No. 38, and West Penn Power Company Rate Schedule FPC No. 32. Allegheny states that the Contract expired by its own terms on December 31, 1980.

Copies of this filing were served upon UGI Corporation, Pennsylvania Public Utility Commission, Public Utility Commission of Ohio, West Virginia Public Service Commission, Maryland Public Service Commission and the Virginia State Corporation Commission.

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 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 November 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-304563 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-88-000]

American Electric Power Service Corp.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, American Electric Power Service Corporation (AEP) tendered for filing Modification No. 2, dated October 1, 1982 among Appalachian Power Company (Appalachian), Ohio Power Company (Ohio Power), Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn). Appalachian and Ohio Power constitute the AEP Parties. Monongahela and West Penn constitute the APS Parties.

Under the Power Supply Agreement the AEP Parties are delivering to the APS Parties for resale to General Public Utilities Corporation (GPU), under a Power Resale Agreement, dated October 1, 1982, among Monongahela, West Penn, Jersey Central Power and Light Company Metropolitan Edison Company, and Pennsylvania Electric Company, 560 MW of capacity and energy during the period October 25, 1982 through December 31, 1990, inclusive.

This Modification increases the monthly demand charge, by the AEP Parties to the APS Parties, from $2,100,000 to $2,670,000. This increase reflects the addition of the new 1300 MW Rockport Unit No. 1 to the group of 1300 MW units as anticipated in the original Power Supply Agreement upon which the monthly demand charge is based.

The Parties have requested an effective date of January 1, 1984 for this Modification.

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 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 November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30564 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-3-000]

Arizona Public Service Co.; Application

November 15, 1984.

Take notice that Arizona Public Service Company, ("Company") on November 6, 1984, tendered for filing an application for sale of certain electrical facilities, including some 69kV transmission lines, conductors and poles to Salt River Project Agricultural Improvement and Power District ("District"). After all requisite approvals are obtained, as a result of the sale, transmission service will be provided by District to the Company at its Gilbert and Chandler Substations in Maricopa County, Arizona. No customer of either party will be affected by the proposed sale.

Copies of the filing were served upon the District and the Arizona Corporation Commission. Approval of the filing is requested as soon as possible, but in no event later than sixty (60) days from the filing date.

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 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 December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30565 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-000, et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Monthly Status Conference

November 15, 1984.

Take notice that on November 29, 1984, at 1:30 p.m., the Commission Staff will convene the next monthly conference in the above-docketed proceeding to discuss the status of the special marketing program.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested persons and Staff are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30569 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-483-003]

Colorado Interstate Gas Co.; Petition To Amend

November 15, 1984.

Take notice that on October 22, 1984, Colorado Interstate Gas Company (Petitioner), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82-483-003 a petition to amend the order issued on November 26, 1982, in Docket No. CP82-483-000 pursuant to section 7(c) of the Natural Gas Act so as to permit the addition of a delivery point under the gas transportation agreement

(transportation agreement) dated March 16, 1982, as amended June 29, 1982, and August 31, 1984, between the Petitioner and Wycon Chemical Company (Wycon), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it and Wycon have excuted an amendment to the transportation agreement adding the Bullfrog 2–7–36–86 well located in Natrona County, Wyoming, as a new delivery point of Wycon's gas supply to Petitioner. Petitioner states that this well is currently connected to a gathering system owned and operated by Petitioner and that gas is currently being gathered and transported by Petitioner on behalf of Wycon pursuant to 18 CFR 157.209 and the authority granted to Petitioner in Docket No. CP84–558–000.

Additionally, Petitioner requests authority to add and delete supply delivery points to the transportation agreement and to file annually by January 31 tariff revisions reflecting the additions and deletions. Petitioner also proposes to impose a gathering charge of 12.0 cents per Mcf gathered from the Bullfrog 2–7–36–86 well.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30570 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER85–85–000 and ER83–437–004]

Commonwealth Edison Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes replace the Electric Service Contracts between Commonwealth Edison Company and the Cities of Batavia, Geneva, Naperville, Rock Falls and St. Charles, Illinois (the Cities) in accordance with a Settlement Agreement dated July 9, 1984, between the Company and the Cities. The Settlement Agreement was approved by the Federal Energy Regulatory Commission in its letter dated October 2, 1984.

A copy of the filing has been served upon the Cities.

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 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 November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30571 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–52–000]

Consolidated Gas Transmission Corp.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 23, 1984, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85–52–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for an end-user under the certificate issued in Docket No. CP82–537–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Mobay Chemical Corporation (Mobay) has acquired an Appalachian supply of natural gas from Industrial Energy Services Company (IESCO). Consolidated proposed to transport up to 2,000 dt equivalent of natural gas per day from the facilities of IESCO to facilities owned by Hope Gas, Inc., for further delivery to Mobay's facilities in Marshall County, West Virginia. It is explained that the end-use of the gas would be 50 percent for process and feedstock needs and 50 percent for non-high priority use. It is asserted that Consolidated would charge Mobay in accordance to its Rate Schedule TI, a rate of 30.95 cents per dt.

It is explained that the term of the transportation service would be from the date of initial deliveries and continuing for a period of 180 days.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30572 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–91–000]

Consumers Power Co.; Filing

November 15, 1984.

Take notice that Consumers Power Company ("Consumers") on November 2, 1984 tendered for filing Consumers' Supplemental Agreement No. 1 to the Service Agreement Wholesale for Resale Electric Service with the Village of Chelsea, Michigan, dated as of March 10, 1977.

Supplemental Agreement No. 1 reduces the capacity reservation in the Service Agreement by 1,737 kW since Chelsea participates by that amount in the Michigan Public Power Agency's ownership in the J.H. Campbell Unit 3. In addition for purposes of determining the capacity charges for the month of January, 1984, and succeeding months, the customer's historical demands for each month of the eleven month period preceding the month of January, 1984, shall be reduced by 1,737 kW.

Consumers Power states that copies of the filing were served on the Village

of Chelsea and on the Michigan Public Service Commission.

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 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 November 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30573 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-86-000]

Florida Power & Light Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, Florida Power and Light Company (FP&L) tendered for filing an Amendment Number One to Service Agreement for the Supply of Wholesale Power Service to Municipalities and Rural Electric Cooperatives (Amendment) between Florida Power & Light Company and the City of Clewiston.

FP&L states that the proposed Amendment replaces in its entirety Exhibit A to the Service Agreement for the Supply of Wholesale Electric Power Service to Municipalities and Rural Electric Cooperatives between Florida Power & Light Company and the City of Clewiston. Such revised Exhibit A describes the additional metering and protective provisions necessary to accommodate the interconnection of certain generating facilities with the City of Clewiston. According to FP&L, the City of Clewiston will remain a full requirements customer receiving service under F&PL's Sale for Resale Rate Schedule FR-2 or its successor schedule(s).

FP&L respectfully requests that the proposed Amendment be made effective on October 29, 1984, and therefore requests waiver of the Commission's notice requirements. FP&L states that the City of Clewiston supports FP&L's request for such waiver.

According to FP&L a copy of this filing was sent to the City of Clewiston and to the Florida Public Service Commission.

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 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 November 27, 1984. Protests will be considered by the Commission in determinining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30574 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-540-001]

Great Lakes Gas Transmission Co.; Amendment

November 15, 1984.

Take notice that on October 12, 1984, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP84-540-001 an amendment to its pending application filed in Docket No. CP84-540-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity so as to reflect certain newly executed contractual arrangements with TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to increase transportation service for TransCanada under an existing natural gas transportation contract from 815,000 Mcf of natural gas per day to 1,070,000 Mcf per day, commencing November 1, 1987, and to increase to 1,270,000 Mcf per day during the succeeding contract years.

Applicant states that its gas transportation contract with TransCanada provides for transportation of gas from the United States-Canadian international boundary near Emerson, Manitoba, to the United States-Canadian international boundary near Sault Ste. Marie and St. Clair, Michigan. Applicant further states that the increase in transportation service has been requested by TransCanada in conjunction with the gas to be exported by TransCanada at Niagara, Ontario, which gas is *inter alia*, the subject of an application filed by Niagara Interstate Pipeline System (NIPS), pending in Docket No, CP83-170-001. Applicant states that its application is being filed in support of NIPS project.

Applicant states that the amended application is being filed due to the newly-executed contractual arrangements between TransCanada and Applicant. Applicant further states that the amended application contains all pertinent exhibits and supersedes the initial application filed on July 3, 1984, and that the total facilities required, their cost, and geographic location are the same as shown in Applicant's application.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30575 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-39-000]

Lone Star Gas Company a Division of ENSERCH Corp.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-39-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain gas sales facilities under the

authorization issued in Docket No. CP83–59–000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Lone Star proposes to abandon line A16 from Station 167+00 to Station 243+94 (end) and line A18–5 from Station 38+12 to Station 129+32 (end) all located in Wichita County, Texas. Lone Star states that the segments of pipeline proposed for abandonment are no longer used or useful in Lone Star's operations. Lone Star states further that the proposed abandonment would not result in the loss of any gas supply or the termination of service to any existing customer. Lone Star asserts that the customers previously served by the segments proposed for abandonment have discontinued service some time ago, as they no longer desired gas service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30576 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–30–000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company) 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85–30–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of James River Corporation (James River) under the certificate issued in Docket No. CP84–451–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 8,200 Mcf of gas per day on an interruptible basis pursuant to a transportation agreement dated October 4, 1984, between Storage Company and James River. Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are downstream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. Storage Company states that James River is the end-use customer of Consumers which is supplied by Storage Company and that end-use of the gas is for boiler fuel at James River's Kalamazoo plant.

In addition, Storage Company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T–3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30577 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–37–000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85–37–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Allied Paper Incorporated (Allied) under the certificate issued in Docket No. CP84–451–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 5,000 Mcf of gas per day on an interruptible basis pursuant to a transportation agreement dated October 12, 1984, between Storage Company and Allied Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states that it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are down stream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. It

is further explained that Allied is the end-use customer of Consumers which is supplied by Storage Company and that the end-use of the gas is for boiler fuel at Allied's Bryant Mill.

In addition, Storage Company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T–3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30578 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–38–000]

Michigan Gas Storage Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 15, 1984, Michigan Gas Storage Company (Storage Company), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP85–38–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of James River Corporation (James River), under the certificate issued in Docket No. CP84–451–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Storage Company proposes to provide transportation for up to 12,000 Mcf of gas per day on an interruptible basis pursuant to a Transportation Agreement dated October 1, 1984, between Storage Company and James River. Storage Company explains that the term of the authorization as herein sought is from the date automatic authorization expires or such later date as the Commission finds appropriate, through termination of authorization as provided by Subpart F of Part 157 of the Regulations or termination of the transportation agreement, whichever occurs first.

Storage Company states that it would receive the gas from Panhandle Eastern Pipe Line Company (Panhandle) at various existing points of interconnection between Panhandle and Storage Company (provided that such points of interconnection are downstream from Storage Company's South Lyon measuring station in Oakland County, Michigan) or such other points as the parties might hereafter agree to. It is explained that the gas would then be redelivered to Consumers Power Company (Consumers) at existing interconnections between the facilities of Consumers and Storage Company. It is further explained that James River is the end-use customer of Consumers which is supplied by Storage Company and that the end-use of the gas is for boiler fuel at James River's KVP Plant.

In addition, Storage company requests flexible authority to add or delete sources of supply or receipt/delivery points. Any changes in source or receipt/delivery points are intended to be on behalf of the same end-user at the same end-user location and within the maximum daily and annual volumes authorized in this docket, it is submitted.

Furthermore, Storage Company agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

It is stated that the transportation rate for this service is based upon Storage Company's T–3 tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30579 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–48–000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–48–000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point and appurtenant facilities for an eligible end-user under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct a new delivery point and appurtenant facilities located in Hardin County, Iowa, for Iowa Electric Light and Power Company to serve a new residential customer, Iowa Falls Mobile Home Park, for residential heating needs. Northern states that the estimated peak day and annual volumes are expected to reach a level of 155 Mcf and 28,555 Mcf of gas, respectively, in the fifth year. The proposed sale would be made in accordance with Northern's Rate Schedule CD–1. It is stated the estimated cost of these facilities is $28,784.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the

instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30581 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-49-000]

Northern Natural Gas Co. Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-49-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point and appurtenant facilities for an eligible end-user under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a new delivery point located in Burt County, Nebraska, for the delivery of natural gas to Minnegasco, Inc. (Minnegasco), in order that Minnegasco may provide natural gas service to an end-user, Densified Forage Products, to meet their alfalfa dehydrating and space heating needs. Northern states that the peak day and annual volumes are expected to reach a level of 154 Mcf and 18,120 Mcf of gas, respectively, in the fifth year. Northern states that the proposed sale would be made in accordance with Northern's Rate Schedule CD-1 with the required volumes served from the existing firm entitlement of Minnegasco. The estimated cost of the proposed facilities is $28,919, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30582 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-69-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

November 15, 1984

Take notice that on October 26, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-69-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate four small volume sales measuring stations to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under the certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would install, operate, and maintain four small volume measuring stations to make sales of natural gas to four end-user customers through Peoples. Northern further states that the proposed facilities would be located in Scott and Dakota Counties, Minnesota, Blackhawk County, Iowa, and Ford County, Kansas. Northern avers that the volumes delivered would provide necessary natural gas for residential heating. Northern further avers that the volumes delivered are within Peoples' presently authorized firm entitlement, which was certificated in Docket No. CP82-500-001 on July 29, 1983.

Northern estimates that the cost of the proposed facilities to be $3,136. Such cost, it is asserted, would be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and the respective letter agreements between Northern and Peoples dated July 10, 1984, and August 31, 1984.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30583 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-560-001]

Northwest Pipeline Corp., Amendment

November 15, 1984.

Take notice that on September 28, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP84-560-001 pursuant to section 7 of the Natural Gas Act an amendment to Northwest's application filed July 10, 1984, in Docket No. CP84-560-000 so as to reflect a change in the receipt points at which NGL Production Company (NGL) would tender natural gas to Northwest for transportation, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that on July 10, 1984, Northwest filed in Docket No. CP84-560-000 an application for certificate authorization, among other things, to transport up to 5,000 Mcf of natural gas per day for the account of NGL pursuant to a gas transportation agreement, dated May 29, 1984 (transportation agreement). The proposed transportation service, it is stated, provided for NGL's tendering the natural gas for transportation at existing points of interconnection between Montana-Dakota Utilities Co. (Mondak) pipeline and the Colorado Interstate Gas Company (CIG) pipeline in Park County, Wyoming (Elk Basin receipt point), or Fremont County, Wyoming (Madden receipt point). It is explained that Northwest, utilizing its March 11, 1980, gas transportation and exchange agreement with CIG, would provide for the transportation of NGL's gas to existing points of delivery on Northwest's transmission system in Sweetwater County, Wyoming, or Uintah County, Utah, and that Northwest would then transport NGL's gas on its mainline facilities and redeliver thermally equivalent volumes

of gas, less fuel, to NGL's processing plants in Rio Blanco County, Colorado, and Lincoln County, Wyoming.

Northwest proposes to amend its transportation service pursuant to the gas transportation agreement as amended by a letter agreement dated August 10, 1984. Northwest states that NGL would now tender its gas to Northwest for transportation at existing delivery points from CIG to Northwest in Sweetwater County, Wyoming, and Uintah County, Utah. Northwest states that NGL and CIG have entered into a gas transportation agreement to provide the transportation of NGL's gs from the existing points of interconnection between Mondak and CIG to the above-mentioned points of delivery from CIG to Northwest.

Northwest further states that NGL intends to utilize a portion of this gas to replace fuel which would be used by a proposed carbon dioxide conditioning plant located adjacent to its Foundation Creek processing plant in addition to replacing fuel and shrinkage use incurred at its processing plants.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 6, 1984, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30584 Filed 11-20-84 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP85-46-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

November 15, 1984.

Take notice that on October 18, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-46-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of S.C.M. Corporation (S.C.M.) under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport gas on behalf of S.C.M. pursuant to a transportation agreement dated August 30, 1984, as amended October 10, 1984, among S.C.M., Panhandle and East Ohio Gas Company (East Ohio), a local distribution company. Panhandle proposes to receive from S.C.M. a transportation quantity of up to 4,400 Mcf of gas per day at existing points of interconnection between Panhandle and Union Texas Products Corporation in Major and Kingfisher Counties, Oklahoma, and redeliver on an interruptible basis thermally equivalent volumes less a four percent reduction for fuel to East Ohio at an existing point of interconnection in Lucas County, Ohio. Panhandle states that East Ohio would then make ultimate redeliveries to S.C.M. at the Ashtabula I and II plants in Ohio.

Panhandle estimates that the annual volume, peak day volume and average day volume would be 1,387,000 Mcf, 4,400 Mcf and 3,800 Mcf of gas, respectively. Panhandle indicates that the end user would use the gas for boiler fuel, TiO_2 heat transfer, $TiCl_4$ heat transfer, spray drying and miscellaneous process heating and that the transported volumes would constitute 100 percent of the fuel needs of the plants.

Panhandle indicates it would charge S.C.M. a contract service rate and excess service rate of 42.0 cents and 87.0 cents, respectively, per million Btu's plus in each case a 1.24 cent-per million Btu GRI surcharge as provided by Panhandle's Rate Schedule OST. Panhandle states that no added incentive charge is involved.

Panhandle has also submitted a letter from East Ohio indicating that it has sufficient capacity to transport the gas but that it would interrupt the transportation if continued transportation would cause a decrease in supply purchases. Panhandle states that the transportation would be rendered through existing facilities and that the gas to be transported is not gas released by Panhandle. Also, Panhandle submitted a letter from the producer indicating that the gas would be sold at a price not in excess of the maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA). Panhandle requests authorization expiring the earlier of (1) eighteen months from the effective date of the transportation agreement, (2) termination of authorization under Subpart F of Part 157 of the Regulations or (3) termination of the agreement by either party.

In addition to the authority as herein described, Panhandle requests flexible authority to add or delete sources of supply or receipt/delivery points, if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service. Within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points, Panhandle indicates it would file the following information in this docket, where applicable to the changes in service:

(1) Copy of the gas purchase contract between the seller and the end-user.

(2) Statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor and if so, identification of the parties, and specification of the current contract price.

(3) Statement of the NGPA pricing categories of the added supply, if released gas, and the volumes attributable to each category.

(4) Statement that the gas is not committed or dedicated within the meaning of NGPA Section 2(18).

(5) Location of the receipt/delivery points being added or deleted, and the name of the producer/supplier.

(6) Where an intermediary participation in the transaction between the seller and the end-user the information required by Section 157.209(c)(1)(ix) of the Regulations.

(7) Identity of any other pipeline involved in the transportation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30586 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-82-000]

Pennsylvania Power & Light Co. and Jersey Central Power & Light Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, GPU Service Corporation (GPU) tendered for filing, on behalf of the above listed utilities, a proposed interconnection agreement, dated August 28, 1984.

GPU states that the agreement covers the construction, operation and maintenance of a 230 kV interconnection between the two systems connecting the Jersey Central Power & Light Company Gilbert Substation with the Pennsylvania Power & Light Company Martins Creek Substation at a point where the 230 kV line crosses the border between New Jersey and Pennsylvania.

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 the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30587 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-4-000]

Public Service Company of New Mexico; Petition for Declaratory Order and Application for Approval Pursuant to Section 203(a) of The Federal Power Act

November 15, 1984.

Take notice that, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission and section 203(a) of the Federal Power Act, on November 13, 1984, Public Service Company of New Mexico ("PNM") filed a Petition for Declaratory Order and Application for Approval pursuant to section 203(a) of the Federal Power Act, requesting the approval of the sale of PNM's Eastern Interconnection Project ("EIP"), including a 345 kV transmission line and associated switching equipment and DC converting facilities, to Trusts to be formed for the benefit of Emerson Leasing Ventures, Inc., and General Foods Credit Corporation, as Owner Participants, in connection with a leveraged lease financing of the EIP.

PNM further requests a declaratory order stating that the Owner Participants and Trusts will not, as a result of their ownership of the EIP, become "public utilities" as that term is defined in section 201(e) of the Federal Power Act. The purchase price for the EIP is estimated at approximately $80,000,000.

After the sale to the Owner Participants and the simultaneous lease-back to PNM, PNM will maintain and operate the EIP and use the EIP for the same purposes as previously contemplated by PNM. The EIP is scheduled to go into commercial operation in January 1985.

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 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 December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30588 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-84-000]

San Diego Gas & Electric Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on November 1, 1984, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interconnection and Exchange Agreement between SDG&E and Imperial Irrigation District (IID).

The Agreement provides for the terms and conditions of interconnection between the two parties and also provides for the exchange of capacity and energy.

SDG&E requests an effective date of January 1, 1985.

Copies of this filing were served upon the Public Utilities Commission of the State of California and IID.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 835.214). All such motions or protests should be filed on or before November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30589 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-248-004]

Tennessee Gas Pipeline Co.; a Division of Tenneco Inc.; Petition to Amend

November 15, 1984.

Take notice that on October 15, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner) P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-284-004 a

petition to amend the Commission's order issued June 21, 1978, as amended, in Docket No. CP78–248 pursuant to section 7(c) of the Natural Gas Act, so as authorize reduction in the quantity of natural gas transported for the account of United Gas Pipe Line Company (United), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner seeks to reduce the quantity of natural gas transported for the account of United from 10,000 Mcf of gas per day to 1,000 Mcf per day. The gas is being purchased by United and delivered to Tennessee at an existing point of interconnection between their facilities in Colorado County, Texas. Tennessee redelivers equivalent volumes to United, less volumes for plant fuel, shrinkage, and Tennessee's fuel and use requirements, at the interconnection of their facilities in Ouachita Parish, Louisiana.

Petitioner proposes to make such reduction in the transportation quantity effective March 17, 1984, pursuant to the provisions of Section 2.1 of its transportation agreement dated March 17, 1978, as amended on May 17, 1983.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30590 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL84–44–000 and EF84–2011–001]

Bonneville Power Administration

Filing and Request for Declaratory Order

November 15, 1984.

Take notice that on September 11, 1984, Bonneville Power Administration (BPA) submitted to the Commission what BPA described as a supplemental response to a data request from the Commission staff in Docket Nos. EF84–2011–000 and EF84–2021–000. This material, which will be filed under Docket No. EF84–2011–001 at this time, concerned BPA's implementation of an Industrial Incentive Rate which BPA had established.

Take notice that on September 12, 1984, Southern California Edison Company, San Diego Gas & Electric Company, Los Angeles Department of Water and Power, California Energy Commission, Burbank Public Service Department, Pasadena Water and Power Department, Glendale Public Service Department, and the California Public Utilities Commission (the California parties) filed a motion for declaratory order concerning the Industrial Incentive Rate. The request was filed by the California parties in Docket Nos. EF84–2011–000 and EF84–2021–000, but has been given a new docket designation, EL84–44–000. In this filing the California parties asked that the Commission issue an order declaring that the Industrial Incentive Rate established by BPA has not been confirmed and approved by the Commission on an interim basis or otherwise. The California parties requested that the Commission assign a new docket number to the BPA filing of September 11, 1984 and either summarily reject the filing as deficient or issue notice of BPA's filing. On September 24, 1984, the Direct Service Industries filed a response in Docket Nos. EF84–2011–000 and EF84–2021–000 to the motion of the California Parties.

Any person desiring to be heard or to protest concerning BPA's filing of September 11, 1984, or the motion for the declaratory order filed on September 12, 1984, 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 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 November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filings described above are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30591 Filed 11–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–81–000]

West Texas Utilities Co.; Filing

November 15, 1984.

The filing Company submits the following:

Take notice that on October 31, 1984, West Texas Utilities Company (WTU) tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume No. 1, unexecuted letter amendments to its electric service agreement with Texas-New Mexico Power Company (formerly Community Public Service Company) and executed letter amendments to contracts for electric service with the Cities of Brady and Coleman, Texas. WTU has proposed a phased rate increase based upon a rate base which includes construction work in progress (CWIP) to the extent permitted under the Commission's regulations. Level B rates, proposed to be effective on January 1, 1985, would increase revenues from jurisdictional sales by $4,419,857 based on calendar year 1985. Level A Rates, proposed to be effective on December 31, 1984, would increase revenues from jurisdictional sales by $4,419,857 based on calendar year 1985. The only difference between the two sets of rates is the return on common equity which the rates are designed to produce. WTU requests that the Level A rates be suspended until January 1, 1985, in accordance with the terms of settlement in the Company's last rate case.

WTU states that it seeks to increase its rates for jurisdictional service in order to earn a fair return on its investment in utility property and thereby attract the capital it needs in order to complete construction of new generating and transmission capability.

Copies of the filing have been served on the customers of WTU affected by the filing and upon the Public Utility Commission of Texas.

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 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 November 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30593 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-21-000]

Bethlehem Steel Corp. Burns Harbor No. 2; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 12, 1984, Bethlehem Steel Corporation (Applicant) of 8th and Eaton Avenues, Bethlehem, Pennsylvania 18016 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility known as Burns Harbor Facility No. 2 is located at the Bethlehem's steel mill in Burns Harbor, Indiana. The extraction turbine generator set, installed in 1969, is driven by 850 psig, 900 °F steam. The primary energy source is natural gas (78%) supplemented by coke oven and blast furnance gases. extracted steam at the rate of 300,000 lb/hr at 265 psig and 650 °F is used for process requirements at the Burns Harbor steel plant. The net electric power production capacity is 51,000 kW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30566 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-22-000]

Bethlehem Steel Corp. Burns Harbor No. 1; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 12, 1984, Bethlehem Steel Corporation (Applicant) of 8th and Eaton Avenues, Bethlehem, Pennsylvania 18016 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility known as Burns Harbor Facility No. 1 is located at the Bethlehem's steel mill in Burns Harbor, Indiana. The extraction turbine generator set, installed in 1969, is driven by 850 psig, 900 °F steam. The primary energy source is natural gas (78%) supplemented by coke oven and blast furnace gases. Extracted steam at the rate of 300,000 lb/hr at 265 psig and 650 °F is used for process requirements at the Burns Harbor steel plant. The net electric power production capacity is 51,000 kW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30567 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-28-000]

Calaveras County Water District; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 15, 1984, Calaveras County Water District (Applicant), of 427 E. St. Charles Street, P.O. Box 846, San Andreas, California 95249 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2,530 kilowatt hydroelectric facility (P. 2903) will be located on the Calaveras River, in Calaveras County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by

the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30568 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-55-000]

Modesto Energy Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 25, 1984, Modesto Energy Company, (Attention: Robert Colman) 880 Third Avenue, New York, New York 10022 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located near Modesto California and will consist of two (6,000 kW each) steam turbine generator units fueled by waste in the form of non-recappable automobile and truck tires. It is estimated that the facility will produce 80 million kilowatthours annually.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30580 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-24-000]

Oklahoma Vawt Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1984.

On October 16, 1985, Oklahoma Vawt Associates (Applicant), of 3719 North Portland, Oklahoma City, Oklahoma 73112 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 36 megawatt wind facility is located in Ames, Oklahoma.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30585 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-42-000]

University of Oklahoma; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 15, 1984.

On October 18, 1984, the University of Oklahoma, Department of Physical Plant, 160 Felgar Street, Norman, Oklahoma 73019 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The existing topping-cycle cogeneration facility, located on the main campus, consists of four natural gas fired steam boilers driving three steam extraction turbine generators with a total capacity of 12,500 kW. A new 3,800 kW steam turbine generator unit is being installed. Steam extracted from the turbines will be used for space heating and cooling, domestic water heating and process related applications.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30592 Filed 11-20-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; 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: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Saturday, December 8, 1984, 9 a.m. to 6 p.m.

Place: National Science Foundation, Room 543, 1800 G Street, NW., Washington, DC 20550.

Contact: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, DC 20545, Telephone: 301-353-4829.

Purpose of Panel

To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tenative Agenda

Saturday, December 8, 1984

—Discussion of Department of Energy High Energy Physics and National Science Foundation Elementary Particle Physics FY 1985 Budgets and Scenarios for FY 1986

—Status of the Subpanel on Computer Needs for the Next Decade
—Discussion of Planning for the 1985 HEPAP Retreat
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Panel 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 make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Issued at Washington, DC on November 16, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–30596 Filed 11–20–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30246; PH–FRL 2717–6]

Pesticides; Applications To Register Products; NOR-AM Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving changed use patterns pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 21, 1984.

ADDRESS: By mail submit comments identified by the document control number [OPP–30246] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

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

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

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

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In Person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location and telephone number	Address
PM 21, Henry Jacoby.	Rm. 229, CM#2, (703–557–1900).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 17, Timothy Gardner.	Rm. 207, CM#2, (703–557–2690).	Do.
PM 25, Robert Taylor.	Rm. 245, CM#2, (703–557–1800).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving changed use patterns pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 45639–OL. Applicant: NOR–AM Chemical Co., 3509 Silverside Rd., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz-Manganese Complex (4 to 1) Technical. Fungicide. Active ingredient: Tetrakis-[1[*N*-propyl-*N*-2-(2,4,6-trichlorophenoxy) ethyl carbamoyl] imidazole] manganese (II) chloride 95%. Proposed classification/Use: General. For use in formulating fungicides only. (PM 21)

2. File Symbol: 352–UGL. Applicant: E.I. du Pont de Nemours and Co., Wilmington, DE 19898. Product name: Ally Herbicide. Herbicide. Active ingredient: Methyl 2-[[[[(4-methoxy-6-methyl-1,3,5,-triazin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate 60%. Proposed classification/Use: General. For use on barley and wheat. Type registration: Conditional. (PM 25)

II. Products Involving Changed Use Patterns

1. File Symbol: 45639–OT. Application NOR–AM Chemical Co., 3509 Silverside Rd., PO Box 7495, Wilmington, DE 19803. Product name: Prochloraz-Manganese Complex (4 to 1) W.P. Fungicide. Active ingredient: Tetrakis-[1 [*N*-propyl-*N*-2-(2,4,6-trichlorophenoxy) ethyl carbamoyl] imidazole] manganese (II) chloride 47.5%. Proposed classification/Use: General. To include in its presently registered use, new use on ornamental plants. (PM 21)

2. File Symbol: 45639–OA. Applicant: NOR–AM Chemical Co. Product name: Prochloraz E.C. Fungicide. Active ingredient: Prochloraz *N*-propyl-*N*-[2-(2,4,6-trichlorophenoxy) ethyl]-1 *H*-imidazole-1-carboxamide 36.2%. Proposed classification/Use: General. To include in its presently registered use, new use for control of certain turfgrass diseases. (PM 21)

3. EPA Registration No: 20954–115. Applicant: Zoecon Corp., 975 California Ave., Palo Alto, CA 94304. Product name: Mavrik® 2E Insecticide. Insecticide. Active ingredient: (Alpha *RS, 2R*)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[chloro-4-(trifluormethyl)anilino]-3-methyl-butanoate] 25%. Proposed classification/Use: Restricted. To include in its presently registered use, new use for outdoor use on agriculture commodities. Type registration: Conditional. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support

Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available in the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: November 2, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–29945 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180660 PH–FRL 2720–7]

Pesticides; Emergency Exemptions; Arkansas State Plant Board, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the five States listed below, during the period of September 23, 1984 to October 9, 1984. Also listed are seven crisis exemptions initiated by four States and three by the U.S. Department of Agriculture. These exemptions are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people.

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of diethatyl-ethyl on spinach to control weeds; October 3, 1984 to May 31, 1985. Arkansas had initiated a crisis exemption for this use. (Stan Austin)

2. California Department of Food and Agriculture for the use of metalaxyl on sunflower seeds for export to France and Italy to control downy mildew; September 28, 1984 to September 15, 1985. (Jack E. Housenger)

3. California Department of Food and Agriculture for the use of carbaryl on home garden crops to eradicate gypsy moth larvae and Japanese beetles; September 23, 1984 to July 31, 1985. California had initiated a crisis exemption for this use. (Jim Tompkins)

4. Texas Department of Agriculture for the use of metalaxyl on sunflower seeds for export to France and Italy to control downy mildew; September 28, 1984 to December 31, 1984. (Jack E. Housenger)

5. Washington Department of Agriculture for the use of carbofuran on raspberries to control root weevils; October 9, 1984 to February 28, 1985. (Jim Tompkins)

6. Wisconsin Department of Agriculture Trade and Consumer Protection for the use of paraquat on dry beans as a harvest aid; October 5, 1984 to December 31, 1984. Wisconsin had initiated a crisis exemption for this use. (Stan Austin)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on September 13, 1984, for the use of paraquat on grain sorghum as a harvest aid. The need for this program has ended. (Jim Tompkins)

2. Florida Department of Agriculture and Consumer Affairs on September 27, 1984, for the use of permethrin on watercress to control diamondback moths. The crisis along with the right to take a crisis in the future for this use was withdrawn by the Agency on September 28, 1984. (Jim Tompkins)

3. Louisiana Department of Agriculture on September 27, 1984, for the use of methyl bromide on bee hives to eradicate the acarine mite in Iberia and Vermilion Parishes in Louisiana. The need for this program has ended. (Jack E. Housenger)

4. Ohio Department of Agriculture on September 11, 1984, for the use of paraquat on dried beans as a desiccant. The need for this program has ended. (Libby Welch)

5. U.S. Department of Agriculture on August 15, 1984, for the use of calcium cyanide on bee hives to eradicate the acarine mite in Texas. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

6. U.S. Department of Agriculture on August 23, 1984, for the use of calcium cyanide on bee hives to eradicate the acarine mite in Louisiana. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

7. U.S. Department of Agriculture on September 14, 1984, for the use of diquat on citrus trees to control the citrus canker. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last for 1 year. (Jack E. Housenger)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: November 8, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 84–30230 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50612; FRL 2719–2]

Pesticides; Issuance of Experimental Use Permits; Elanco Products Co., 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, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 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: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–63. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,615 pounds of the herbicide ethalfluralin on peanuts to evaluate the control of weeds. A total of 4,820 acres are involved; the program is authorized only in the States of Alabama, Florida, Georgia, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. The experimental use permit is effective from March 1, 1984 to March 1, 1985.

(Richard Mountfort, PM 23, Rm. 253, CB#2, (703–557–1830))

43808–EUP–1. Extension. The State of Florida, Department of Citrus, 1115 E. Memorial Blvd., P.O. Box 148, Lakeland, FL 33802. This experimental use permit allows the use of the remaining supply of 939.2 pounds (3,000 pounds originally authorized) of the plant growth regulator 5-chloro-3-methyl-4-nitro-1H-pyrazole on citrus to evaluate its use as an abscission agent. A total of 500 acres are involved; the program is authorized only in the State of Florida. The experimental use permit is effective from January 5, 1984 to January 5, 1985. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

524–EUP–60. Issuance. Monsanto Company, 1101 17th St., NW., Washington, DC 20036. This experimental use permit allows the use of 3,100 pounds of the plant growth regulator N-[(acetylamino)methyl]-2-chloro-N-(2,6-diethylphenyl)-acetamide on turf grasses to evaluate the control of weeds. A total of 3,100 acres are involved. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

524–EUP–61. Issuance. Monsanto Company, 1101 17th St., NW., Washington, DC 20036. This experimental use permit allows the use of 3,100 pounds of the plant growth regulator N-[(acetylamino)methyl]-2-chloro-N-(2,6-diethylphenyl)-acetamide on turf grasses to evaluate the control of weeds. A total of 3,100 acres are involved; this permit and the one above are authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. Both permits are effective from January 3, 1984 to January 3, 1986. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 251, CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquiries concerning these permits should be directed to the person 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 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; Stat. 828 (7 U.S.C. 136c))

Dated: November 7, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–30115 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

[PP 1G2503/T465; PH–FRL 2720–6]

Pesticides; Renewal of Temporary Tolerances; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the insecticide/miticide amitraz and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire August 31, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of March 31, 1982, (47 FR 13575), stating that temporary tolerances had been established for the combined residues of the insecticide/miticide amitraz *N'*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl) iminol]methyl]-*N*-methylemthanimid-amide and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities fat, meat and meat byproducts of hogs at 0.1 part per million (ppm). These tolerances were renewed in response to pesticide petition PP 1G2503, submitted by Nor-Am Chemical Company.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 45639–EUP–2 which is being renewed 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 a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed 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. Nor-Am Chemical Co. 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 August 31, 1985. Residues not in excees of this amount remaining in or on the above 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. 96–534, 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** on May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: October 22, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–30231 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

[PF-394; PH-FRL 2718-5]

Pesticide Tolerance Petitions; Interregional Research Project No. 4 (IR-4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received feed and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-394] and the petition number, at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attention: Donald R. Stubbs. In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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

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

Office location and telephone number: Rm. 716 B. CM No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has received feed and food additive (FAP) petitions from the Interregional Research Project No. 4 (IR-4) National Director, Dr. R. H. Kupelian, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, relating to the establishment of tolerances for certain pesticide chemicals in or on certain feed and food commodities in accordance with the Federal Food, Drug, and Cosmetic Act.

Initial Filing

1. *FAP 3H5394.* IR-4. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide phosphamidon (2-chloro-2-diethylcarbamoyl-1-methylvinyl dimethyl phosphate) including its related cholinesterase inhibiting metabolites in or on the food commodity dry hops at 30 parts per million (ppm) resulting from application of the pesticide to the growing crop. The proposed analytical method for determining residues is gas chromatography using a phosphorus specific flame photometric detector.

2. *FAP 4H5438.* IR-4. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide/nematicide oxamyl (methyl *N',N'* dimethyl-*N*-(methylcarbamoyl)oxyl]-1-thiooxamidate) in or on the food commodity raisins at 4 ppm resulting from application of the pesticide to the growing crop.

3. *FAP 4H5438.* IR-4. Proposes amending 21 CFR 561.285 by establishing a regulation permitting residues of the insecticide/nematicide oxamyl in or on the feed commodities raisin waste at 4 ppm, and in or on grape pomace at 0.5 ppm resulting from application of the pesticide to the growing crop.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))

Dated: October 31, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-29937 Filed 11-20-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00180A; FRL 2721-3]

FIFRA Scientific Advisory Panel Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of three members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of September 5, 1984 (49 FR 35040).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS-766C), Office of Pesticide Programs, Office Location and telephone number : Rm. 1115, Crystal Mall Building No. 2, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. Accordingly, seven members were appointed in March 24, 1983, to the Panel (which, at the time, was constituted under the Federal Advisory Committee Act rather than FIFRA), with the terms of two members scheduled to expire on September 30, 1984, the terms of three members scheduled to expire on September 30, 1985, and the terms of the remaining two members scheduled to expire on September 30, 1986. One panel member resigned in July 1984 due to his impending prolonged absence from the country. Thus EPA was faced with the need for appointing three new Panel members. Lists of nominees were obtained from NIH and NSF, and a public notice of nominees, including biographical data, appeared in the **Federal Register** of September 5, 1984. Five comments were received in response to this Notice.

My decision to appoint the following three nominees to serve as members of the Scientific Advisory Panel is based upon several factors including comments received, the need for a disciplinary mix, and the need for wide geographic representation.

Harold Lee Bergman, Professor of Zoology and Physiology, Department of Zoology and Physiology, University of Wyoming, Laramie, Wyoming 82071. Born: Sault St. Marie, Mich., July 8, 1941. Education: Eastern Michigan University, BA 1968, MS, 1971; Michigan State University, PhD (fisheries biology), 1973. Professional experience: Fishery Biologist, Great Lakes Fishery Lab, US Fish and Wildlife Service, Ann Arbor, Michigan, 1968-1971; Research Assistant Fishery Biology, Department of Fisheries and Wildlife, Michigan State University, East Lansing, 1971-1973; Research Associate, environmental physiology, Department of Physiology, 1974; Research Associate, properties of liver and lung microsomal mixed-function oxidases and their role in the metabolism of drugs and xenobiotics to

toxic reactive intermediates; hepatic drug elimination in pregnancy; environmental impact, Environmental Science Division, Oak Ridge National Laboratory, Oak Ridge, Tennessee, 1974–1975; Assistant Professor, Zoology and Physiology, University of Wyoming, 1975-present. Concurrent Position: Editor, Black Thunder Study, Wyoming Environmental Institute, 1975. Societies: Sigma Xi; American Fisheries Society; AAAS; North American Benthological Society. Research: Physiological ecology of fishes and the effects of environmental perturbation on aquatic animals.

Richard Allan Griesemer, Director, Biology Division, Oak Ridge National Laboratory, Post Office Box Y, Oak Ridge, Tennessee 37831. Born: Andreas, Pa., May 8, 1929. Education: Ohio State University, DVM 1953, PhD (veterinary pathology), 1959. Professional experience: Instructor, Veterinary Pathology, Ohio State University 1953–1955; Jr. Pathologist, Virology Branch, Armed Forces Institute of Pathology, 1955–1957; from instructor to professor Veterinary Pathology, Ohio State University, 1957–1971, Chairman of Department, 1967–1971; Associate Director, National Center Primate Biology, University of California, Davis, 1971–1973; senior resident staff member, Carcino-Genesis Program, Oak Ridge National Laboratory, 1973–1975, Program Manager, Cancer and Toxicology Program, 1975–1977; Associate Director, Carcinogenesis Testing, National Cancer Institute, 1977–1980; Director, Biology Division, Oak Ridge National Laboratory, 1980-present. Concurrent Position: Memorial Animal Resources Advisory Committee, NIH 1969–1973. Honors and Awards: National Gaines Award, American Veterinary Medical Association. Societies: AAAS; American Veterinary Medical Association; American College of Veterinary Pathology; International Academy of Pathologists; American Association of Cancer Research. Research: Morphogenesis of cancer; environmental co-carcinogenesis.

Joe Wheeler Grisham, Professor and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, North Carolina 27514. Born: Brush Creek, Tenn., December 5, 1931. Education: Vanderbilt University, AB 1953, MD 1957. Professional experience: Resident pathologist, School of Medicine, Washington University 1957–1960; from instructor to professor of pathology and anatomy, 1960–1973; Professor, and Chairman, Department of Pathology, School of Medicine, University of North Carolina, Chapel Hill, 1973-present. Concurrent positions: National Cancer Institute fellow, 1958–1959; Life Insurance Medical Research Fund fellow, 1959–1961; Markle Scholar, 1964–1969; member, board science councellors, National Institute Environmental Health Science, 1974–1978. Societies: American Association Cancer Research; American Association Study Liver Disease; International Academy of Pathologists; American Society of Cell Biologists. Research: Liver diseases, especially cirrhosis; chemical carcinogenesis; regulation of cellular proliferation; DNA replication and repair.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting. It is expected that the next meeting will take place shortly. When a definite date and place have been decided upon, the appropriate announcement will appear in the **Federal Register.**

Dated: November 13, 1984.

Alvin L. Alm,

Deputy Administrator.

[FR Doc. 84–30424 Filed 11–20–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP 42058; FRL–2711–3]

Territory of American Samoa; Submission of State Plan for Certification of Pesticide Applicators

Correction

In FR Doc. 84–29113 beginning on page 44552 in the issue of Wednesday, November 7, 1984, the docket number in the heading should be corrected to read as it appears in the above heading.

BILLING CODE 1505–01–M

[PP 3G2932/T467; PH–FRL 2709–3]

Zoecon Corp.; Establishment of Temporary Tolerances

Correction

In FR Doc. 84–28810 beginning on page 44551 in the issue of Wednesday, November 7, 1984, make the following correction: In the third column, **SUPPLEMENTARY INFORMATION,** eighth line "(R)-2-2[2-chloro-4-" should read "(R)-2-[2-cloro-4-".

BILLING CODE 1505–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Condition and Income (Savings Banks) (OMB No. 3064–0054).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget Standard Form 83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is submitting for OMB approval a change in the reporting frequency of the Consolidated Reports of Income and Condition (Call Reports) filed by insured state-chartered savings banks. As in the past, the Report of Condition would continue to be filed on a quarterly basis. However, under the proposed change in reporting frequency, the existing Report of Income, which is presently filed on only a semiannual basis, would be filed quarterly. This change in reporting frequency would be effective beginning with the March 1985 call date. The purpose for this change is to obtain more timely and complete information needed by the FDIC to effectively monitor the financial condition and performance of individual savings banks. It is estimated that the change in reporting frequency of the Report of Income will increase the average reporting burden on each bank by 11 hours annually (5.5 hours for each of the two new quarterly reporting periods).

Dated: November 15, 1984.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 84-30528 Filed 11-20-84; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than December 13, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to engage in the taking of deposits; the making and servicing of consumer loans; engaging in trust company functions; and acting as an investment or financial advisor, through the following national bank subsidiaries: Bank of Boston—Ft. Lauderdale, N.A., Ft. Lauderdale, Florida; Bank of Boston—Jacksonville, N.A., Jacksonville, Florida; Bank of Boston—Orlando, N.A., Orlando, Florida; Bank of Boston—St. Petersburg, N.A., St. Petersburg, Florida; and Bank of Boston—Tampa, N.A., Tampa, Florida. These activities will be conducted in the State of Florida.

Board of Governors of the Federal Reserve System, November 15, 1984.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 84-30481 Filed 11-20-84; 8:45 am]
BILLING CODE 6210-01-M

H & R Bankshares, Inc., et. al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *H & R Bankshares, Inc.,* Charleston, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Danville, Danville, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Guaranty Capital Corporation,* Mamou, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Guaranty Bank of Mamou, Mamou, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.,* Springfield, Illinois; to merge with Sagamon Banc Shares II, Inc., Springfield, Illinois, thereby indirectly acquiring 100 percent of the voting shares of Coffeen State Bank, Coffeen, Illinois.

2. *CBC Bancorp, Ltd.,* Chicago, Illinois; to acquire 80 percent or more of the voting shares of Heritage Bank of Oakwood, Westmont, Illinois.

3. *Comerica Incorporated,* Detroit, Michigan; to acquire 100 percent of the voting shares of Comerica Bank-Lansing, N.A., Lansing, Michigan (in organization).

4. *F & M Bancorp,* Rochester, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank of Rochester, Indiana, Rochester, Indiana.

D. **Federal Reserve Bank of St Louis** (Delmer P. Weisz, Vice President (411 Locust Street, St. Louis, Missouri 63166:

1. *Wilson & Muir Bancorp, Inc.,* Bardstown, Kentucky; to acquire at least 80 percent of the voting shares of Citizens Bank & Trust Company of Grayson County, Leitchfield, Kentucky.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cush-Banc Shares, Inc.,* Cushing, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Cushing, Cushing, Texas.

Board of Governors of the Federal Reserve System, November 15, 1984

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30482 Filed 11-20-84; 8:45 am]

BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services; Automated Clearing House Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule for the Automated Clearing House Service.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board"), has approved a revised fee schedule for the Reserve Bank automated clearing house ("ACH") service.

EFFECTIVE DATES: All transaction fees will be implemented on December 27, 1984, except the fee for handling paper ACH return items and notifications of change, which will become effective on January 31, 1985. All fixed fees will be implemented on December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202)452-2231) or Florence M. Young, Manager, Electronic Payments Section (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On March 29, 1984, the Reserve Banks implemented new fees for the ACH service that were set to recover 60 percent of the total costs in accordance with the incentive pricing policy adopted by the Board in April 1982. 49 FR 6564. In accordance with this policy, the revised ACH fees are set to recover 80 percent of the costs of providing commercial ACH services. This incentive pricing policy was established in order to encourage growth in the ACH service, generally. It is believed appropriate to continue the incentive pricing policy through 1985 in order to avoid disruption among users of Federal Reserve ACH services. At the same time, several aspects of the ACH fee schedule have been re-evaluated. These aspects include: (1) The use of benefits-based fees; (2) the level of transaction fees; (3) the level of fees for non-electronic deliveries; and (4) the practice of recovering the costs associated with handling ACH return items and notifications of change through transaction fees.

Benefits-Based Fees

The ACH service is used to process two types of transactions—credit transactions and debit transactions. Because the institutions receiving funds, that is, the receivers of credits and the originators of debits, receive the funds earlier through the ACH than they would if a paper check were used, the previous ACH fee schedule assessed higher fees to these ACH participants. This pricing policy was intended to encourage use of the ACH.

Because of the trend towards the use of private sector ACH processing, under the benefits-based fee structure, cross-subsidies would occur among depository institutions using Federal Reserve services and privately operated ACHs. For example, if a user of the Federal Reserve's ACH service originates a credit transaction destined for a privately operated ACH, the originator would be charged 1.0 cent and the privately operated ACH would be charged 3.0 cents under the current fee schedule. For this reason, the Board believes that continue use of benefits-based fees is inappropriate, and has determined that the same transaction fees will be assessed to originators and receivers of ACH transactions.

Level of ACH Transaction Fees

The revised fee schedule includes a reduction in inter-ACH fees of approximately 0.2 cent for the originator and the receiver to reflect more accurately the cost of providing this element of the ACH service.

Non-Electronic Delivery Fee

The non-electronic delivery fees are intended to recover the costs of generating magnetic tapes, diskettes and paper listings containing ACH transactions, preparing them for delivery and delivering them to messengers or via ground transportation. The processing necessary to generate physical output and to prepare it for delivery is a time consuming, labor intensive activity. In addition, ground transportation is costly. The current fees of $0.75 for messenger pick-up and $1.75 for ground delivery are not recovering the costs that the Reserve Banks incur in making non-electronic deliveries. Therefore, the non-electronic delivery fees will be increased to $1.25 for each messenger pick-up and to $3.00 for each delivery to institutions using Federal Reserve transportation.

ACH Return Items and Notifications of Change

The costs of processing return items and notifications of change [1] are currently recovered through basic transaction fees. About 96 percent of return items and notifications of change are deposited with the Federal Reserve in paper form. As a result, return item processing tends to be an extremely labor intensive and costly operation and constitutes a disproportionately high share of ACH operating costs. Assessing the full costs of return item processing to institutions returning transactions would result in the costs of the ACH service being assessed to users more equitably. In addition, the efficiency of the ACH mechanism can be improved by assessing a fee for return item processing to encourage despository institutions to deposit automated return items. Therefore, the Board has approved a fee of $2.50 for handling paper ACH return items and notifications of change. The Reserve Banks plan to begin converting ACH return items and notifications of change to automated form on January 31, 1985, and the fee for handling these items will be implemented on that date.

While it may be desirable to assess a fee for automated return items and notifications of change, it is not now possible because of operating considerations. The Reserve Banks will be implementing new ACH software and have discontinued making modifications to the current ACH software. The current software does not provide the capability to assess a fee for automated return items and notifications of change. However, when the new ACH software is implemented the Board will review the possibility of assessing a fee for automated return items and notifications of change.

Cost, Volume, and Revenue Projections

At the 80 percent recovery rate, Reserve Bank commercial ACH costs, including the PSAF and float, are projected to amount to $18.0 million for 1985. Revenues are estimated at $18.4 million, resulting in a net revenue surplus of approximately $400,000.

Accordingly, the Board has approved the following fee schedule for the Federal Reserve's ACH service:

[1] Notifications of change are used by receiving institutions to advise originators of recurring transactions about changes in such elements as customer's names and account numbers.

Transaction fees	
Origination:	
Intra-ACH	1.0 cents.
Intra-ACH:	
Unsorted	1.8 cents.
Presorted	1.2 cents.
Night time surcharges:	
Debits	6.0 cents.
Next-day credits	3.0 cents.
Receipt:	
Intra-ACH	1.0 cents.
Inter-ACH	1.8 cents.
New York	1.2 cents.
Paper return items and notifications of change.	$2.50.
Fixed Fees	
Deposit fees:	
Tape handling	$3.00 per tape.
File processing	$1.00 per file.
Receiver handling fees:	
Courier	$3.00 per delivery.
Messenger pick-up	$1.25 per delivery.
Telephone advice:	
Including 10 pieces of information	$2.50
Each additional piece of information	$0.05.

The current fees for corporate trade payments will remain in effect. Also, institutions having an electronic connection with the Federal Reserve will be assessed monthly fees as approved earlier by the Board. 49 FR 36689.

By order of the Board of Governors of the Federal Reserve System, November 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30483 Filed 11-20-84; 8:45 am]

BILLING CODE 6210-01-M

Fee Schedules for Federal Reserve Bank Services; Wire Transfer of Funds and Net Settlement

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Fee Schedule for Wire Transfers of Funds and Net Settlement Service.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has approved a reduction in the basic fee for originating or receiving a wire transfer of funds from $0.60 to $0.55.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Ellicott C. McEntee, Associate Director (202/452-2231) or Florence M. Young, Manager, Electronic Payments Section (202/452-3955), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Elaine M. Boutilier, Attorney (202/452-2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Effective September 27, 1984, the fee for originating or receiving a wire transfer of funds was reduced $0.05 to a new basic fee of $0.60 per transfer. 49 FR 35866. At the same time, the Board approved assessing fixed monthly fees to all depository institutions having an electronic connection with the Federal Reserve for one or more priced services, beginning January 1985. 49 FR 36689.

When the reduction in the basic fee was approved, it was stated that if the Reserve Banks' estimates continued to show a net surplus for this service, the Board would consider a further reduction in the basic fee for originating or receiving a wire transfer of funds.

Based on the Reserve Banks' current estimates for the full year 1984, total costs, including the private sector adjustment factor ("PSAF"), are expected to be $57.1 million, and revenues are anticipated to be $62.4 million, resulting in a net revenue surplus of $5.3 million. The volume of basic funds transfers originated is expected to amount to 41.1 million. Accordingly, the Board has approved a reduction in the basic fee for originating or receiving a wire transfer of funds. All other elements of the current fee schedule remain unchanged.

The Reserve Banks' 1985 projections indicate that total costs, including the PSAF, will amount to $62.8 million. Based on the transaction fee of $0.55 and on income that will be allocated to the funds transfer and net settlement service from fixed monthly electronic connection fees, 1985 revenues are expected to amount to $63.0 million, resulting in a net revenue surplus of $200,000.

Accordingly, the Board has approved the following fee schedule for the wire transfer of funds and net settlement service:

Wire Transfer of Funds	
Basic transfer originated	$0.55
Basic transfer received	0.55
Off-line origination	5.50
Telephone advise	3.00

Net Settlement[1]	
Settlement entry	$1.30
Off-line settlement	8.00
Telephone advise	3.00

[1] In cases where net settlement arrangements result in higher operating costs than those incurred for standard arrangements, the Reserve Banks may establish higher fees.

By order of the Board of Governors of the Federal Reserve System, November 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30480 Filed 11-20-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0141]

Extra-Label Use of New Animal Drugs in Food-Producing Animals; Availability of a Revised Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising the compliance policy guide entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals." This revision clarifies one of the criteria in the guide.

ADDRESS: The revised guide is available for public examination at, and comments and requests for single copies 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: Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3336.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 17, 1984 (49 FR 20915), FDA announced the availability of the compliance policy guide entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals" prepared by FDA's Center for Veterinary Medicine (CVM).

The parenthetical information under criteria to be met and precautions to be observed in the previous guide caused some veterinarians to believe that FDA would not, in any circumstance, permit use of a drug in the species for which the drug is not approved. This was not intended by CVM. Therefore, the parenthetical information is being deleted.

The policy guide is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above). In accordance with 21 CFR 10.85(d)(3) and (i), any person may submit written comments on the revised guide. Written comments should be sent to the Dockets Management Branch. 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. Although such comments will be considered if the guide is revised again in the future, the agency will not

defer regulatory action pending any such revision.

Dated: November 15, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30467 Filed 11-20-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0294]

Radionics, Inc.; Premarket Approval Supplement for the Cosman ICP Tele-Sensor® and Cosman ICP Tele-Monitor® System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Radionics, Inc., Burlington, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Cosman ICP Tele-Sensor® and Cosman ICP Tele-Monitor® System. The device is indicated for closed intraventricular pressure monitoring in patients 2 years of age and older in cases of brain tumors or brain tumor surgery where elevated intraventricular pressure is anticipated. Use of the device in patients under 2 years of age is investigational. After reviewing the recommendation of the Neurological Devices Panel (formerly the Neurological Device Section of the Respiratory and Nervous System Devices Panel), FDA notified the applicant that FDA notified the applicant that FDA approved the supplemental application because the applicant had shown the device to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by December 21, 1984.

ADDRESS: Written requests for copies of the summary of safety and effectiviness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: On November 1, 1983, Radionics, Inc., Burlington, MA 01803, submitted to FDA a supplemental application for premarket approval of the Cosman ICP Tele-Sensor® and Cosman ICP Tele-Monitor® System. The device is an implanted intracranial pressure sensor and monitor. The device is indicated for closed intraventricular pressure monitoring in patients 2 years of age and older in cases of brain tumors or brain tumor surgery where elevated intraventricular pressure is anticipated. Use of the device in patients under 2 years of age is investigational. On February 24, 1984, the then Neurological Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committe, reviewed and recommended approval of the supplemental application. (On April 24, 1984, the Neurological Device Section of the Respiratory and Nervous System Devices Panel was terminated. Concurrently, FDA established the Neurological Devices Panel (see 49 FR 17446; April 24, 1984).) On October 19, 1984, FDA approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA based its appproval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at the Center for Devices and Radiological Health—contact Robert F. Munzer (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this supplemental application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 21, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 15, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-30469 Filed 11-20-84 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fallon Paiute-Shoshone Indian Reservation, Nevada; Amendment to Federal Indian Liquor Laws

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. IX was duly adopted by the Fallon Business Council on May 9, 1984. Ordinance No. IX amends a previous ordinance adopted by the Fallon Business Council which was published on January 27, 1972, 37 FR 1253. The instant ordinance relates to the application of the federal Indian liquor laws within the areas of Indian country under the jurisdiction of the Fallon Paiute-Shoshone Tribes. It reads as follows:

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

Resolution No. 84-F-33

Whereas: The Fallon Business Council being a recognized governing body of the Constitution of the Fallon Paiute-Shoshone Tribe of which does exercise the privileges and powers of self-government to conserve and develop our resources for the social economic well being of our tribe; and

Whereas: The Fallon Business Council on July 12, 1983 did establish a board known as the Law & Order Committee of the Fallon Paiute-Shoshone Tribe whose primary duty is to review and if necessary to amend, revise, and update the Law and Order Codes of the Fallon Paiute-Shoshone Tribe; and

Whereas: The Law and Order Committee did review, amend, revise and update Ordinance IX of the Fallon Paiute-Shoshone Tribe known as the Liquor Ordinance; and

Whereas: The Law and Order Committee did bring before the Fallon Business Council such revised ordinance for approval; and

Whereas: The Fallon Business Council did approve and cause such revised ordinance to be posted publicly for a period of thirty days for comment; and

Whereas: At termination of the thirty days, no comment was received desirous of any change;

Therefore be it resolved: That the ordinance of the Law & Order Code, Title Nine, Liquor Ordinance, is hereby amended, revised, and updated as per attached.

Certification

At a duly held meeting of the governing body of the Fallon Paiute-Shoshone Tribe, consisting of 7 members of which 4 constitutes a quorum was present on this 9th day of May 1984, and voted 5 for, 0 against, 1 abstention in the adoption of the foregoing resolution by the powers invested in its Constitution and By-Laws.

Vicki Rosse,

Secretary/Treasurer, Fallon Business Council.

Recommended Approval:

Ray Albert,

Acting Superintendent.

Date: June 21, 1984

Fallon Paiute-Shoshone Tribe

An ordinance, pursuant to 18 U.S.C. 1161 (1966), amending Ordinance No. IX enacted on November 9, 1971 and published in the **Federal Register** on January 27, 1972, regulating the possession and sale of intoxicating beverages within the exterior boundaries of the Fallon Paiute-Shoshone Reservation and Colony, Nevada.

Be it enacted by the Business Council of the Fallon Reservation and Colony, Nevada, that the following provisions shall regulate and govern the possession and sale of introxicating beverages within the exterior boundaries of the Fallon Reservation and Colony:

Section 1. Purpose and Definitions

(a) Pursuant to 25 CFR 11.1(e) (1982), this ordinance pre-empts the provision of 25 CFR 11.55 (1982). This ordinance regulates and governs the sale and possession of intoxicating beverages within the exterior boundaries of the Fallon Reservation and Colony and the provisions of 25 CFR 11.55 (1982) do not apply.

(b) As used in this ordinance, "intoxicating beverages" means liquor, beer, wine, and every liquid containing one-half of one percent or more alcohol by volume and which is used for beverage purposes.

Section 2. Possession of Intoxicating Beverages

(a) The possession of intoxicating beverages by any person twenty-one (21) years of age or older shall be lawful within the exterior boundaries of the Fallon Reservation and Colony except as otherwise provided herein.

(b) It is unlawful for any person under the age of Twenty-one (21) years to purchase, possess, or consume intoxicating beverages.

Section 3. Furnishing Intoxicating Beverages Unlawful

(a) It is unlawful for any person to sell, deliver, give away, or otherwise furnish any intoxicating beverage to any person who is under the influence of intoxicating beverages.

(b) It is unlawful for any person to sell, deliver, give away, or otherwise furnish any intoxicating beverage to any person under the age of twenty-one (21) years, or to leave or deposit any intoxicating beverage in any place with the intent that the same shall be procured by any person under the age of twenty-one (21) years.

Section 4. Penalty Applicable to Unlawful Possession or Furnishing of Intoxicating Beverages

(a) Any Indian who violates any provision of section 2 or section 3 shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine of not more than $300.00, or by sentence to imprisonment for not more than 150 days, or both fine and imprisonment.

(b) Any non-Indian who violates any provision of section 2 or section 3 shall be referred to the State of Nevada and/or federal law enforcement authorities for prosecution under applicable law.

Section 5. Sale of Intoxicating Beverages

(a) It shall be lawful for any person twenty-one years of age or older to sell intoxicating beverages within the exterior boundaries of the Fallon Reservation and Colony, Nevada; *Provided*, that the person selling intoxicating beverages or the employer of the person selling intoxicating beverages has obtained a valid tribal liquor license issued by the Fallon Reservation-Colony Business Council, in addition to any other license which may be required.

(b) The tribal liquor license will authorize the holder thereof or an employee of the holder to sell intoxicating beverages at places specifically identified in the tribal liquor license. The tribal liquor license will also specifically authorize the holder thereof or an employee of the holder to sell intoxicating beverages in retail packages, by the drink for consumption on the premises, or both.

Section 6. Application Process for Tribal Liquor License

(a) All applications for a tribal liquor license must be submitted to the Fallon Reservation-Colony Business Council.

(b) If the application is denied, the decision of the Fallon Reservation-Colony Business Council may be appealed by the applicant to the Fallon Tribal Court. The applicant will have the burden of proving by clear and convincing evidence that the application was wrongfully denied.

(c) If the application is granted, a tribal liquor license will be issued by the Fallon Reservation-Colony Business Council after the payment of the required tribal liquor license fee. The tribal liquor license must set forth the name of the license holder, the location and description of the building, room, or other premises where sales of intoxicating beverages may be made, and whether sales may be made in retail packages, by the drink for consumption on the premises, or both.

(d) All required licenses must be displayed in a conspicuous place within the building, room, or other premises where intoxicating beverages are sold.

(e) The tribal liquor license will be issued for a period of one year.

(f) Once each year, through appropriate resolutions, the Fallon Reservation-Colony Business Council will determine what information is required in the tribal liquor license application and the amount of the tribal liquor license fee.

Section 7. Penalty Applicable to Sale of Intoxicating Beverages

(a) Any Indian who sells intoxicating beverages in violation of section 5 shall be deemed guilty of an offense and upon conviction thereof shall be punished by

a fine of not more than $300.00, or by sentence to imprisonment for not more than 150 days, or both such fine and imprisonment.

(b) Any non-Indian who sells intoxicating beverages in violation of section 5 shall be referred to the State of Nevada and/or federal law enforcement authorities for prosecution under applicable law.

(c) If any holder or the employee of any holder of a tribal liquor license violates the provisions of section 2 or section 3, the tribal liquor license may be revoked by the Fallon Reservation-Colony Business Council.

(d) Any person whose license is revoked under this section shall have the right to appeal the decision of the Fallon Reservation-Colony Business Council to the Fallon Tribal Court. The former license holder will have the burden of proving by clear and convincing evidence that the license was wrongfully revoked.

[FR Doc. 84-30472 Filed 11-20-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[NM-58259]

Navajo Relocation Exchange Amended Notice; Dona Ana County, NM

Correction

In FR Doc. 84-28573 beginning on page 43594 in the issue of Tuesday, October 30, 1984, make the following corrections:

1. On page 43594, in the second column, the following line should be added as the first line of the "Roberts Rauch" description:

Township 21 North, Range 29 East, G&SRB&M

2. On the same page, in the third column, is the description for "Township 20", the following line should be added between the entries for "Sec. 6" and "Sec. 8":

Sec. 7, Lots 1,2,3,4, E½W½, E½;

3. On the same page and in the same column, the entry between "Sec. 18" and "Sec. 20" reading "Sec. 29", should read "Sec. 19".

BILLING CODE 1505-01-M

Richfield District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Richfield District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 that a meeting of the Richfield District Grazing Advisory Board will be held December 20, 1984 at 9:00 A.M. in the BLM District Office, 150 East 900 North, Richfield, Utah 84701.

Agenda for the Board meeting will be:

1. Final ranking of Districts range projects.
2. Review of East Piut Allotment grazing problems.
3. Winter road maintenance problems.
4. Sheep trailing and potential footrot situation.
5. Winter grazing condition.
6. Arrange next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 P.M. and 2:00 P.M. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproductions during regular business hours within 30 days following the meeting.

Donald L. Pendleton,

District Manager.

November 13, 1984.

[FR Doc. 84- Filed 30470-11,20-84; 8:45 am]
BILLING CODE 4310-DQ-M

Wyoming; Adoption of Final Environmental Impact Statement on Thermopolis-Alcova-Casper Transmission Line Project

November 13, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of Final Environmental Impact Statement for Thermopolis-Alcova-Casper Electrical Transmission Line Project.

SUMMARY: Pursuant to 1506.3 (a), (b), and (c) of the National Environmental Policy Act of 1969 and the Regulations for Implementing the Provisions of the National Environmental Policy Act 43 CFR Parts 1500-1508, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has adopted the final environmental impact statement for the purpose of constructing and maintaining 152 miles of new 230 kv of which 136 miles will be 230/345 kv line to replace two existing but deteriorating 69 kv lines as described in the FEIS prepared by the Department of Energy, Western Area Power Administration and released November 1984 (No. DOE/EIS 0101-F).

The final impact statement analyses the impacts that would result from the construction, operation, and maintenance of the Thermopolis-Alcova-Casper Transmission Line Project.

The comments made by the Bureau of Land Management (BLM) on the draft statement were adequately addressed in the final. No new issues were raised between the draft and the final, and a BLM evaluation of both the draft and final EIS concluded that the documents contents and analyses were adequate for adoption.

Adoption of the FEIS by BLM will be considered official 30 days after publication of this notice in the **Federal Register.** Any comments or exceptions which could affect the adoption should be forwarded to: State Director, Wyoming (934), P.O. Box 1828, Cheyenne, Wyoming 82003, within the 30-day period.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 84-30466 Filed 11-20-84; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 299 Federal Unit Agreement No. 14-08-0001-8850, submitted on November 8, 1984, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 299 Federal unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m. 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 14, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico Region.

[FR Doc. 84-30529 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Comprehensive Environmental Impact Statement and Public Hearing on Permitting Under the Tennessee Federal Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of draft comprehensive environmental impact statement and public hearing.

SUMMARY: The Office of Surface Mining (OSM) is making available for public review and comment a draft environmental impact statement (EIS) on permitting under the Tennessee Federal Program. This EIS has been prepared to analyze comprehensive impacts to the human environment that would result from decisions by OSM on individual permit applications for surface coal mining operations under the Federal regulatory program for Tennessee. A public hearing will be held to obtain comments on this draft EIS. All interested parties are invited to attend this hearing to give their comments.

DATES: *Comment period:* The comment period for the draft EIS will extend until 5:00 p.m. (eastern time) on January 18, 1985.

Public hearing: A public hearing on the draft EIS will be held on January 8, 1985, at 7:00 p.m., in Knoxville, Tennessee.

ADDRESSES: *Written Comments:* Hand deliver or mail to the Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, Room 134, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearing: Tennessee Ballroom, Holiday Inn, World's Fair, 525 Henley Street, Knoxville, Tennessee 37902.

Availability of copies: Copies of the draft EIS are available at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Room 134, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, (telephone: 202-343-5854).

Knoxville Field Office, Office of Surface Mining, U.S. Department of the Interior, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Dr. Mark A. Boster, Office of Surface Mining, Room 134, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, (telephone: 202-343-5854).

SUPPLEMENTARY INFORMATION: *Written comments:* Written comments should be as specific as possible. OSM appreciates all comments, but those most useful and likely to influence decisions in the preparation of the final EIS are those that provide facts and analyses to support any recommendations or conclusions. OSM cannot assure that written comments received after the time indicated under **DATES** or at locations other than that in Washington, D.C., indicated under **ADDRESSES**, Will be considered or included in the preparation of the final EIS.

Public hearings: Filing of written statements by commenters at the time of the hearing is requested and will greatly assist the transcribers. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons who are present in the audience and wish to comment have been heard.

Background

In accordance with the provisions of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87 (SMCRA), OSM implemented, on October 1, 1984, a Federal program for the regulation of surface coal mining operations in the State of Tennessee. The purpose of this EIS is to analyze the cumulative impacts of decisions by OSM on permit applications for coal mining under this Federal program for Tennessee. The analysis provides compliance with the National Environmental Policy Act of 1969 (NEPA) for decisions on permit applications for existing and proposed operations in Tennessee. In addition, this EIS will form the basis for NEPA compliance for future decisions on permit applications.

Alternatives

The decisions available to OSM with regard to individual mining and reclamation permit applications are approval of the application, approval with conditions to meet the requirements of SMCRA, disapproval of the permit, and no action. The no action decision is not available to OSM as an alternative, because the Secretary is required to make decisions on all applications.

OSM has evaluated a range of permitting alternatives to estimate annual acreage disturbed in Tennessee, and by this means has estimated the resulting cumulative impacts of individual permitting decisions. For the purpose of the cumulative impacts analysis, it has been estimated that OSM would be able to make the necessary findings for nearly 100 percent of all pending and new applications for mining permits. In addition, a lower range of permit approvals that result in 70 percent of current annual disturbance and an upper range of 130 percent have been analyzed.

Dated: November 15, 1984.

Drent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84-30494 Filed 11-20-84; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service; Performance Review Board; Members

October 29, 1984.

On or about October 29, 1984, the following persons will be added as members to the Performance Review Board:

Julius W. Becton
Walter H. Bollinger
Joan Dudik-Gayoso
Duff G. Gillespie

Jan Barrow,

Executive Secretary, Performance Review Board, Agency for International Development.

[FR Doc. 84-30530 Filed 11-20-84; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with the investigation of processed mushrooms (Inv. No. 332–84) pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), in accordance with a request by the President on March 10, 1977, and amplified by the Office of the United States Trade Representative in a letter of March 30, 1977.

Summary of Proposals

(1) Number of forms submitted: One.

(2) Title of form: Processed Mushrooms—Quarterly Report on Production, Sales, and Inventories.

(3) Type of request: Extension of expiration date.

(4) Frequency of use: Quarterly.

(5) Description of respondents: U.S. mushroom processors.

(6) Estimated number of respondents: 40.

(7) Estimated total number of hours to complete the forms: 40 per quarter.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Tim McCarty, USITC (tel. no. 202–724–1753). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to William Fry, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: November 14, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 30517 Filed 11–20–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–223 (Preliminary)

Agricultural Tillage Tools From Brazil

Determination

On the basis of the record [1] developed in investigation No. 701–TA–223 (Preliminary), the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Brazil of agricultural tillage tools, provided for in item 666.00 of the Tariff Schedules of the United States, which are alleged to be subsized by the Government of Brazil.

Background

On September 28, 1984, a petition was filed with the Commission and the Department of Commerce by Ingersoll Products Corp. of Chicago, IL, Empire Plow Co. of Cleveland, OH, and Nichols Tillage Tools of Sterling, CO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of agricultural tillage tools from Brazil. Accordingly, effective September 28, 1984, the Commission instituted preliminary countervailing duty investigation No. 701–TA–223 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 15, 1984 (49 FR 40231). A public conference was held in Washington, DC, on October 25, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on November 13, 1984. A public version of the Commission's report, *Agricultural Tillage Tools from Brazil* (investigation No. 701–TA–223 (Preliminary), USITC Publication 1609, November 1984) contains the views of the Commission and information developed during the investigation.

Issued: November 13, 1984.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30521 Filed 11–20–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–206 (Preliminary)]

Fabric and Expanded Neoprene Laminate From Japan

Determination

On the basis of the record [1] developed in investigation No. 731–TA–206 (Preliminary), the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of fabric and expanded neoprene lamiante (except for fabric and expanded neoprene laminate containing metallic oxides), provided for in items 355.81, 355.82, 359.50, and 359.60 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 28, 1984, a petition was filed with the Commission and the Department of Commerce by Rubatex Corp., Bedford, VA, alleging that an industry in the United States is materially injured by reason of LTFV imports of fabric and expanded neoprene laminate from Japan. Accordingly, effective September 28, 1984, the Commission instituted

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Stern and Vice Chairman Liebeler dissenting.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern determines as follows:

(1) There is reasonable indication of material injury to a domestic industry consisting of production of petitoner's grade R–1400–N fabric and expanded neoprene laminate and any other comparable domestically produced material in thicknesses of $\frac{1}{16}$ inch or greater;

(2) There is reasonable indication of material retardation of a domestic industry consisting of petitioner's grade R–131–N fabric and expanded neoprene laminate and any other comparable domestically produced material in thicknesses of $\frac{1}{16}$ inch or greater; and

(3) There is no reasonable indication of material injury, threat thereof, or material retardation regarding domestic industries consisting of production most similar in characteristics and uses to fabric and expanded neoprene laminate in thicknesses less than $\frac{1}{16}$ inch and to fabric and expanded neoprene laminate containing metallic oxides.

preliminary antidumping investigation No. 731–TA–206 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 11, 1984 (49 FR 39924). A public conference was held in Washington, DC, on October 22, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determiation in this investigation to the Secretary of Commerce on November 13, 1984. The views of the Commission are contained in USITC Publication 1608 (November 1984), entitled "Investigation No. 731–TA–206 (Preliminary), Fabric and Expanded Neoprene Laminate from Japan."

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30519 Filed 11–20–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–179]

Certain Spherical Roller Bearings and Components Thereof; Commission Decision not to Review Initial Determination of no Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation based on a finding that the patent in controversy, U.S. Letters Patent 3,996,753 ('753 patent) is invalid for failure to meet the requirements of 35 U.S.C. 112.

FOR FURTHER INFORMATION CONTACT: Frank J Schuchat, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523–1626.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53–210.56 of the Commission's Rules of Practice and Procedure. (19 CFR 210.53–210.56).

The Commission instituted this investigation in response to a complaint filed by SKF Industries Inc. (SKF), King of Prussia, Pennsylvania, seeking an investigation to determine whether there is a violation of section 337 in the importation of certain spherical roller bearings and components thereof, into the United States, or in their sale, by reason of alleged infringement of claims 1–4, 11, 12, 16, 17, 19–23, 25, 26, 28, or 29 of the '753 patent. Complainant SKF alleged that the effect or tendency of the unfair acts was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. SKF requested issuance of a permanent exclusion order an a permanent cease and desist order.

Two firms were named as respondents: (1) FAG Bearings Corporation, Stamford, Connecticut, and (2) FAG Kugelfischer George Schafer & Co., Schweinfurt, Federal Republic of Germany. A notice of investigation was issued and published in the **Federal Register** of January 11, 1984. (49 FR 1433–34).

A hearing was held before the presiding officer from July 31, 1984 to August 10, 1984. Appearances were made by counsel for SKF and counsel for respondents and by the Commission investigative attorney.

On October 12, 1984, the presiding officer issued an ID that there is no violation of section 337 in the importation or sale of the spherical roller bearings under investigation. Specifically, the presiding officer found the '753 patent is invalid under 35 U.S.C. 112.

Complainant SKF filed a petition for review of the presiding officer's determination on October 2, 1984. On that same date, respondents filed a contingent petition for review. No other petitions or agency comments were received.

Copies of the public version of the ID and all other nonconfidential documents in the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone (202) 523–0161.

By Order of the Commission.

Issued by: November 15, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30525 Filed 11–20–84; 8:45 am]

BILLING CODE 7020–02–M

[332–201]

Conditions of Competition Affecting the U.S. Gulf and South Atlantic Shrimp Industry

AGENCY: International Trade Commission.

ACTION: At the request of the United States Trade Representative (USTR), the Commission has instituted investigation No. 332–201 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of gathering and presenting information on the competitive and economic factors affecting the performance of the U.S. Gulf and South Atlantic shrimp industry.

EFFECTIVE DATE: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Newman, Mr. Roger Corey, or Ms. Rose Steller, Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–0087, 202–724–1759, or 202–724–2862, respectively.

Background

The USTR requested on October 5, 1984, that the Commission investigate the competitive conditions affecting the performance of the U.S. Gulf and South Atlantic shrimp industry. The USTR specified that the investigation cover warm water white, pink, and brown shrimp in the common product forms of fresh, chilled, frozen, and prepared or preserved. To the extent possible, the study will provide information on the structure of the U.S. Gulf and South Atlantic shrimp industry and markets; a comparison of the costs of production of shrimp in the United States and major foreign supplying countries; a comparison of transportation costs for domestic and imported shrimp to major U.S. markets; a comparison of marketing practices of U.S. and foreign suppliers; levels and tends of U.S. shrimp consumption, production, and trade; shrimp prices; and U.S. and foreign govermment involvement in shrimp industries; and barriers to trade in shrimp. Further, the Commission has been asked to examine the development of shrimp aquaculture and surimi-based imitation-shrimp products in the United States and foreign countries.

Public Hearing

A public hearing in connection with the investigation will be held beginning on March 21, 1985, in New Orleans, LA at a time and place to be announced. All interested persons shall have the right to appear by counsel or in person, to present information and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission., 701 E Street NW., Washington, D.C. 20436, not later than noon, March 14, 1985.

Written Submissions

In lieu of, or in addition to, appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules or practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than March 7, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30516 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-205 (Preliminary)]

Carbon Steel Wire Rod From the German Democratic Republic

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from the German Democratic Republic of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 26, 1984, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Atlantic Steel Co., Continental Steel Co., Georgetown Steel Corp., North Star Steel Co.-Texas, and Raritan River Steel Co., alleging that imports of carbon steel wire rod from the German Demoratic Republic are being sold at LTFV. Accordingly, effective September 26, 1984, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 3, 1984 (49 FR 39113). The conference was held in Washington, DC, on October 19, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on September 13, 1984. A public version of the Commission's report, Carbon Steel Wire Rod from the German Democratic Republic (investigation No. 731-TA-205 (Preliminary), USITC Publication 1607, November 1984) contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30520 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: C.O.M.B. Company.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 13, 1984.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By Order of the Commission.

Issued: November 13, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30518 Filed 11-20-84; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Lodwick determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28640 (Sub-9)[1]]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization; Acquisition by Grand Trunk Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Application and petition accepted.

SUMMARY: The Commission is accepting for consideration the submission by Chicago and North Western Transportation Company (CNW) in support of its amendments to its application filed under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b) (MRR) and the reorganization plan filed under section 77 of the Bankruptcy Act to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW). The Commission also is accepting the petition, filed by the MILW trustee, for modification of the plan of reorganization approved by the Commission.

DATES: In a decision served November 13, 1984, and published at 49 FR 45277, November 15, 1984, the Commission established a procedural schedule applicable to this proceeding.

ADDRESSES: Appropriate addresses were also listed in the decision served November 13, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

Joseph C. Levin, (202) 275–7936

SUPPLEMENTARY INFORMATION: On November 7, 1984, CNW filed its submission in support of amendments to its reorganization plan and its MRR application to acquire and operate MILW's core assets. The submission was filed pursuant to Order No. 782 of the Reorganization Court, which referred the matter to the Commission for its review and recommendation. The material submitted is in compliance, and is sufficient to permit us to undertake the review contemplated by that Order. Accordingly, CNW's submission is accepted for consideration. As required by Order No. 762, the CNW's modified proposal will be reviewed by the Commission and also will be evaluated by the Commission in light of the proposal of the Soo Line Railroad Company as filed or modified.

[1] Embraces Finance Docket No. 28640 (Sub-No. 9 A–E, K–N, and P–BB), MC–F–15231, and MC–F–15231 (Sub-Nos. 1 and 2).

We also are accepting for consideration the petition, filed by the trustee of the MILW pursuant to the above court order for modification of the plan of reorganization approved in our decision served September 26, 1984.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The submission by CNW and the Trustee of MILW are accepted for consideration.

2. This decision is effective on November 21, 1984.

Decided: November 14, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioner Gradison did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–30491 Filed 11–20–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Revised 1984 Aggregate Production Quota for Fentanyl

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Revision of the 1984 aggregate production quota for fentanyl.

SUMMARY: This notice revises the aggregate production quota for fentanyl.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. Code, Section 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

On February 1, 1984, a notice of the final aggregate production quota for fentanyl was published in the Federal Register (49 FR 4051). Since the finalization of this quota, DEA has been advised by the bulk manufacturer of fentanyl that additional production of this substance will be necessary in 1984. This increase is required in order to supply an additional amount of fentanyl to the dosage form manufacturer who has made DEA aware of increased domestic sales in 1984 relative to 1983. In addition, this increase is necessary to provide sufficient amounts of material for the product introduction of a new dosage form manufacturer, for research and for quality assurance samples by the bulk manufacturer. In order to allow additional production in 1984, the aggregate production quota must be revised.

On November 6, 1984, the Administrator received from the bulk manufacturer of fentanyl a request that they be granted, pursuant to 21 CFR 1307.03, an emergency exception to the proposed publication, notice and comment requirements of 21 CFR 1303.13(c). This exception is required because normal notice and comment procedures cannot be completed in sufficient time to permit the manufacturer to satisfy these legitimate medical needs in 1984. The Administrator is satisfied that the exception requested is warranted and in the public interest. Accordingly, the requirements of 21 CFR 1303.13(c) are suspended with respect to this quota adjustment. Request to be well reasoned and thus the rules of § 1303.13(c) are suspended with respect to this quota adjustment.

Therefore, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code, Section 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby orders that the 1984 aggregate production quota for fentanyl, expressed in grams of anhydrous base be established as follows:

Basic class	Previously finalized 1984 aggregate	Established revised 1984 aggregate
Fentanyl	3,000	4,210

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

This order is effective upon publication.

Dated: November 15, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-30561 Filed 11-20-84; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Federal Coordinating Council an Juvenile Justice and Delinquency Prevention; Meeting

The third quarterly meeting of the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on December 13, 1984. The meeting will take place at ACTION, Room 522, 806 Connecticut Avenue, N.W., from 9:00 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (202) 724-7655.

Dated: November 15, 1984.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84-30463 Filed 11-20-84; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-89]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on the Commerical Use of Space.

DATE AND TIME: December 10, 1984, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW, Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on the Commercial Use of Space was established under the NASA Advisory Council to counsel NASA on the development of the appropriate policies, programs, and research priorities to foster the commercial use of space and on the conduct of those programs. The Task Force, chaired by Thomas A. Vanderslice, has a total of 11 members.

The meeting will be closed to the public from 3 p.m. to 5 p.m. on December 10, 1984, for a discussion of qualifications of candidates to participate in the Task Force as additional members. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), has been determined that this session should be closed to the public.

For the open session, visitors will be admitted to the meeting room up to its capacity, which is approximately 50 persons, including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open—except for the closed sessions as noted in the following agenda.

Agenda

December 10, 1984

9 a.m.—Introduction
9:15 a.m.—National Policy and NASA Objectives
10:30 a.m.—Current Views on Commercial Opportunities
1:30 p.m.—The Opportunities to Work in Space
3 p.m.—Planning Session (closed)
5 p.m.—Adjourn

Richard L. Daniels

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

November 15, 1984.

[FR Doc. 84-30471 Filed 11-20-84; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-441]

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 2); Issuance of Director's Decision Under 10 CFR 2.206 (DD-84-23)

Notice is hereby given that the Deputy Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Susan L. Hiatt, on behalf of Ohio Citizens for Responsible Energy (OCRE). In its petition, OCRE requested that the Director, Office of Inspection and Enforcement, order the Cleveland Electric Illuminating Company (CEI) to show cause why the construction permit for Perry Unit 2 should not be revoked or suspended. The bases for this request are OCRE's assertions that: (1) CEI's apparent abandonment of construction of the facility constitutes grounds for revocation or suspension of the construction permit and (2) CEI's silence to the Commission on the matter of the completion of the facility and its statements to the Regional Administrator that corrective actions will be completed on Unit 2 within the year, in spite of its public statements that no work is being done or money is being expended on the facility, raises the question of whether CEI has made a material false statement which would constitute grounds for revocation of its construction permit.

Upon consideration of the petitioner's request, the staff has determined that no adequate basis exists to suspend or revoke the construction permit. The reasons for the denial of OCRE's petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, D.C. 20555, and in the local public document room for Perry Nuclear Power Plant located at Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 15th day of November 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

[FR Doc. 84-30548 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-276]

Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License; Georgia Institute of Technology

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of Orders authorizing the Georgia Institute of Technology (licensee) to dismantle and dispose of the component parts of the AGN 201 research and training reactor in their possession, and terminating Facility Operating License No. R-111 in accordance with the licensee's application dated September 26, 1984.

The first of these Orders would be issued following the Commission's

review and approval of the licensee's plan for disposition of the reactor components and decontamination of the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By December 21, 1984, the licensee may file a request for a hearing with respect to issuance of either or both of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding may file a 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 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 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 actions 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (Georgia Institute of Technology) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Michael Drew, Legal Division, Office of Contract Administration, Georgia Institute of Technology, Atlanta, Georgia 30332.

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 Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated September 26, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland, this 13th day of November, 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 84-30549 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Hope Creek Generating Station Unit 1; Location Change

The ACRS Subcommittee on Hope Creek Generating Station Unit 1 scheduled at the Hilton of Philadelphia has been changed to the *Sheraton University City, 36th & Chestnut Street, Philadelphia, PA for November 28 and 29, 1984.* Notice of this meeting was published Friday, November 9, 1984 (49 FR 44832).

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 28, 1984—2:00 p.m. until the conclusion of business

Thursday, November 29, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review the operating license application of the Public Service Electric and Gas Company for the Hope Creek Generating Station.

Oral statements may be presented by members of the public with concurence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Public Service Electric and Gas Company, NRC Staff, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 15, 1984.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 84-30551 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. 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 monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on October 24, 1984 (49 FR 42814) through November 13, 1984.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE 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.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By December 21, 1984 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 requred 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 preceeding 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 becomes 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, providing 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, D.C. 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 (*Branch Chief*): 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 Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 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 Atomic Safety and Licensing Board desginated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commissioner's Public Document Room, 1717 H Street, NW., Washington, D.C., 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, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: November 2, 1984.

Description of amendments request: The amendments would modify the Technical Specifications to delete the 8-hour day but maintain the nominal 40-hour work week from Section 6, Administrative Controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example which the licensee stated the proposed amendments fit is: "(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," We agree. The Technical Specification change under consideration (6.2.2.f.) requires development of administrative procedures to limit working hours of unit staff who perform safety related functions. The objective is to be met by reducting the consecutive days worked from seven to five, increasing the consecutive days off, and increasing the days off per five week shift rotation. Our preliminary evaluation indicates that this action which is administrative in nature will also enhance plant safety.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Arkansas Power and Light Company, Dockets Nos. 50–313 and 50–368, Arkansas Nuclear One, Units Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: March 16, 1984, supplemented by letter dated August 22, 1984.

Description of amendment request: The request dated August 22, 1984, revises the request for amendment dated March 16, 1984, which was noticed on May 23, 1984 (49 FR 21825). The proposed changes, as revised by the August 22, 1984 request, would modify the Technical Specifications in response to the Commission's Generic Letter 83–37 dated November 1, 1983, concerning Technical Specifications related to implemented TMI Action Plan Items. The proposed changes, as revised, would add Technical Specification Limiting Conditions for Operation and Surveillance Requirements for:

(1) The reactor coolant system vents in accordance with 10 CFR 50.44(c)(3)(iii) which superseded TMI Action Plan Item II.b.I;

(2) The post-accident sampling system in accordance with TMI Action Plan Item II.B.3;

(3) The post-accident effluent monitors for radioactive iodine and particulate sampling in accordance with TMI Action Plan Item II.F.1.2;

(4) The containment high range monitors in accordance with TMI Action Plan Item II.F.1.3;

(5) The containment pressure monitors in accordance with TMI Action Plan Item II.F.1.4;

(6) The containment water level monitor in accordance with TMI Action Plan Item II.F.1.5; and

(7) The containment hydrogen monitor in accordance with TMI Action Plan Item II.F.1.6.

In addition, the proposed changes, as revised, would modify the Technical Specifications in response to the Commission's Generic Letter 82–16 dated September 20, 1982, related to implemented TMI Action Plan Items. However, the changes proposed by the March 16, 1984 request concerning the Technical Specifications regarding limitation of overtime by plant staff performing safety related functions in accordance with TMI Action Plan Item I.A.1.3. was not modified by the request dated August 22, 1984, and therefore that part of the notice issued in 49 FR 21825 is unchanged.

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 (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constituties an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to the example for which

no significant hazards considerations exists, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicoholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

NRC Branch Chiefs: John F. Stolz, James R. Miller.

Arkansas Power and Light Company, Dockets Nos. 50–313 and 50–368, Arkansas Nuclear One, Units Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: October 16, 1984.

Description of amendment request: The amendment would add Technical Specifications which would require that keys to key operated handswitches for the containment purge valves for Arkansas Nuclear One, Units Nos. 1 & 2, be removed when the purge valves are required to be closed. This would prevent inadvertent opening of the ANO–1 & 2 containment purge valves during operation.

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 (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, on control not presently included in the Technical Specifications. The proposed Technical Specification modifications impose additional limitations, restrictions and controls and, therefore, fall within this example. Therefore, since the application for amendments involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

NRC Branch Chief: John F. Stolz, James R. Miller.

Carolina Power & Light Company, Docket Nos. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 26, 1984.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Tables 3.3.5.2–1 and 4.3.5.2.–1 and TS 3/4.6.6.4 to reflect requirements for the drywell/suppression chamber hydrogen and oxygen analyzers issued as Brunswick-2 Amendment No. 99 on August 13, 1984.

The proposed Technical Specification changes would delete item, 7, drywell oxygen concentration, and renumber items 8, 9 and 10 in TS Tables 3.3.5.2–1 and 4.3.5.2–1. The drywell oxygen concentration indication on the remote shutdown panel has been removed as part of the replacement of the existing drywell hydrogen/oxygen monitoring system with a new wide-range monitoring system. The new wide-range monitoring system was approved for Unit 1 in Amendment No. 63 dated December 28, 1983. It was also included in a staff review dated July 30, 1984 of TMI Item II.F.1.6, Containment Hydrogen Monitor. The proposed changes also revise TS 4.6.6.4 by incorporating the increased calibration gas sample ranges necessary due to the increased measurement range of the new hydrogen and oxygen monitoring system and by incorporating revised instrument tag numbers.

The changes proposed are consistent with both the existing Brunswick-1 Technical Specifications and the BWR–4 Standard Technical Specifications guidance. Similar Technical Specification changes were issued as Amendment No. 63 for Burnswick-1 on December 28, 1983. This action was noticed for both units on August 22, 1983 (48 FR 38118), but was not issued for Unit 2 since the modifications were not complete for Unit 2 at that time. The licensee has now completed the modification for Unit 2 and has requested the appropriate Technical Specification changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration 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 deletion of item 7 and renumbering of items 8, 9 and 10 in Table 3.3.5.2–1 and 4.3.5.2–1, the removal of the oxygen concentration indication which was replaced by the new values in the wide-range monitoring system, and the changes in instrument tag numbers are encompassed by example (i) above in that the changes would be administrative changes to achieve consistency between the Technical Specifications and the revised physical configuration of the nuclear power plant. The balance of the changes to the Technical Specifications called for by the amendment request, namely the changes in gas sample ranges, constitute additional limitations and are therefore encompassed by example (ii) above since they would add limitations and restrictions not presently included in the Technical Specifications.

Therefore, since the application for amendment involves proposed changes that are similar to the example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

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 amendment: October 2, 1984.

Description of amendment request: The proposed amendment would change Table 4.3.5.9–1 to remove the requirement for control room alarm annunciation when the noble gas activity monitors of the main stack monitoring system, the reactor building ventilation monitoring system, or the turbine building ventilation monitoring system experience a high-voltage circuit failure. In addition, the requirement for control room alarm annunciation is removed for the condition when the noble gas activity monitor of the reactor

building ventilation system is not set in the "operate mode." These changes reflect the actual design features of the monitors and should have been reflected in Amendment Nos. 62 and 88 which were issued on December 27, 1983. These features are usually included in new facilities and are therefore included in the Standard Technical Specifications. The fact that these features were not present in the Brunswick facilities was inadvertently overlooked in the review of Amendment Nos. 62 and 88.

Although control room alarm annunciation for high-voltage low circuit failure does not exist for these systems, adequate means are available and are currently being employed to ensure operability of the monitors. The reactor building ventilation monitoring system is equipped with monitors manufactured by Nuclear Measurements Corporation (NMC). The design of the NMC monitors does not provide an alarm function for high-voltage low conditions. If such a condition were to exist, the affected monitor would indicate a significant reduction in the count rate. Such a reduction would be obvious to personnel performing the required once per shift channel functional test and to personnel who verify instrument operability on a weekly basis. A complete loss of high voltage will cause a sufficient loss of counts to initiate a downscale/inoperative annunciation. In addition, the NMC monitors are not equipped with an operate mode switch that is capable of providing annunication. However, as mentioned above, the channel checks which are performed once per shift ensure timely verification of the monitor's operability. There are also administrative controls which require independent verification of instrument operability prior to returning a monitor to service following repair or routine maintenance.

General Atomic Wide Range Gas Monitors are used for the main stack monitoring system and the turbine building ventilation monitoring system. These monitors do not provide an alarm function for high-voltage low conditions. However, two built-in self test functions (a loss of counts test and a check source test) provide indirect monitoring of high-voltage performance. A complete high-voltage failure will result in a loss of counts which will trigger the downscale/inoperative annunciation. Decreasing high-voltage will result in failure of the check source test which also generates downscale/inoperative annunciation. These tests are performed automatically at five minute and 24 hour intervals, respectively, and ensure proper high-voltage operation.

Basis for proposed no significant hazards consideration determination: Based on the above information we conclude that there are adequate alternative means available to ensure operability of the monitors. Therefore, (1) operation of the facility in accord with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) during our review we could find no way that operation as proposed could create the possibility of a new or different kind of accident from any accident previously evaluated; (3) the above information, the other means to assure operability of the monitors, indicates that operation of the facility would not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of amendment request: July 17, 1984.

Description of amendment request: This amendment would revise the Technical Specifications to allow use of Integrated Leak Rate Test (ILRT) duration criteria contained in ANSI N45.4–1972.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations by providing certain examples published in the Federal Register on April 6, 1983 (48 FR 14864). One of the examples of an amendment which will likely be found to involve no significant hazards considerations is (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 amendment request matches example vii because the change in test duration for containment integrated leak rate measurements is being accomplished according to section 7.6 of ANSI N45.4–1972. The use of ANSI N45.4–1972 is required by 10 CFR Part 50 Appendix J, therefore, the minor changes are clearly in keeping with the regulations.

Therefore, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: September 27, 1984.

Description of amendment request: The proposed amendment would change the Technical Specifications for the reactor scram system. The changes would provide new limiting conditions for operation and surveillance requirements for a newly modified scram system having improved reliability. The modifications were implemented per an NRC Order issued on June 24, 1983. The proposed changes to the Technical Specifications are based upon the licensee's final design of its scram system and its review of model technical specifications provided as guidance by the NRC staff.

Basis for proposed no significant hazards consideration determination: The licensee submittal of September 27, 1984 contained an evaluation of the proposed action, and a basis for a proposed no significant hazards consideration determination, as follows: Subsequent to a failure of 76 of 185 control rods to fully insert at Browns Ferry Unit 3 in response to a manual scram signal, the Commission had embarked on an indepth review of the BWR control rod drive system which identified a number of design issues requiring both short and long term corrective measures. On October 1, 1980

letters were sent to all BWR licensees requesting commitments to reevaluate the present scram system and modifying it as necessary to meet both the design and performance criteria as developed by the BWR Owners Subgroup. Accordingly, a confirmatory order was written June 24, 1983 for Dresden Unit 2 regarding a schedule for implementation of the long term corrective actions. That Confirmatory Order also provided model technical specification changes. Based on Commonwealth Edison's final design and upon a review of the model technical specifications, Commonwealth Edison is proposing a number of changes to Appendix A of the Technical Specification for Dresden Unit 2 in accordance with the forementioned Confirmatory Order.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing specific examples. The examples of actions involving no significant hazards consideration include: (ii) Changes that constitute an additional limitation or restriction or control not presently within the technical specification e.g., a more stringent surveillance requirement.

The changes proposed in this application for amendment are encompassed by this example because of the additional limitations and restrictions that will be added by this Technical Specification amendment.

Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, Commonwealth Edison has made a proposed determination that the application involves no significant hazards considerations.

The staff has reviewed the licensee's significant hazards consideration determination and, based on this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Robert A. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket No. 20–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois

Date of amendment request: September 28, 1984.

Description of amendment request: The amendment would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. These modifications are being made to achieve full compliance with the requirements of 10 CFR 50.49 (Environmental Qualification of Electrical Equipment).

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed Technical Specification change and has determined that the change does not represent a significant hazards consideration. The licensee's proposed determination is based on the following considerations.

The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions likely to involve no significant hazards consideration include: (vi) A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the changes are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculation model or design method.

The licensee's proposed amendement would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. The use of analog trip units, and the acceptable intervals for their calibration and testing, has been reviewed and accepted by the NRC in their review and acceptance of General Electrical Topical Report NEDO–217617–A, "Analog Transmitter/Trip Units Systems for Engineered Safeguard Sensor Trip Inputs," dated December 1978. The analog sensor transmitter channel calibration interval is less stringent than the current requirements on the existing equipment, but the proposed calibration interval falls within the interval specified in the approved Topical Report for this equipment, and is consistent with the Standard Technical Specifications as endorsed, and is consistent with the Standard Technical Specifications as endorsed by Chapter 16 of the Standard Review plan. This calibration frequency has been found acceptable by the staff and approved, in letter dated August 2, 1984, for use at a similar unit, Quad Cities Unit No. 1. Since the requested amendment is encompassed by the example (vi) of the guidance for which no significant hazards consideration is likely to exist, the licensee has made a proposed determination that the proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and, based on this review, the staff has made a proposed determination that the proposed application for amendment involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit No. 2, Grundy County, Illinois.

Date of amendment request: October 2, 1984.

Description of amendment request: The submittal requests changes in Section 5.2 of the Dresden Unit 2 Technical Specifications to allow for the use of General Electric (GE) hybrid design hafnium control rod assemblies. These assemblies will be used to replace standard control rod assemblies during the current Unit 2 refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determininig 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 staff has reviewed the proposed amendment and the related topical report. The licensee concludes that the proposed amendment does not involve a significant hazards consideration and based on the following discussion the staff concurs with this conclusion.

The Hybrid I Control Rod (HICR) Assembly has been designed by GE to be used as a direct replacement for the

present control rod assemblies. The description of these control rods was submitted to the NRC by GE in topical report NEDE–22290. The staff's safety evaluation of the report was based on information provided in (a) NEDE–22290, (b) a meeting with GE representatives; and (c) responses to NRC staff questions and concluded that there is reasonable assurance that the substitution of Type I HICRs for other approved GE control blades will not result in unacceptable hazards to the public and should, in fact, result in improved control blade performance and a positive contribution to reactor safety. Therefore, NEDE–22290, as amended to incorporate this safety evaluation, is approved as a referential document for the GE Type I HICR by NRC letter dated August 22, 1983.

The staff had determined that: (1) The nuclear and mechanical properties of the HICR do not differ from currently used assemblies in a significant way; (2) the possiblity of an accident different from those analyzed in the FSAR would not result from these changes because, in addition to the above, these systems would not be operated in a manner new or different from that described in the FSAR; and (3) the margin of safety as analyzed in Technical Specifications would not be reduced because the proposed amendment involves no significant relaxation of the criteria used to establish safety limits, no significant relaxation of the bases for limiting safety system settings, and no significant relaxation in limiting conditions for operation. Therefore, the staff finds that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident; or (3) involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Attorney for licensee: Robert G. Fitzgibbons, Jr., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50–373 & 50–374, La Salle County Station, Units 1 & 2, La Salle County, Illinois

Date of amendment request: September 19, 1984 as modified by letter of October 5, 1984.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Unit 1 and Unit 2 Technical Specifications consistent with a design change in the location of the reactor water cleanup (RWCU) pumps to a point in the system containing lower water temperature. The Technical Specifications changes will eliminate the requirement to specify limits on the ambient and differential temperature measurements in the RWCU pump rooms in Tables 3.3.2–1, 3.3.2–2, 3.3.2–3, and 4.3.2–1. These Technical Specification revisions are requested because the RWCU system recirculation pumps do not contain reactor water at full operating temperature and pressure as originally designed and spurious isolations have occurred.

To allow for better pump operation based on operating experience at other plants, the system design was built with the heat exchangers in the lines upstream of the pumps. This resulted in lower water temperature in both pumps in the RWCU pump rooms. However, the leak detection system was not changed at the time the position of the RWCU pumps were changed. The original RWCU system temperatures, anticipated at the pumps and in the pump rooms, were retained by the licensee for the RWCU pump rooms leak detection and the RWCU isolation instrumentation design. The RWCU isolation instrumentation has logic trips based on the following: (1) System high differential flow, (2) ambient and differential temperatures, and (3) reactor building sump level. Trips based on items (1) and (2) above provide automatic isolation signals to the RWCU system. Item (3) provides remote alarm provisions to the control room to allow the operator to manually isolate the RWCU system. Although the RWCU systems have a lower temperature as this water passes through the RWCU pump rooms, the ambient and differential temperature trip setpoints for these temperature channels (set at temperatures for equivalent allowable leakage) are very near the normal operating temperatures. This has caused spurious isolations (no leaks present). Because of the change in the location of these pumps, these temperature channels and their logic trip inputs are unnecessary. Sufficient diversity remains in the differential flow and reactor low water level automatic isolations to ensure that actual RWCU leakage in the pump rooms is monitored and will be promptly isolated. In addition, a ruptured RWCU system can be detectd and isolated manually if area sump pumps indicate leakage in the system. Since the ambient and differential temperatures have proven unnecessary inputs for RWCU isolation and have caused spurious isolations, the staff agrees that it is prudent to remove them from the protection system and from the 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; (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 consequences of an accident previously evaluated because the reactor water cleanup (RWCU) system will still have adequate isolation capability and meets the requirements for cold system piping as specified in the Final Safety Analysis Report for this system.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the bounding leakage from the RWCU System has already been evaluated.

(3) Involve a significant reduction in the margin of safety because the remaining protective instrumentations is fully adequate to monitor for leakage and isolate the affected RWCU system if the leakage exceeds the required limits.

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, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut, Avenue, NW., Washington D.C. 20036.

NRC Branch Chief: A. Schwencer.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County Michigan

Date of amendment request: May 31, 1984.

Description of amendment request: The amendment would decrese the

required frequency given in the Technical Specifications (TS) for control rod drive performance testing to a frequency of once every major refueling outage. Currently, TS require performance of the following tests every 6 months:

(1) Withdrawal of each drive, stopping at each locking position to check latching and unlatching operations and the functioning of the position indication system.

(2) Scram of each drive from full withdrawn position. Maximum scram time from system trip to 90 percent of insertion shall not exceed 2.5 seconds.

Also, the TS currently require performance of the control rod insertion test at each major refueling outage but not less frequently than once a year. This test involves insertion of each drive over its entire stroke with reduced hydraulic system pressure to determine that drive friction is normal. The proposed amendment would decrease the frequency of these three test to once every major refueling outage.

Basis for proposed no significant hazards consideration determination: According to the standards of 10 CFR 50.92, a proposed amendment 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.

A. Insertion Test

The current TS require the control rod insertion test to determine that drive friction is normal once a year. The proposed change would specify the test frequency as once every major refueling outage. Since major refueling outages occur about once a year at Big Rock Point, the test frequency would be essentially unchanged. Therefore, the staff proposes to determine that the requested action does not involve a signficant hazards consideration in that it does 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.

B. Withdrawal Test

The current TS require performance of the control rod withdrawal test including latching, unlatching, and position indication at each latch position during each major refueling and once every 6 months during power operation. The proposed change would remove the requirement to perform the test once every 6 months during power operation. Therefore, the proposed test frequency would be just during each major refueling outage. Since major refueling outages occur about once a year at Big Rock Point, the proposed change is basically a reduction in test frequency from twice-a-year to once-a-year. However, the current TS also require daily testing (exercising or movement) of any control rod which is not fully inserted. This test also involves latching, unlatching, and a check on position indication, but only at a couple of latch positions. Thus, this test involves the same elements as the withdrawal test and the daily test could be described as a mini-withdrawal test. While the daily test is less rigorous than the withdrawal test, the daily test is obviously performed much more frequently than once every 6 months. Because of the combination of these tests, the deletion of the test every 6 months during power operation does not significantly reduce the licensee's capability to diagnose control rod drive operability problems.

Also the Standard Technical Specifications (STS) for General Electric Boiling Water Reactors (GE–BWR) do not include such a withdrawal test in the interim between refueling outages. The STS are the staff's general guidance for determining the adequacy of TS.

Therefore, the staff proposes to determine that the requested action does not involve a significant hazards consideration in that it 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 from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

C. Scram Time Test

The current TS require the control rod scram time tests to be performed at major refueling outages and every 6 months during power operation. The proposed change would remove the requirements to perform the test once every 6 months during power operation. Therefore, the proposed test frequency would be just during major refueling outages. Since major refueling outages occur about once a year at Big Rock Point, the propose change is basically a reduction in test frequency from twice-a-year to once-a-year.

The licensee states that deletion of the scram time test every 6 months during power operation would not significantly reduce the margin of safety for the control rod drive system because past tests have shown that the system is reliable and there is no significant degradation of performance in a 1-year period of time.

The scram time test history for Big Rock Point does show that the contol rod drive system is reliable; there have only been two scram test failures. Both failures were during testing in 1978 and both were due to degradation of a particular kind of rubber disc. The preventive maintenance program has been enhanced to prevent recurrent failures of the discs. Also, the test history does show that performance in the time tests does not degrade significantly over a 1-year period of time. Therefore, deletion of the test every 6 months during power operation would not significantly affect the reliability of the scram system.

Therefore, the staff proposes to determine that the requested action does not involve a significant hazards consideration in that it 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 from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Branch Chief: Walter A. Paulson, Acting Chief.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 8, 1984.

Description of amendment request: This is an application for an amendment to Operating License DPR–66, revising the Technical Specifications to comply with requirements (NUREG–0737) imposed by the Commission as a result of the Three Mile Island accident. The proposed changes are patterned after the staff's Standard Technical Specifications transmitted by Generic Letter 83–37. They are as follows:

(1) Tables 3.3–11 and 4.3–7 would be revised by adding Instrument No. 10, Containment Sump Wide Range Water

Level, to comply with the staff's requirement. In addition, Table 3.3–11 would be revised to include Instrument No. 9, PORV Control Pressure Channels, which was previously added to Table 4.3–7 by Amendment No. 45.

(2) Sections 3.4.12, 4.4.12 and B3/4.4.12 would be added to specify the limiting conditions for operation, associated surveillance requirements, and basis for the reactor coolant vent system.

(3) Section 3.6.4.1 would be revised to apply specifically to the wide range hydrogen analyzers installed to meet staff requirements.

(4) Section 6.8.4 would be added to require a post-accident monitoring program be established, implemented and maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Example (ii), involving no significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications". All proposed specifications described above are currently non-existent in the Beaver Valley Unit 1 Technical Specifications. Issuance of an amendment to incorporate them would be an action that matches the quoted example. Therefore, the staff proposes to characterize the proposed amendment as involving no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Florida Power & Light Co., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: September 10, 1984.

Description of amendment request: The proposed amendment would make changes in the technical specifications of St. Lucie Plant, Unit No. 1 by providing flow rates and tolerances for each of the two sodium hydroxide sources. When Amendment 49 to Operating License DPR–67 was issued, the flow rates and tolerances were not available and the licensee committed to supply them at a future date.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards contained in 10 CFR 50.92 by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the Federal Register on April 6, 1983 (48 FR 14870). One of the examples involving no significant hazards consideration (i) relates to 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. This change does not meet any of the cited examples but is believed to be administrative in nature in that it provides the numbers specifically called for in Amendment 49. Specifically in Technical Specification 4.6.2.2.d, the licensee is required to provide flow rates and tolerances within six months following restart from the 1983 refueling outage. This application for amendment satisfies that requirement and is felt to be administrative in nature.

Another example (ii) relates to a change that institutes an additional limitation or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. This change meets this example in that it now specifies the flows and pressures that are required to be met in order to declare the spray additive system operable. It is more restrictive in that numbers specifying flow and pressure now exist where none existed before.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Port Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esq., Newman, and Holtzinger, 1615 L Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 23, 1984.

Description of amendment request: The proposed amendment would revise the reporting requirements of the Technical Specifications to bring them into comformance with the recent revision to 10 CFR 50.72 and with the new 10 CFR 50.73.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One example of an amendment that is considered not likely to involve a significant hazards consideration is "(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operation clearly in keeping with the regulations."

Since the proposed changes deal with reporting requirements and would have little or no effect on facility operations, and are proposed in order to conform to changes in the regulations, they are encompassed by this example. Therefore, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 NW First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 23, 1984.

Description of amendment request: The proposed amendment would permit opening of certain containment isolation valves (which would otherwise be required to be isolated in accordance with Technical Specification 3.6.1) provided that a dedicated operator is stationed at the valve to isolate the penetration upon receipt of a containment isolation signal. Inability to open the affected valves prevents conformance with other requirements of the Technical Specifications which in many cases would necessitate an undesirable plant shutdown.

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 (48 FR 14870). One of the examples (vi) of actions involving no significant hazards considerations is a change which may reduce in some way a safety margin, but where the results of the change are

clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan. . . .

Chapter 16 of the Standard Review Plan refers to NUREG–0103, Standard Technical Specifications for B&W Pressurized Water Reactors (B&W STS), which are applicable to this plant. Table 3.6–1 of the B&W STS suggests that designated containment isolation valves "may be opened on an intermittent basis under administrative control." The proposed amendment would be within the criteria specified in the Standard Review Plan. Therefore, since the proposed amendment is encompassed by this example, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 31, 1984.

Description of amendment request: The proposed amendment would exempt from the provisions of Technical Specification (TS) 3.0.4. these TSs: 3.4.11, 3.9.9, and 3.9.11. TS 3.0.4 prevents entry into an operational mode unless the Limiting Conditions for Operation are met, without reliance on ACTION statements, unless otherwise excepted. TS 3.4.11, recently requested by the licensee and not yet in place, applies to Reactor Coolant System (RCS) vents. TS 3.9.9 governs the containment purge isolation system operability, and TS 3.9.11 requires missile shielding and water depth over fuel assemblies in the storage tanks.

Basis for proposed no significant hazards consideration determination:

TS 3.4.11

The NRC staff's Generic Letter 83–87 (November 1, 1983) allows continued Power Operation and startup provided the inoperable vent path is deactivated. Because there are no additional safety concerns during the less significant modes of Hot Standby or Hot Shutdown with regard to RCS vents, the requested exemption is within the intent of NRC guidance on this matter, and therefore the staff concludes that 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.

TSs 3.9.9 and 3.9.11

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (vi) of actions involving no significant hazards considerations is a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan.

With regard to TS 3.9.9, the Standard Review Plan refers to the B&W Standard Technical Specifications (B&W STS) which apply to this plant. TS 3.9.9 of the B&W STS clearly permits exemption from the provisions of Section 3.0.4. For TS 3.9.11, analysis required by the Standard Review Plan does not take into consideration the operating mode of the reactor. Therefore, the proposed change cannot affect a safety margin. Therefore, these proposed changes are encompassed by this example.

For the reasons discussed above, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 25, 1984.

Description of amendment request: The proposed amendment would delete Surveillance Requirement 4.8.1.1.1.a.2, which requires that the sump pumps in the tunnel containing the DC control feeds to the 230 Kv switchgear be verified to be operable at least once every seven days. The licensee presents information which is asserted to show that the DC control feed cables, which the sump pumps are intended to keep dry, are not adversely affected by immersion in rain or salt water. Therefore, weekly surveillance, and presently-required operation of the diesel generators if the sump pumps are not operable, are not necessary to assure plant safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards considered not likely to involve a significant hazards consideration by providing certain examples (48 FR 14870). One example (iv) is a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. Since demonstration of operability of the sump pumps (the operating restriction) was initially included in the Technical Specifications to assure that common mode failure of the DC feeds due to flooding would not occur, acceptable evidence that the DC control feed cables would not fail due to flooding constitutes demonstration of acceptable operation of the cables. The proposed change is encompassed by this example, and therefore, the staff proposes to demonstrate that the proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 30, 1984.

Description of amendment requests: The proposed amendment would revise Technical Specification 3.3.3.45, Remo[te] Shutdown System, to be consistent w[ith] the new remote shutdown system. The new system has been reviewed and accepted by the NRC and will be installed during Refuel V after which the revised Technical Specification would become effective. Operability and surveillance requirements for the remote shutdown system transfer switches are also added.

Basis for proposed no significant hazards consideration determination: As part of its compliance with the requirements of 10 CFR Part 50,

Appendix R, the licensee provided a new remote shutdown system. The NRC staff reviewed the design of the new system and on January 6, 1983, approved this system and noted that Technical Specifications governing the system are required. The proposed amendment provides these revised Technical Specifications. Because these changes are necessary to cover this previously-accepted new system and to conform with the requirements of the regulations, and because they add additional limitations, restrictions, and controls (example ii, 48 FR 14870), the Commission's staff finds that 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 an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 30, 1984.

Description of amendment request: The proposed amendment would change the applicability of Technical Specification 3.3.3.3 to allow the Triaxial Peak Accelograph on top of the reactor vessel head to be inoperable during Modes 5 and 6, and the head is off the reactor. This accelograph provides no useful function when the head is off.

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 (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (i) purely administrative changes to the Technical Specifications, for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature. The change proposed by the licensee is such an administrative change to correct the error involved in the present Technical Specifications in not considering the lack of need for operability of the Head Accelograph when the reactor vessel head is off the reactor vessel. Therefore the Commission's staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: September 28, 1984.

Description of amendment request: The proposed amendment would correct errors and inconsistencies in and clarify certain radiological effluent Technical Specifications (TSs). Specifically, change 1 revises TS 3.3.3.8 to require source check prior to each release rather than daily; change 2 revises TS 3.3.3.9 to change specified modes for applicability and surveillance on RM–A1 to "During periods of Reactor Building purge"; change 3 corrects a typographical error and changes source check requirements in TS 3.3.3.9 to be consistent with other TSs; change 4 adds reporting requirements in TS 3.3.3.10 in the event of inoperability of Waste Gas Decay Tank monitors for more than 14 days; change 5 clarifies that only the in-service Waste Gas Decay Tank need be continuously monitored (TS 4.7.13.5); change 6 corrects an inconsistency in the requirements for reporting unavailability of vegetable samples (TS 6.9.2); and change 7 clarifies the group of individuals to be considered when reporting doses 6.9.1.4).

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 (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration 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 nonmenclature. The proposed changes fall within the scope of this example, as follows:

Change 1. When TS 3.3.3.8 was initially developed, releases through RM–L7 (Secondary Drain Tank liquid effluent line monitor) were being made continuously. These releases are now being made on a "Batch" basis. The proposed change would be consistent with other batch type release monitors.

Change 2. When the applicable modes for operation of RM–A1 (Reactor Building purge exhaust duct monitor) were determined, Crystal River Unit 3 was allowed to purge during all modes. Since then, purging has been restricted to Modes 5 and 6. The operability requirements are proposed to reflect this restriction and require monitoring only during times purging is performed. Therefore, this change is administrative in nature.

Change 3. This change corrects a typographical error which erroneously tied Auxiliary Building exhaust monitoring to periods of Reactor Building purge. It also changes the erroneous requirement to perform a source check prior to release through the Auxiliary Building exhaust monitor (RM–A2), which is required to operate continuously by TS 3.7.8.1.

Change 4. Compliance with current TSs is not possible in this case. TS 3.3.3.10 allows operation with inoperable Waste Gas Decay Tank monitors for up to 14 days. After that, entrance into TS 3.0.3 (shutdown) would generally be required. However, the monitor is required to be operable in all modes so shutdown would not satisfy this requirement. In addition, initiating plant shutdown would result in release of additional hydrogen which could have safety consequences if the monitor were inoperable. Thus, the proposed change, in defining action to be taken after 14 days, corrects the TS error.

Change 5. This change would clarify that only the in-service Waste Gas Decay Tank needs to be continuously monitored for hydrogen and oxygen concentrations.

Change 6. The unavailability of vegetable samples is reported in the Annual Radiological Environmental Operating Report not as a special report as implied in the present TS 6.9.2. Specification 3.7.11.4 does not require a special report, thus the reference to 3.7.11.4 has been deleted.

Change 7. This change would change "individuals" to "members of the public", which is a defined term, while "individuals" is not. This change clarifies the scope of individuals to be considered when reporting doses per this requirement. Individuals who are not members of the public are covered under other requirements.

As discussed specifically above, the Commission's staff concludes that the proposed changes fall within the scope of this example. On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: May 4, 1984, as revised September 12, 1984.

Description of amendment request: The amendment would change the Technical Specifications to expand the present definition of operability to explicitly include functionality of support equipment, redundant trains and electric power supplies. The amendment would also add provisions to the Technical Specifications to allow a system, subsystem, train, component or device to be considered OPERABLE under certain conditions when the normal or emergency power source providing power to the system, subsystem, etc. is INOPERABLE.

The present definition of operable requires only that a system or component be capable of performing its intended function in its required manner in order to be considered operable.

The proposed change was submitted in response to an April 10, 1980, NRC request that licensees submit proposed Technical Specifications concerning the definition of the term "OPERABLE" that conform with Model Technical Specifications included with the April 10, 1980 request.

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 (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently in the Technical Specifications (Example (ii)).

The proposed change would add additional limitations and is therefore similar to this example.

The Commission therefore proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Pots and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: October 18, 1984, supplementing the request of September 5, 1984.

Description of amendment request: This submittal supplements the request for amendment dated September 5, 1984, which was noticed in the **Federal Register** on October 24, 1984 (49 FR 42819). This supplemental request for Technical Specification (TS) change relates to the proposed High Pressure Coolant Injection (HPCI) steamline differential pressure trip setpoint/allowable value modification to the TSs. The purpose of this change is to update the TS trip setpoint for these instruments which are being replaced by the Analog Transmitter Trip System (ATTS). Since the time that original setpoint was determined, a better calculational method has been developed. This proposed change uses the Regulatory Guide 1.105 methodology in updating the setpoint for the new ATTS instruments, and takes credit for the improved error and drift characteristics of the new system. This change replaces the trip setpoint listed in the TSs with the newly evaluated allowable value determined through Regulatory Guide 1.105 methodology. Changes to the surveillance requirements are the same as those discussed in the October 24, 1984 **Federal Register** Notice for ATTS instrumentation.

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 licensees have provided the following evaluations against each of the above three criteria for the proposed change:

GPC reviewed the proposed change and considers it not to involve a significant hazards consideration for the following reasons:

1. It will not significantly increase the probability or consequences of an accident previously evaluated because the new ATTS instruments are of a superior design as compared to the current instruments. In addition, the setpoint was determined using the criteria of Regulatory Guide 1.105, and therefore, still meets the Final Safety Analysis Report (FSAR) criteria.

2. It will not create the possibility of a new or different kind of accident from any accident previously evaluated, because the basic trip function, as described in the FSAR, is unchanged.

3. It will not involve a significant reduction in a margin of safety because the original design basis was maintained. In addition, Regulatory Guide 1.105 criteria were used in the calculation of the new setpoint.

The Commission's staff agrees with the licensees' evaluation that the change meets the three criteria of the Commission's guidance as stated above. On this basis, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amemdment request: September 5, 1984.

Description of amendment request: These amendments would modify the Technical Specifications to add leak rate limits and test requirements for the automatic depressurization system.

These additional requirements are submitted in response to the NUREG–0737 requirements.

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 (48 FR 14870). An

example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendments involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

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 No. 2, Appling County, Georgia

Date of amendment request: September 5, 1984.

Description of amendment request: This amendment would modify the Technical Specifications to add limiting conditions for operation, trip setpoints and surveillance requirements for the monitors which provide the high radiation isolation signals to the containment purge and vent valves.

The above proposed Technical Specification modifications were submitted to reflect implementation of NUREG-0737 Item II.E.4.2(7) which requires that the purge and vent valves close automatically on a high containment radiation signal.

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 (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corpration, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County New Jersey

Date of amendment request: August 11, 1980 as supplemented October 18, 1982, December 5, 1983, February 9 and March 23, 1984.

Description of amendment request: The proposed amendment requests approval of Technical Specification (TS) changes relating to station electric distribution system voltage.

Basis for proposed no significant hazards consideration determination: The criteria and NRC staff positions regarding degraded grid voltage protection were sent to Jersey Central Power and Light Company (JCP&L), now GPU Nuclear Corporation (GPU), on August 11, 1976 and on June 3, 1977, JCP&L responses were dated November 5, 1976, April 18, 1977, September 25, 1979, August 11, 1980, and April 30, 1981. EG&G Idaho under contract to NRC performed a detailed review and technical evaluation of the submittals. The results of this review are contained in the staff's Safety Evaluation (SE) entitled "Degraded Grid Protection for Class 1E Power Systems, Oyster Creek Nuclear Power Station" dated October 16, 1981. The proposed amendment change request supports the design of the grid undervoltage protection system and the mode of operation of the bus tie breakers previously approved in the October 16, 1981 SE and includes relay surveillance requirements, setpoints and limits, and limiting conditions for operation (LDO).

The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of action not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the TS; for example, a more stringent surveillance requirement. The changes proposed in the application for amendment are encompassed by this example and the requested action fulfills the requirements set forth in the SE dated October 16, 1981. On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of amendment request: August 4, 1983 and supplemented February 8, 1984.

Description of amendment request: The proposed amendment requests approval of a Technical Specification (TS) change to Section 3.1 which would raise the high drywell pressure trip setpoint from 2.0 psig to 2.4 psig.

Basis for proposed no significant hazards consideration determination: The proposed amendment involves a slight increase in the established trip setting which initiates automatic protective actions, but does not involve a change of any of the limiting safety system settings listed in Section 2.3 of the TS. This change will increase the separation between the containment operating pressure and the pressure trip setpoint which would reduce the likelihood of spurious trips and will ensure that only valid signals will challenge the trip system. However, the setpoint is still low enough that the trips initiated by the affected instruments will occur in time to ensure that they will perform their protective function. Although this change may slightly reduce in some way a safety margin, the results of this change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The decrease in the likelihood of spurious trips will significantly reduce the possibility of plant disruptions or transients which lead to more significant events.

The Commission has provided guidance concerning the application of standards for no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (vi) of action not likely to involve a significant hazards consideration relates to change which either may result in some increase to the probability or

consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The changes proposed in the application for amendment are encompassed by this example. On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 8, 1984.

Description of amendment request: The proposed amendment requests approval of Technical Specification (TS) changes to Section 6.0, Administrative Controls.

Basis for proposed no significant hazards consideration determination: The proposed amendment change request would provide a Plant Engineering organization which is more responsive to the continuing operations and maintenance needs of the Oyster Creek facility and to enhance the administrative capabilities of the organization. The reorganization would be achieved by:

—Reducing the number of direct interfaces to both the Plant Engineering Director and the Manager—Plant Engineering.
—Providing a three Manager structure with specific responsibilities in the areas of Operations, Maintenance, and Support.
—Providing direct interfaces within Plant Engineering for the related organizations of the Oyster Creek division and GPUN.
—Assigning specific responsibility to a dedicated group for discharging the administrative functions of Plant Engineering.

The responsibilities presently under the congizance of the "Manager-Plant Engineering" will be split into three specific areas: Operations Engineering, Maintenance Engineering, and Support Engineering. Each of these disciplines will be headed by a respective Manager with appropriate Technical/Administrative backgrounds and capabilities required for the existing managerial position as specified in the Oyster Creek Technical Specification Facility Staff Qualifications, Section 6.3. The three managers shall directly report to the Plant Engineering Director. This concept also provides increased time on the Managerial level for both Technical/Administrative support to the Supervisory/Engineering personnel.

This change is administrative based on the consideration that the technical/educational/administrative and experience requirements for the three managerial positions are not changed. Therefore, the related revision to section 6.3 of the Technical Specifications requires only a wording change for "Manager—Plant Engineering" to "Managers—Plant Enigneering".

The position title of Fire Pretection Supervisor will be revised to Site Fire Pretection Coordinator, which is a title change and is considered administrative only. This change is incorporated, based on the consideration that the position no longer directly supervises the activities of Fire Protection personnel. Technical responsibilities remain unchanged. This position reports to the Manager—Support Engineering, but continues direct access to the Plant Engineering Division providing an additional level of technical support to this function.

The position title of Manager-Core Engineering will be revised to Core Manager. This is a title change and, therefore, administrative only. The technical responsibilities shall remain as presently specified in the Oyster Creek Technical Specification Facility Staff Qualifications, Section 6.3. Also, the direct report for this position will be the Manager—Operations Engineering. This organizational change relieves this position of a degree of administrative responsibilities and relinquishes this time to the discharge of technical duties. This also provides an additional level of technical expertise to the Plant Engineering Director.

The position of Chemistry Manager no longer falls under the cognizance of Plant Engineering. This position now reports to the Plant Operations Director and is, therefore, deleted from Plant Engineering. Also, it should be noted the position now is titled Manager—Plant Chemistry.

Another change that is being made within the organization at Oyster Creek is that the position of Manager, Radiological Controls has been upgraded to the Director level. The TS requirements for this position remain the same.

An additional proposed amendment request would update the requirements for written procedures in effect for Oyster Creek and the addition of the NUREG-0737 requirement for a special report that is to be submitted after the failure of, or challenge to, relief and safety valves. The model TS for these reporting requirements were described in the NRC's Generic Letter No. 82-16. However, subsequent issuance of the new "LER rule" (10 CFR 50.73) supersedes the model reporting requirement of most events that may be attributable to or, associated with failures of relief and safety valves. Therefore, Oyster Creek has proposed reporting failures and challenges to relief and safety valves, which do not constitute an LER, within 60 days of the occurrence. This proposed administrative change is consistent with the intent of the NUREG-0737 requirement.

The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (i) of action not likely to involve a significant hazards consideration relates to a purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The changes proposed in the application for amendment are encompassed by this exampole.

On this basis, the staff proposes to determine that the proposed amendment involves no significant hazards condsiderations.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036

NRC Branch Chief: John A. Zwolinski, Chief.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 1, 1984, as revised and supplemented July 11, 1984, August 2, 1984, and September 11, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs)

related to the allowable concentration of hydrogen and oxygen in the waste gas holdup system and the associated hydrogen/oxygen monitoring instrumentation. The proposed amendment would remove the current limit on oxygen content provided that the hydrogen content is below 4% and would remove the current limit on hydrogen content provided that the oxygen content is below 2%. The proposed TSs would require two hydrogen monitors and two oxygen monitors to assure compliance with the proposed hydrogen and oxygen limits; the proposed TSs also include action statements to be followed if the hydrogen or oxygen limits are exceeded.

The proposed amendment also includes administrative changes to correct wording.

Basis for proposed no significant hazards consideration determination: The proposed amendment would relax the hydrogen/oxygen limits currently specified in the TSs, but the proposed limits are within the limits currently specified in the Standard Review Plan (SRP). Also the installation of dual monitors for hydrogen and oxygen would meet SRP requirements. Thus, the proposed change may result in some increase in the probability of a previously-analyzed accident but the results of the change would be clearly within the safety of margin specified in the SRP because the SRP requirements will be met by the proposed TS change. Therefore, the proposed change in the TS is in the same category as Example (vi), 48 FR 14870, which cites changes "clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan" as an action not likely to involve a significant hazard consideration. The changes to correct wording in the Technical Specifications are purely administrative changes encompassed by the Commission's Example (i), 48 FR 14870, of actions not likely to involve significant hazards considerations.

Based on the foregoing, the Commission's staff proposes to determine that the proposed 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: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 24, 1984.

Description of amendment request: The amendment application requested two changes to the TMI–1 Technical Specifications, Section 6.12, High Radiation Area. The first proposed change would provide reference to 10 CFR 20.202(b)(3) to define a high radiation area. The second proposed change would amend Technical Specification Section 6.12.1a. to address dose rate monitoring requirements for groups of individuals entering a high radiation area. The existing Technical Specifications are currently silent with respect to dose rate monitoring requirements for groups of individuals. The licensee has requested the change to (1) achieve consistency between the TMI–1 and Oyster Creek Nuclear Generating Station Technical Specifications, (2) allow better radiation monitoring equipment inventory control, and (3) increase worker productivity and thereby reduce personnel exposure to radiation.

Basis for proposed no significant hazards consideration determination: The Commission's staff considers the first proposed change, which provides reference to 10 CFR 20.202(b)(3) to define a high radiation area, to be a purely administrative change which is not considered likely to involve a significant hazards consideration, Example (i), 48 FR 14870. The proposed change provides convenient reference to the applicable definition and neither relaxes nor increases the requirements of the Technical Specifications.

The Commission's staff considers the second change, which amends the Technical Specifications to address dose rate monitoring requirements for groups of individuals entering high radiation areas, to be a change which may reduce in some way the applicable safety margin, but the results of the change are clearly within all acceptable criteria in the Standard Review Plan, Example (vi), 48 FR 14870. That is, since the existing Technical Specifications are silent with respect to dose rate monitoring requirements for groups of individuals, one could interpret the existing requirements to be that each member of a group must comply with the applicable requirements on an individual basis. This could result in each member of a group carrying his or her own dose rate monitoring or integrating device.

However, under the proposed Technical Specification change, only one member of a group would be required to carry the required devise. Consequently, by neglecting any increase in worker productivity which could reduce stay times and therefore exposures, one could postulate a reduction in a margin of safety. However, the proposed change is clearly within all acceptable criteria in the Standard Review Plan, and is consistent with the requirements of the Standard Specifications for Babcock & Wilcox plants.

Based on the foregoing discussion, the Commission's staff proposes to determine that the amendment request does not involve a 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: G.F. Trowbridge, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 20, 1984.

Description of amendment request: The proposed amendment would change the Duane Arnold Energy Center (DAEC) Technical Specifications to, (i) change the additional snubber testing in the event of a snubber failure, from 10% to 5%, (ii) delete the requirement to increase the drag force by 50% when the snubbers are functionally tested, (iii) delete the snubbers list from the Technical Specifications in accordance with the Nuclear Regulatory Commission guidance of Generic Letter 84–13, and (iv) correct some errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. 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.

In item (i) the licensee has requested a reduction of the additional testing of snubbers required after a failure of a snubber, from 10% to 5% of the snubbers in the category of failed snubber. The initial testing of each snubber category will continue to be performed for a sample of 10% of the total number of snubbers in each type. The licensee's evaluation indicates, and we agree, that, although the proposed reduction in testing would involve a relaxation of the existing Technical Specification, it will not significantly increase the probability or consequences of an accident previously evaluated, or create the probability of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

In item (ii) the licensee requested that the requirement to increase the drag force 50% when the snubbers are functionally tested be deleted. The licensee states that the test machines used for snubber testing use loads up to 5000 pounds with a sensitivity of ±0.1% or 5 pounds force. The measured drag force of a smaller snubber could be of the order of 5 pounds. A 50% increase in the drag force may, therefore, not be measurable with any accuracy or reliability. In addition, the additional activities associated with 50% increase in drag force would cause radiation exposures to personnel without any reliable increase in safety. The licensee therefore concludes, and the staff agrees, that although the proposed change is a relaxation of the current Technical Specifications, the change will not involve a significant increase in the probability or consequences of a previously evaluated accident, or create the probability of a new or different kind of accident from any accident prieviously evaluated, or involved a significant reduction in a margin of safety.

In item (iii) the licensee has requested that the snubbers list in the Technical Specifications be deleted as suggested by the Nuclear Regulatory Commission in the Generic Letter 84–13.

In item (iv) the licensee has requested to change the Technical Specifications to correct some errors. The Commission has provided some examples of actions which are likely or not likely to involve significant hazards consideration (48 FR 14870). One of the examples not involving significant hazards consideration is 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. The changes requested in items (iii) and (iv) are administrative changes only and are encompassed by the above Commission example involving no significant hazards consideration.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 26, 1984.

Description of amendment request: The proposed amendment would remove the commitment of the use, by the Security Force, of rifles from the Duane Arnold Energy Center Security Plan and the Guard Training and Qualification Plan.

Basis for proposed no significant hazards consideration determination: Elimination of the rifles does not decrease the capability of the security force. Rifles are long range weapons which are not suited for use within a confined area. Due to their long range destructive capability, rifle shots could injure personnel and damage equipment on and off-site. The amendment would authorize a change in composition of small arms and other shoulder fired weapons available onsite for response personnel. The elimination of rifles, therefore, does not decrease the safeguards effectiveness at this site. Any additional description of the change beyond that stated above involves Safeguards Information, which is being withheld from public disclosure pursuant to 10 CFR 73.21.

Based on the above discussion, the staff has concluded that the proposed change meets the Commission standards as defined in 10 CFR 50.92(c), for amendments which do not involve a significant hazards consideration, because such a change 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, and (3) involve a significant reduction in a margin of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, Iowa 52401.

Attorney for license: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 9, 1984.

Description of amendment request: The amendment would revise Figure 6.2.1–1 "Offsite Organization" in the Technical Specifications by changing a position title from "Vice President-Nuclear Support" to "Director-Nuclear Support." The offsite organization provides unit management and technical support. The position for which a title change is being considered is responsible for nuclear fuel, offsite nuclear service and support, and radiological and environmental areas including radiochemistry service and support areas.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a purely administrative change to Technical Specifications such as a change in nomenclature in Technical Specifications. The change of the position title in Technical Specification Figure 6.2.1–1 is similar to this example since the change does not affect the functions of the position or alter the lines of communication or responsibility. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, George M. McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1220 Seventeenth Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Elinor G. Adensam.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 9, 1982, as supplemented by submittals dated September 12, 1983, March 7, 1984, April 10, 1984 and July 19, 1984.

Description of amendment request: The Amendment request of June 9, 1982 was initially noticed on August 23, 1983 (48 FR 38408). The June 9, 1982 Amendment request would change the Radiological Effluent Technical Specifications to assure compliance with Appendix I of 10 CFR Par 50. The Amendment provides new Technical Specification sections defining limiting conditions for operation and surveillance requirements for radioactive liquid and gaseous effluent monitoring; concentration, dose and treatment of liquid, gaseous and solid wastes; total dose; radiological environmental monitoring that consists of a monitoring program, land use census, and interlaboratory comparison program. This change also incorporates into the Technical Specifications the bases that support the operation and surveillance requirements. In addition, some changes were made in administrative controls, specifically dealing with the process control program and the offsite dose calculation manual.

Subsequent to the initial notice, the licensee proposed revisions to the June 9, 1982 amendment application by letters dated September 12, 1983, March 7, 1984, April 10, 1984 and July 19, 1984. The revisions proposed by these supplemental submittals would change the original amendment by providing specific detailed information in the Radiological Effluent Technical Specifications. The overall objective of the proposed amendment to assure compliance with Appendix I of 10 CFR Part 50 is not altered by the supplemental submittals.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a "no significant hazards consideration" determination by providing certain examples (48 FR 14870). One of the examples (ii) of action not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions of controls not presently included in the technical specifications.

The Commission, in a revision to Appendix I, 10 CFR Part 50 required licensees to imporve and modify their radiological effluent systems in a manner that would keep releases of radioactive material to unrestricted areas during normal operation as low as is reasonably achievable. In complying with this requirement it became necessary to add additional restrictions and controls to the Technical Specifications to assure compliance. The additional Technical Specifications requested by the June 9, 1982 submittal were proposed in response to this Commission requirement. Therefore, the staff, in the August 23, 1983 notice, proposed to determine that the June 9, 1982 application did not involve a significant hazards consideration because the change constituted additional restrictions and controls. The revisions proposed by the supplemental submittals of September 19, 1983, March 7, 1984, April 10, 1984 and July 19, 1984 do not change the basic intent of the original application but serve only to clarify and provide specific details to the proposed Radiological Effluent Technical Specifications. Therefore, the revisions proposed by the supplemental submittals do not change our originally proposed determination that the requested change will not involve significant hazards considerations.

Local Public Document Room locations: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Stations, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 18, 1984, as supplemented by PP&L letter dated September 20, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise the Susquehanna Unit 1 Technical Specifications to reflect changes incorporated into the Susquehanna Unit 2 Technical Specifications. The following is a list of proposed changes to the Unit 1 Technical Specifications based onthe Unit 2 Technical Specifications:

1. Page ii, change item 1.35 from "REPORTABLE OCCURRENCE" to read "REPORTABLE EVENT."

2. Page ii, delete line item "TABLE 1.1" and "TABLE 1.2" from this page and incorporate into list of tables.

3. Page viii, change "EMERGENCY WATER SYSTEM" under item 3/4.7.1 to read "EMERGENCY SERVICE WATER SYSTEM."

4. Page ix, change "Motor Operated Valve Thermal Overload Protection" to read "Motor-Operated Valves Thermal Overload Protection."

5. Page xviii, correct typographical error under SECTION 5.1 to read "Map Defining Unrestricted Areas . . ."

6. Page xx, under SECTION 6.9 in the first line item, delete the words ". . . And Reportable Occurrences." Also delete line items "Reportable Occurrences," "Prompt Notification With Written Followup," and "Thirty Day Written Reports." Transfer line items SECTION 6.13, 6.14, and 6.15 from page xxi to page xx.

7. New page xxi through xxv—add list of Figures and Tables.

8. Page 1–6, item 1.37 e. would be changed to read, ". . . welds, bellows, resilient material seals, or O-rings, is OPERABLE."

9. Page 1–10, delete commas between the footnote notations under the MODE SWITCH POSITION column for Conditions 3 and 4. Condition 5 under the MODE SWITCH POSITION column would be changed to read "Shutdown * * * # or Refuel * * * #."

10. Page B 2–2, correct typographical error in footnote b to read ". . . NEDO-20340 and Amendment 1, . . ."

11. Page 3/4 1–4, under ACTION 2., modify first line to read, ". . . within 1 hour, disarm . . ."

12. The phrase ". . . within one hour . . ." would be modified to read ". . . within 1 hour . . ." on pages 3/4 1–9, 3/4 1–13, 3/4 2–7, 3/4 3–1 (twice), 3/4 3–4 (five times), 3/4 3–9 (twice), 3/4 3–16 (three times), 3/4 3–30 (three times), 3/4 3–48 (twice), 3/4 3–53 (twice), 3/4 3–59 (twice), 3/4 3–74, 3/4 3–76, 3/4 4–24 (twice), 3/4 4–25 (twice), 3/4 7–36, 3/4 7–38, 3/4 7–39, 3/4 7–42, 3/4 7–43, 3/4 7–45, 3/4 8–1 (twice), 3/4 8–11, 3/4 9–17 (twice), 3/4 9–18 (twice), and 6–14.

13. Page 3/4 1–9, under ACTION a.2., modify second line to read ". . . associated control rods inoperable and:"

14. Page 3/4 1–9, under ACTION b.2., modify second line to read ". . . scram accumulators inoperable . . ."

15. Page 3/4 1–14, in Technical Specification 4.1.3.7.c., the second line would be changed to read ". . . indicated by a "Full out" position . . ."

16. The following figures would be modified for clarity:

Figure 3.1.5–2
Figure 3.2.1–1
Figure 3.2.1–2
Figure 3.2.1–3
Figure 3.2.3–1

Figure 3.2.3–2
Figure 5.1.2–1

17. Page 3/4 2–1, in Technical Specification 3.2.1, the third line would read ". . . shown in Figures 3.2.1–1, . . ."

18. Page 3/4 2–1, in Technical Specification 4.2.1, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

19. Page 3/4 2–5, in Technical Specification 4.2.2, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

20. Page 3/4 2–6, in Technical Specification 3.2.3, change the fourth line to read, ". . . system is OPERABLE per Specification 3.3.4.2 and the turbine bypass system is OPERABLE per Specification 3.7.8, with:"

21. Page 3/4 2–6, under APPLICABILITY, correct the typographical error in the first line to read, "OPERATIONAL CONDITION 1, when . . ."

22. Page 3/4 2–7, redesignate ACTION statement b. as ACTION statement c. and add a new ACTION statement b. to read, "With the turbine bypass system inoperable per Specification 3.7.8, operation may continue and the provisions of Specification 3.0.4 are not applicable provided that within 1 hour, MCPR is determined to be greater than or equal to the MCPR limit as a function of average scram time as shown in Figure 3.2.3–1, turbine bypass inoperable curve, times the K_f shown in Figure 3.2.3–2."

23. Page 3/4 2–7, under Technical Specification 4.2.3, add "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

24. Page 3/4 2–10, in Technical Specification 4.2.4, revise first line to read, "LHGRs shall be determined . . ."

25. Page 3/4 2–10, in Technical Specification 4.2.4, add, "d. The provisions of Specification 4.0.4 are not applicable." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

26. Change second line of title to read, "ACTION STATEMENTS" on pages 3/4 3–4, 3/4 3–16, 3/4 3–30, 3/4 3–48, and 3/4 3–59.

27. Page 3/4 3–5, modify the beginning of notation statements (b) and (g) to read, "This function is automatically bypassed . . ."

28. Under the heading REACTOR WATER CLEANUP SYSTEM ISOLATION on pages 3/4 3–12, 3/4 3–18, 3/4 3–21, and 3/4 3–24, change "RWCS" to read "RWCU" in items a, b, c, and f. Also change "Delta Pressure" to read "Flow" in item f. on these same pages.

29. Page 3/4 3–16, in footnote **, change "valves" to read "dampers."

30. Page 3/4 3–20, in footnote #, change "TSH–G3S–N600" to read "TSH–G33–N600."

31. Page 3/4 3–21, under trip function 1.a.3), change the footnote notation in the RESPONSE TIME column from "(2)" to read "(a)."

32. Page 3/4 3–21, under trip function 3.b., delete reference to footnote (a) following words "Main Steam Line Radiation—High."

33. Page 3/4 3–33. replace Table 3.3.3–3 with revised Table 3.3.3–3.

34. Page 3/4 3–53, modify the beginning of NOTES c, d, and e to read, "This function is automatically bypassed . . ."

35. Page 3/4 3–54, add symbol for "less than or equal to" at beginning of words under the ALLOWABLE VALUE column for trip functions 6.a and 6.c.

36. Page 3/4 3–55, delete reference to notiation (c) under the CHANNEL FUNCTIONAL TEST column for trip functions 1.a., 1.b., and 1.c.

37. Page 3/4 3–56, change "NOTES:" to read "TABLE NOTATIONS." Add parenthesis to notes a. and b.

38. Page 3/4 3–56, delete note c.

39. Page 3/4 3–58, add symbol for "less than or equal to" at beginning of setpoint under the ALARM/TRIP SETPOINT column for item 1.

40. Page 3/4 3–58, delete "(RR–D12–R610)" under the INSTRUMENTATION column for item 1. Under the same column, delete "(Channel #13)" and "(Channel #14)" for items 2.a.1) and 2.a.2), respectively.

41. Page 3/4 3–62, replace Table 3.3.7.2–1 with revised Table 3.3.7.2–1.

42. Page 3/4 3–63, replace Table 4.3.7.2–1 with revised Table 4.3.7.2–1.

43. Page 3/4 3–83, the units "microcuries/ml" would be modified to read "microcurie/mL."

44. Delete the statement "(Operating plants may substitute previously established calibration procedures for this requirement.)" under note (3) on page 3/4 3–85 and under note (2) on page 3/4 3–92.

45. Page 3/4 3–88, under the APPLICABILITY column, change the notation from "***" to read "**" for item 4.a.

46. Delete footnote ** and reassign footnote *** as footnote ** on pages 3/4 3–89 and 3/4 3–92. Add the words ". . . and offgas treatment system." to the end of the new footnote**.

47. Page 3/4 3–89, change the last statement under ACTION 115 to read, ". . . at least HOT SHUTDOWN within 12 hours."

48. Page 3/4 3–91, under the MODES IN WHICH SURVEILLANCE REQUIRED column, change the notation from "***" to read "**" for item 4.a.

49. Page 3/4 3–92, change beginning of notation (3)2. to read, "4 volume percent . . ."

50. Page 3/4 4–2, change the third line under Technical Specification 4.4.1.2 and the first line under Technical Specification 4.4.1.2.a. from" . . . recirculation pump flow . . ." to read ". . . recirculation loop flow . . ."

51. Page 3/4 4–5, delete the comma from the footnote notation for Technical Specification 3.4.2.

52. Page 3/4 4–5, add footnote notation "##" at the end of Technical Specification 4.4.2.b. and add the associated footnote to read "##" The provisions of Specification 4.0.4 are not applicable provided the surveillance is performed within 12 hours after reactor steam pressure is adequate to perform the test." This change is a clarification of intent to permit entry into the applicable operating condition in order to perform specified surveillance requirements.

53. Page 3/4 4–6, change line four under ACTION to read, ". . . required gaseous or particulate . . ."

54. Page 3/4 4–9, delete "REACTOR COOLANT SYSTEM" from top left corner of page.

55. Page 3/4 4–11, change Technical Specification 4.4.4.c to read ". . . conductivity monitor is inoperable, obtaining an in-line . . ."

56. Page 3/4 4–13, ". . . 0.2 microcuries per gram . . ." to read ". . . 0.2 microcurire per gram . . ." (six places on page).

57. Page 3/4 4–13, correct typographical error at beginning of ACTION b. to read "In OPERATIONAL CONDITIONS..."

58. Page 3/4 4–16, in Technical Specifications 3.4.6.1.a. and 3.4.6.1.b., change ". . . any one hour . . . " to read ". . . any 1-hour . . ."

59. Page 3/4 4–24, in Technical Specification 3.4.9.1, delete the comma in the footnote notation.

60. Page 3/4 4–25, in Technical Specification 3.4.9.2, delete the comma in the footnote notation.

61. Page 3/4 5–3, correct typographical error at top of page to read, "LIMITING CONDITION FOR OPERATION (Continued)"

62. Change "delta P" by replacing the word delta with the symbol for delta on pages 3/4 5–3 (twice), 3/4 5–4, and 3/4 5–5.

63. Page 3/4 5–4, in Technical Specification 4.5.1.a.1.b), change to read ". . . in its correct ** position." and add the associated footnote to read, "** Except that an automatic valve capable of automatic return to its ECCS position when an ECCS signal is present may be in position for another mode of operation." This change is a clarification of the wording "correct position" regarding automatic valves with multiple functions.

64. Page 3/4 5–4, correct typographical error in beginning of Technical Specification 4.5.1.b. to read, "Verifying that, when tested . . ."

65. Page 3/4 6–2, correct typographical error in ACTION e. to read, ". . . valves in hydrostatically tested lines . . ."

66. Page 3/4 6–6, change footnote** to read ". . . interlock is tested upon initial entry after . . ." This change provides operational flexibility yet achieves the same level of assurance that interlocks are tested.

67. Page 3/4 6–7, redesignate Technical Specification 4.6.1.4.d. as Technical Specification 4.6.1.4.c

68. Page 3/4 6–14, change Technical Specification 4.6.2.1.c. to read, ". . . at least sixteen surface water temperature . . ."

69. Page 3/4 6–14, change Technical Specification 4.6.2.1.d. to read, " . . . initial differential pressure of at least 4.3 psi and verifying . . ."

70. Page 3/4 6–15, change Technical Specification 4.6.2.2.c. from "At least once per 3 years . . ." to read, "At least once per 5 years . . ." This change corrects a typographical error.

71. Page 3/4 6–33, delete footnote notation "*" from item 3, and the associated footnote.

72. Page 3/4, change Technical Specification 3.6.6.3. to read, ". . . unit cooler subsystems (1V414A,B, 1V415A,B, and 1V416A,B) shall be . . ."

73. Page 3/4 6–38, change Technical Specification 4.6.6.3 to read, ". . . unit cooler subsystem required above shall be deomonstrated . . ."

74. Page 3/4 7–2, change Technical Specification 4.7.1.2.a. to read, ". . . that each valve (manual, power operated or automatic) servicing safety-related equipment . . ."

75. Change " . . . 0.005 microcuries . . . " to read ". . . 0.005 microcurie . . ." on pages 3/4 7–31 (twice) and 3/4 7–32.

76. Page 3/4 7–31, in Technical Specification 4.7.5.2.a.1., change ". . . excluding Hydrogen 3, and . . ." to read, "excluding Hydrogen 3 (Tritium), and . . ."

77. Page 3/4 7–38, in Technical Specification 4.7.6.3.2.b., correct typographical error to read, "At least one per 18 months . . ."

78. Page 3/4 7–40, in Technical Specification 4.7.6.5.b.2., change to read, ". . . inspection and re-racking for all fire hose stations, and"

79. Page 3/4 7–40, in Technical Specification 4.7.6.5.b.3., change to read, ". . . gaskets in the couplings for all fire hose stations."

80. Page 3/4 8–1, in ACTION, a., change ". . . within four hours . . ." to read, "within 4 hours . . ."

81. Page 3/4 8–1, in ACTION b., change ". . . within three hours . . ." to read, ". . . within 3 hours . . ."

82. Page 3/4 8–5, change beginning of Technical Specification 4.8.1.1.2.d.7. to read "Simulating a loss-of-offsite power . . ."

83. Page 3/4 8–5, change "kW" to read "kw" (four places on page).

84. Page 3/4 8–5, in footnote, change ". . . for one hour . . ." to read, ". . . for 1 hour . . ."

85. Page 3/4 8–6, in Technical Specification 4.8.1.1.2.f.2., change to read, ". . . ASME Code Section XI Article IWD–5000."

86. Change ". . . 150×10^{-6} ohms . . ." to read ". . . 150×10^{-6} ohm . . ." on pages 3/4 8–11 and 3/4 8–12.

87. Page 3/48–22, change Technical Specification 3.8.4.1 to read, "All primary containment penetration conductor overcurrent protective devices shown in Table 3.8.4.1.–1 and all fuses tested pursuant to specification 4.8.4.1.a.2 shall be OPERABLE."

88. Page 3/4 8–22, change ACTION a. to read, "With one or more of the above required containment penetration conductor overcurrent devices shown in Table 3.8.4.1–1 and/or fuses tested pursuant Specification 4.8.4.1.a.2 inoperable:

1. Restore the protective device(s) to OPERABLE status or deenergize the circuit(s) by tripping, racking out, or removing the alternate device or racking out by removing the inoperable device within 72 hours, and

2. Declare the affected system or component inoperable, and

3. Verify at least once per 7 days thereafter the alternate device is tripped, racked out, or removed, or the device is racked out or removed.

Otherwise, be in at least HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours."

89. Page 3/4 8–22, change ACTION b. to read, "The provisions of Specification 3.0.4 are not applicable to overcurrent devices which have the inoperable device racked out or removed or, which have the alternate device tripped, racked out, or removed." This change provides clarifications that removal of the inoperable device is equivalent to racking out the same device. Additionally, the change permits tripping, racking or removal of an alternate device to protect primary containment penetration conductors.

90. Page 3/4 8–22, change Technical Specification 4.8.4.1 to read, ". . . protective devices required above shall be . . ."

91. Redesignate the footnote notation associated with title "Type 2 Molded Case Circuit Breakers" from "+" to read "#" on pages 3/4 8–24, 3/4 8–25, and 3/4 8–26.

92. Page 3/4 8–24, modify the description under the SYSTEMS OR EQUIPMENT POWERED column to read, "HVB211F016-Main Stm, Line Drain Inboard Isolution" for items 14.

93. Page 3/4 8–25, modify the description under the SYSTEMS OR EQUIPMENT POWERED column to read, "HVE511F007-RCIC Inbrd Steam Line Isolation" for item 20.

94. Page 3/4 8–26, under the SYSTEMS OR EQUIPMENT POWERED column, change "pp" to read "Pump" for items 33, 38, and 40.

95. Page 3/4 8–26, redesignate footnote "+" as "#" and modify to read, "Each location number represents two breakers in series."

96. Page 3/4 8–28, Technical Specification 4.8.4.2.1 would be modified to read, "The thermal overload protection for the above required valves shall be verified to be bypassed continuously by an OPERABLE integral bypass device by verifying that the thermal overload protection is bypassed:

a. At least once per 18 months, and

b. Following maintenance on the motor starter."

97. Page 3/4 8–28, Technical Specification 4.8.4.2.2 would be modified to read, "The thermal overload protection shall be verified to be bypassed following activities during which the thermal overload protection was temporarily placed in force."

98. Page 3/4 8–30, in the VALVE NUMBER column, change "HB–E11–1F015B" to read "HV–E11–1F015B," and in the SYSTEM(S) AFFECTED column change "NSS" tyo read "NSSS."

99. Page 3/4 8–31, in the VALVE NUMBER column, change "HV–E11–1F0738" to read "HV–E11–1F073B."

100. Page 3/4 8–33, in Technical Specification 4.8.4.3.b., change words "over-voltage," "undervoltage" and "under-frequency" to read, "overvoltage," "undervoltage," and "underfrequency," respectively.

101. Page 3/4 9–1, change the footnote notation in Technical Specifications 4.9.1.2 and 4.9.1.3, and footnote itself from "*" to read "##."

102. Page 3/4 9–3, delete the footnote notation "***" in the ACTION statement and the associated footnote.

103. Page 3/4 9–3, change the footnote notation "#" in Technical Specification 3.9.2.d. and the associated footnote to "**."

104. Page 3/4 9–13, add "Suspension of movement of the control rod and/or associated control rod drive mechanism shall not preclude completion of the movement of the component to a safe conservative position." to the end of the ACTION statement.

105. Page 3/4 9–15, add "Suspension of movement of the control rods and/or associated control rod drive mechanisms shall not preclude completion of the movement of the components to a safe conservative position." to the end of the ACTION statement.

106. Page 3/4 11–5, in note c., change to read, ". . . the LLD specification applies include the following . . ."

107. Page 3/4 11–10, under the Type of Activity Analysis column, change the footnote notation from "h" to read "g, h" for the Principal Gamma Emitters in section B.

108. Page 3/4 11–12, in note g., change to read, ". . . the LLD specification applies include the following . . ." and ". . . Radioactive Effluent Release Report, pursuant to . . ."

109. Page 3/4 11–18, in the ACTION statement, change to read, ". . . be in at least HOT SHUTDOWN within the next 12 hours."

110. Page 3/4 11–22, in the fourth line of ACTION a., change to read, ". . . calculations shall be made including . . ."

111. Page 3/4 12–2, redesignate Technical Specifications 4.12.1 and 4.12.2 as Technical Specifications 4.12.1.1 and 4.12.1.2 respectively.

112. Pages 3/4 12–3 through 3/4 12–6 change all column titles to all capital letters, delete designations in parantheses from the second column, and add periods to all statements in the third and fourth columns.

113. Orient the table notation vertically on the page for pages 3/4 12–7, 3/4 12–8, 3/4 12–11, and 3/4 12–12.

114. Page 3/4 12–7, in note b, delete the remainder of the paragraph beginning with, "The 40 stations is not an absolute . . ."

115. Page 3/4 12–8, in note h, correct typographical error to read, ". . . gradient or rechange properties . . ."

116. Page 3/4 12–9, change footnote * to read, ". . . 30,000 pCi/L may be used."

117. Page 3/4 12–11, in note a, correct typographical error to read, ". . . Radiological Environmental Operating . . ."

118. The following figures would be modified to update in the PP&L property line:

Figure 5.1.1–1
Figure 5.1.3–1a
Figure 5.1.3–1b

119. Page 6–1, in section 6.1.2, change to read, ". . . signed by the Senior Vice President—Nuclear shall be reissued . . ."

120. Page 6–1, in section 6.2.2.b., change to read, "At least one licensed Reactor Operator assigned to and qualified on that unit shall be in the control room when fuel is in the reactor. In addition, while the reactor is in OPERATIONAL CONDITION 1, 2 or 3, at least one licensed Senior Reactor Operator qualified on this unit shall be in the Control Room. This individual may be qualified on both units and be serving in this capacity on both units."

121. Pages 6–5 through 6–6 make Table 6.2.2–1, including all notations, identical to the same table on pages 6–5 through 6–6 of the Susquehanna Unit 2 Technical Specifications.

122. Page 6–7, section 6.5.1.5, change to read, "The quorum of the PORC . . ."

123. Page 6–10, section 6.5.2.2, change to read, "The SRC shall be composed of nine individuals who . . ."

124. Page 6–10, section 6.5.2.6, change to read, "The quorum of the SRC and ". . . at least four SRC members including . . ."

125. Page 6–10, section 6.5.2.7, change to read, "The SRC shall be responsible for the review of:" and revise ". . . Section 50.59, 10 CFR . . ." to read ". . . 10 CFR 50.59 . . ." (three places).

126. Page 6–16, section 6.9.1.2, change to read, "The startup report shall address each of the startup tests . . ."

127. Page 6–16, redesignate footnote "1" and "2" as "*" and "**," respectively.

128. Page 6–17, second paragraph of section 6.9.1.6, change to read ". . . within 90 days of when the change(s) . . ."

129. Page 6–20, third paragraph, change to read, ". . . results of these analyses and measurements . . ."

130. Page 6–20, fourth paragraph, change to read, ". . . two legible maps** covering . . ." and ". . . the LLD required by Table 4.12.1–1 was not achievable."

131. Pages 6–21 and 6–22, change title of 6.9.1.11 to read, "SEMIANNUAL RADIOACTIVE EFFLUENT RELEASE REPORT*"

132. Page 6–21, section 6.9.1.11, revise first sentence of first paragraph to read, "Routine Semiannual Radioactive Effluent . . ."

133. Page 6–21, section 6.9.1.11, revise the first sentence of the second and third paragraphs to read, "The Semiannual Radioactive Effluent . . ."

134. Page 6–22, revise the first sentence of the first, second, third and fifth paragraphs to read, "The Semiannual Radioactive Effluent . . ."

135. Page 6–22, delete the fourth paragraph.

136. Page 6–24, section 6.10.2.1., change to read, ". . . service lives of all snubbers, including the date . . ."

At the Susquehanna site, reactor operation and control is accomplished in a dual type control room where controls and reactor operators for each unit are located. The plant design for both units is generally identical with some minor differences as described in the Final Safety Analysis Report for Susquehanna. Consequently, consistency and uniformity between Unit 1 and Unit 2 Technical Specifications will minimize the potential for confusion and Technical Specification violation, and allow a consistent basis for operating, maintenance and surveillance procedures for both units.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include:

(i) A purely administrative change to the Technical Specifications, to achieve consistency throughout the Technical Specifications, correction of errors or clarification; (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; 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 changes proposed in the application for amendment are encompassed by these examples in the following ways:

(1) The following proposed changes in the Technical Specifications are for typing errors, correcting punctuations, updating the index (Table of Contents), minor changes to add clarity, and updating to reflect two unit operation and are encompased by the Commission's example (i) of actions not likely to involve significant hazards considerations: (items are enumerated as above) Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, and 136.

(3) The following proposed changes in the Technical Specifications are requirements which constitute an additional limitation, restriction, or control not presently included in Unit 1 requirements and are encompassed by the Commission's example (ii) of actions not likely to involve significant hazards considerations: Items 22, 55, 87, 88 and 102.

(3) The following proposed changes in the Technical Specifications is a change to make the license conform with the requirements of the regulations for two-unit staffing with a common control room, where the change results in very minor changes to facility operations clearly in keeping with the regulations, and is encompassed by the Commission's example (vii) of actions not likely to involve significant hazards considerations: Item 121.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the above proposed changes involve no significant hazards consideration. For item 66, the proposed change achieves the same level of assurance that the interlocks will be tested prior to entry into an operational condition requiring primary containment integrity while allowing some operational flexibility on actual timing of surveillance test performance. No safety analysis is affected by this change. This change clearly does 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. For item 89, the proposed change provides clarification that removal of the inoperable device is equivalent to racking out the same device. Additionally, the change permits tripping, racking or removal of an alternative device to protect primary containment penetration conductors. No safety analysis is affected by this change since protection of the containment penetration conductor is maintained. This change is consistent with existing controls and remains within the bases for protection of the primary containment penetration conductors. This proposed change clearly does 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.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

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NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: September 7, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Technical Specifications to remove the 50° blocking requirement on containment purge valves and to revise the maximum isolation times for the containment purge valves. Specifically, on page ¾ 6–11 in Technical Specification 3.6.1.8, delete the phrase, ". . . provided that each butterfly value is blocked so as not to open more than 50°". On page ¾ 6–11 in Technical Specification 4.6.1.8.1, delete the phrase, ". . . to be blocked so as to open to less than or equal to 50° open unless so verified within the previous 31 days, and shall be verified . . .". On page ¾ 6–20 under *"Containment Purge"*, valves HV–15703, HV–15704, HV–15705, HV–15711, HV–15713, HV–15714, HV–15721, HV–15722, HV–15723 HV–15724, and HV–15725, would each have a maximum isolation time of 15 seconds.

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 (48 FR 14870). One of the examples (iv) of action not likely to involve a significant hazards consideration is a relief granted upon demonstration of acceptable operation from an operation restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a relief have been met. At the time of issuance of Facility Operating License No. NPF–14, qualification data, demonstrating the operability of the containment purge valves during and after a loss of coolant accident, had not been provided. As a result, the operating license for the Susquehanna, Unit 1 facility contains appropriate license conditions and technical specification restrictions limiting the maximum opening position of the containment purge valves to 50° (90° being full open). Subsequently, qualification data for the containment purge valves were provided and found acceptable by the NRC staff as discussed in Section 22 (II.E.4.2) of Supplement No. 6 to the Susquehanna Safety Evaluaton Report. The staff proposes to conclude that the proposed technical specification changes to remove the containment purge valve blocking limitations would be within example (iv), and do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated, and the proposed changes do not result in a significant reduction in a margin of safety.

Other examples of action not likely to involve a significant hazards consideration are (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 (vi) a change which either may result in some increase to the probability or consequences of a previously—analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. Changes to the isolation times of the containment purge valves listed in Technical Specification Table 3.6.3–1 involve reducing the maximum isolation time for eight of the valves listed and increasing the maximum isolation time for three of the valves listed. The proposed maximum isolation time for all containment purge

valves would be 15 seconds. The staff proposes to conclude that the proposed maximum isolation time changes to containment purge valves which result in a reduction in the maximum isolation time fall within example (ii), and changes to containment purge valves which result in an increase in the maximum isolation time fall within example (vi), and do not involve a significant increase in the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident from any accident previously evaluated, and the proposed changes do not result in a significant reduction in a margin of safety. Therefore, the proposed changes are considered likely to involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin, Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 19, 1984.

Description of amendment request: The proposed amendments would revise License Condition 2.C.(23)(b) of Facility Operating License No. NPF–14 and License Condition 2.C.(8)(b) of Facility Operating License No. NPF–22. These license conditions currently require the licensee to perform the nonlinear analysis to qualify the In-Vessel Rack (F22–E006) to the Seismic Qualification Review Team (SQRT) criteria and provide the qualification documentation to the NRC staff for review and approval prior to commencement of the first refueling outage. The licensee proposes to revise these license conditions to read, "Prior to use, PP&L shall complete qualification and documentation for the in-vessel rack (F22–E006)." The licensee has stated that the current planning for the first refueling outage of each unit is to off-load the core, thereby eliminating the need for the in-vessel rack during the refueling outage.

Basis for proposed no significant hazards consideration determination: The licensee in his letter of September 19, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the in-vessel rack is not necessary to perform any core manipulations, but is rather, a device which can be used as a convenience. No credit for its use is taken in any safety analysis. The licensee stated the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the in-vessel rack is not planned to be utilized during the refueling operation nor is its use required to perform core manipulations. The licensee also stated the proposed change does not result in a significant reduction in the margin of safety because the procedures involved in the refueling or any other core manipulation do not require the use of the in-vessel rack. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposed to find the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: September 28, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Susquehanna Unit 1 and Unit 2 Technical Specifications 4.5.6.3 and 4.7.2. regarding HEPA filters and charcoal adsorber units to incorporate clarifications discussed in NRC Generic Letter No. 83–13, dated March 2, 1983. The clarifications to the Technical Specifications were provided to clearly reflect the required relationship between the guidance in Regulatory Guide 1.52, Revision 2, and ANSI N510–1979: the testing requirements of the HEPA filters and charcoal adsorber units; and the NRC staff assumptions used in its safety evaluations for the ESF atmospheric cleanup systems.

Basis for proposed no significant hazards consideration determination. The Commission has provided guidance concerning the application of the no no significant hazards consideration standard by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve significant hazards considerations, example (i), a purely administrative change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The NRC staff proposes to find that the changes to Susquehanna Unit 1 and Unit 2 Technical Specifications 4.6.5.3 and 4.7.2. fall within the Commission's example (i) and does not involve a significant hazards consideration because the change as discussed in NRC Generic Letter No. 83–13 provides clarification to the technical specification to clearly reflect the relationships between the guidance in Regulatory Guide 1.52, Revision 2, and ANSI N510–1975; the testing requirements of the HEPA filters and charcoal absorbers units; and the NRC Staff assumptions used in its safety evaluations for the ESF atmospheric cleanup systems.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: A Schwencer.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: September 14, 1984.

Description of amendment request: Deletion of the tabular listing (Table 3.11.D.1) of snubbers in the Technical Specifications (TSs) in accordance with the NRC staff guidance contained in Generic Letter 84–13 ("Technical Specifications for Snubbers", May 3, 1984). In addition, the proposed changes would add the criteria contained in Generic Letter 84–13 specifying which snubbers are required to be operable and which snubbers are exempted from this requirement. Deletion of Table 3.11.D.1 from the Peach Bottom Units 2 and 3 TSs eliminates the need for frequent TS amendments to incorporate changes in the snubber listing. This list of individual snubber location, size, and system affected will be maintained in plant procedures as required by § 50.71(c) of 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: The Commission's staff has previously evaluated the inclusion of the snubber

listings in the TSs (Generic Letter 84–13) and has concluded that such listings are not necessary provided the snubber TS is modified to specify which snubbers are required to be operable. The licensees' amendment request would add specific language to address which snubbers are required to be operable and which are exempted in accordance with the staff's guidance provided in the above referenced Generic Letter. Furthermore, the Peach Bottom TSs recordkeeping requirements in Section 4.11.D.4 for snubbers are not altered for this requested change. These plant records must contain a record of the service life, installation date, etc., of each snubber. Since any change in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR 50.59, and these changes would have to be reflected in the records required. On May 3, 1984, the Commission sent a letter to all licensees which indicated the above conclusion regarding inclusion of snubber tables in the TSs and indicated that such changes were not required but that the licensee could choose to request an amendment to delete the tabular listing of snubbers.

The Commission's staff finds that removal of the snubber tables with the added criteria specified in Generic Letter 84–13 would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because although the proposed change would delete the snubber table from the TSs, plant records must still be maintained on each snubber; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because any changes in snubber quantities, types or location would still be subject to the provisions of 10 CFR 50.59, and these changes would have to be reflected in the plant records; or (3) involve a significant reduction in a margin of safety because the proposed changes would add additional TS requirements which would specify which snubbers are required to be operable to maintain the designed margin of safety. Having made these findings, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: September 20, 1984.

Description of amendment request: The amendment would revise the channel functional test that is required to be performed on the pressurizer power-operated relief valve (PORV) within 31 days prior to its use as overpressure protection for the reactor coolant system during cold shutdowns. Current requirements state that the valve should be demonstrated operable by performance of a channel functional test, but excluding valve operation. PGE states in its request that a full channel functional test that excludes valve operation would require lifting leads or the use of jumpers. Changes such as these would normally require a full test *with valve operation* to ensure that all temporary changes had been restored to normal. Since this would be contrary to the desired test, PGE requests that the surveillance requirement be clarified or modified to state that the channel functional test would be performed to the maximum extent possible (components tested without performing any action such as lifting a lead that would require valve operation as a retest requirement).

The second part of the request involves a revision to a basis statement resulting from a design change completed during the 1984 refueling outage. This change does not involve an amendment to the operating license.

Basis for proposed no significant hazards consideration determination: The revision to the PORV surveillance test is consistent with the NRC's original request—that the test exclude valve operation. That being the case, it would be undesirable to lift leads or fuses, etc., in order to conduct a full channel functional test at the risk of not restoring the circuitry properly and thereby leading to valve unreliability. This would be contrary to the intent of the test. Therefore it appears that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety. Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The second change involves a change to the basis for a technical specification but does not involve an amendment to the license, since as stated in § 50.36 (a) such bases are not part of the technical specifications. Therefore no proposed finding regarding "no significant hazards consideration" is required.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company et. al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 1, 1984.

Description of amendment request: The following changes to the technical specifications and the operating license are proposed:

1. *Page 6–4a.* New Technical Specification 6.2.2.g would be added to require that overtime limits be implemented in accordance with NRC Generic Letter 82–12.

2. *Page 3/4 3–12.* Table 4.3–1 of the Trojan Technical Specifications would be changed to add an 18-month calibration requirement for the low hydraulic control oil pressure switch. This switch generates a reactor trip on turbine trip.

3. *Operating License.* License conditions 13, 14 and 15 would be deleted from the license and would be incorporated in Paragraph 6.8.4 of the Appendix A Technical Specifications.

4. *Page 6–13.* Paragraph 6.8 is being retitled "Procedures and Programs" in accordance with Revision 4 of NUREG-0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors".

5. *Page 6–14.* New Paragraph 6.8.4. would be added to include the requirements previously included in license conditions 13, 14 and 15. Additionally, Paragraph 6.8.4.d would incorporate the Standard Technical Specification for Post-Accident Sampling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance to the NRC staff for such determinations by providing examples of amendments that are likely—and not likely—to include a significant hazards consideration. Two examples of amendments not likely to involve a

significant hazards consideration are (i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications; and (ii) a change that consititutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

All of the five changes discussed above are encompassed by these two examples. Changes No. 1, 2 and part of 5 add new requirements with respect to overtime restrictions, a new surveillance requirement for the turbine trip circuitry, and a new program for the post-accident sampling system and are encompassed by example (ii) actions not likely to involve significant hazards considerations. Changes No. 3, 4 and the rest of 5 are purely administrative in nature, in that the changes involve moving the requirements from the license itself to a new seciton of the technical specifications. These latter changes are thus encompassed by example (i) of actions not likely to involve significant hazards considerations.

Since the proposed changes are similar to the examples which have been determined not likely to involve a significant hazards consideration, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment requests: October 9, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications to impose stricter limitations on leakage rates from unidentified sources inside the primary containment. The proposed revisions include increasing the frequency of monitoring and recording the reactor cooling leakage rate from once per day to once every four hours and limiting any increase in unidentified leakage to 2 gpm within any 24-hour period. In addition, it would now be required that an inoperable Primary Containment Sump Monitoring System be restored to operable status within a 24-hour period.

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 (48 FR 14870). The examples of actions involving no significant hazards consideration include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." The proposed revisions are encompassed by this example since more stringent limitations on leakage rates from unidentified sources are being imposed.

Based on the foregoing, the Commission proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Public Service Co. of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generation Station, Platteville, Colorado

Date of amendment request: September 27, 1984.

Description of amendment request: The proposed change to the Technical Specifications revises the fire hose station numbering scheme. The new scheme consists of a numbering sequence which indicates the building, floor level and location of the station.

Basis for proposed no significant hazards consideration determination: The Commisison has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards considerations include purely administrative changes to the Technical Specifications: for example, a change in nomenclature. Since the proposed change only provides new, more meaningful numbers for the existing hose stations, we propose to determine that this action involves no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P. O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: Eric H. Johnson.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: May 31, 1984, as supplemented July 31 and August 31, 1984.

Description of amendment request: The amendment would incorporate a license condition requiring Sacramento Municipal Utility District to follow its plan for implementing the Living Schedule Plan for the Rancho Seco Nuclear Generating Station. The proposed amendment provides for establishment of schedules for a wide range of planned plant modifications including those required by NRC, as well as those modifications deemed desirable by the licensee, and provides methods for accommodating changes to such schedules.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a purely administrative change to the Technical Specifications. The incorporation of a license condition requiring use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 1, 1984 (Reference PCN–148, 152, 162 and 164).

Description of Amendment Request: The proposed changes would revise Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants" to accommodate CPC software changes being implemented for Cycle 2 operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed license amendment involves a significant hazards consideration by providing certain examples (48 FR 14870) of amendments not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may in some way reduce a margin of safety, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Each of the proposed changes proposed by the licensee is similar to example (vi) and thus it is proposed that no significant hazards consideration exists for the requested changes. A description of each proposed change to the technical specifications, and a discussion of how each change is similar to example (vi) of 48 FR 14870 follow:

1. Proposed Change PCN–148

The proposed change would revise Table 2.2–2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants." The CPC is an integral part of the reactor protection system. Some CPC addressable constants are provided to allow calibration of the CPC system to more accurately predict power level and radial power peaking factors. Other CPC addressable constants allow the CPC to account for measurement uncertainties or inoperable equipment. The proposed change would add the CPC addressable constant PCALIB (point ID Number 104) to Table 2.–2. Specifically, CPC addressable constant PCALIB is defined as calorimetric power at the time of latest calibration. This addressable constant is added to one of the CPC algorithms which applies uncertainties to the calculations of the thermal power and neutron flux power level by the CPC. Because of a change in these algorithms for Cycle 2, the addition of addressable constant PCALIB ensures the application of correct power measurement uncertainty at each power level.

The proposed change is similar to example (vi) of 48 FR 14870 in that the proposed change is a small refinement of the previously used calculational model, and, although the change may in some way reduce a safety margin, it is nevertheless within the SRP acceptance critieria. Specifically, this change applies uncertainties to the measured reactor power level used by CPC. Further, Cycle 2 safety analyses included the proposed change in the simulated CPC response to the anticipated operational occurrences (A00's) and postulated accidents which depend on the CPC to provide reactor trip protection. All Cycle 2 A00's and postulated accidents were shown in the Reload Analysis Report to be within all acceptable crtieria with respect to the system or component specified in the applicable section of the Standard Review Plan (Section 7.2). Furthermore, the proposed change enhances the reactor protection system's ability to meet the criteria specified in Standard Review Plan Section 7.2 "Reactor Trip System" in that it enhances the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

2. Proposed Change PCN–152

The proposed change would revise Table 2.2–2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants", by addiing the addressable constant RCPLIM (point ID Number, 103), the reactor power cutback time limit, to Table 2.2–2. The CPC algorithms which require RCPLIM are a small part of a large CPC software package update provided to the licensee by Combustion Engineering (C–E), the CPC vendor. This change represents a standard software package for C–E CPC's. San Onofre 2 and 3 do not contain the hardware necessary to implement reactor power cutback. Thus, the proposed addition of RCPLIM does not have any effect on CPC function. The new addressable constant will be set to zero in the data base.

The proposed change is similar to example (vi) of 48 FR 14870 in that it may result in a slight reduction of a safety margin, but is nevertheless within the SRP acceptance crtieria. Specifically, it provides for future refinement of the CPC by the addition of algorithms to support a reactor power cutback system. At present, the necessary hardware for a reactor cutback system is not installed at San Onofre 2 and 3 and the algorithms are deactivated by the use of appropriate addressable and non-addressable constants.

3. Proposed Change PCN–162

The proposed change would revise Table 2.2–2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants". Specifically the proposed change redefines the CPC addressable constant TCREF (point ID Number 98). The addressable constant TCREF is currently defined as the "Temperature Shadowing Factor Correction Multiplier". Temperature Shadowing is the decalibration of ex-core neutron flux power resulting from changes in inlet coolant density. A modification to the CPC temperature shadowing factor (TSF) algorithm for Cycle 2 has resulted in the temperature shadowing correction multipler becoming fixed in the CPC software. The proposed change would redefine the addressable constant TCREF as the "Reference Cold Leg Temperature," consistent with the CPC temperature shadowing factor algorithm modifications and would reclassify it as a Type I addressable constant (Type I constants require periodic calibration). The proposed change combined with temperature shadowing factor modifications would improve the thermal margin at nominal inlet temperature. At conditions other than nominal conditions, the proposed change provides a more conservative temperature shadowing correction.

The proposed change is similar to example (vi) of 48 FR 14870 in that although it may result in the reduction of a safety margin, it nevertheless is within the SRP acceptance criteria. Specifically, the proposed change is a refinement of the previously used calculational model for correcting excore detector signals for the effects of temperature shadowing. Further, Cycle 2 safety analyses included the proposed change into the simulated CPC response to the anticipated operational occurrences (AOO's) and postulated accidents which depend on the CPC to show protection. All Cycle 2 AOO's and postulated accidents were clearly within all acceptable criteria with respect to the system or component specified in the applicable section of the Standard Review Plan (Section 7.2). Furthermore, the proposed change enhances the

reactor protection system's ability to meet the criteria specified in Standard Review Plan 7.2 "Reactor Trip System" in that it enhances the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

4. Proposed Change PCN–164

The proposed change would revise Table 2.2–2 of Technical Specification 2.2.2, "Core Protection Calculator (CPC) Addressable Constants". Specifically, the proposed change revises the allowable value for the addressable constant TR (point ID number 63), the azimuthal tilt allowance. The azimuthal power tilt is a measure of the power asymmetry between the azimuthally symmetric fuel assemblies. This change is made in order to make the CPC consistent with the core operating limit supervisory system (COLSS) azimuthal tilt algorithm modifications. The COLSS provides reliable and continual information on the status of the reactor as an aid to the operator. The proposed change would revise the minimum allowed value of addressable constant TR from 1.02 to 1.00. The proposed change increases the range of TR values which can be used as addressable constants.

The proposed change is similar to example (vi) of 48 FR 14870 in that it may result in the reduction of a safety margin, but it nevertheless is within the SRP acceptance criteria. Specifically, the proposed change is a refinement of the previously used calculational model which estimates the azimuthal tilt in the reactor. Further, the change enhances the reactor protection system's ability to meet the criteria specified in Standard Review Plan Section 7.2, "Reactor Trip System," in that it enhanced the CPC's ability to sense accident conditions and to initiate the operation of systems and components important to safety.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: October 1, 1984 *(Reference:* Proposed Changes PCN–160 and PCN–168).

Description of amendment request: The proposed changes revise the technical specifications relating to the departure from nucleate boiling ratio (DNBR) limit and special test exceptions to allow CEA misalignment during required physics testing. The change to the DNBR limit results from the Cycle 2 safety analysis. The special test exception revision is required to accommodate required physics testing in light of more restrictive CEA insertion limits required for Cycle 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Both of the proposed changes are similar to example (vi) of 48 FR 14870. Therefore it is proposed that these changes do not involve significant hazards considerations. A description of each of the proposed change and how each is similar to example (vi) of 48 FR 14870 follows:

1. Proposed Change PCN–160

The proposed change revises Technical Specifications (T.S) 2.1.1.1, "Safety Limits—Reactor Core—DNBR," and 2.2.1, "Limiting Safety System Settings—Reactor Trip Setpoints," and T.S. Bases 2.2.1, "Reactor Trip Setpoints," and 3/4.4.1, "Reactor Coolant Loops and Coolant Circulation," which specify the departure from nuclear boiling ratio (DNBR) limiting safety system settings (LSSS). DNBR is a unitless value calculated from reactor core thermal-hydraulic conditions on a real-time basis from an empirical correlation that has been reviewed and approved by the NRC staff. It is a measure of thermal margin. Maintaining core conditions such that DNBR is above a minimum value helps to ensure that the fuel cladding will not overheat during anticipated operational occurrences (AOO). The technical specifications affected by this change fall into two categories: first, the technical specifications establishing the reactor core safety limit for DNBR and the reactor protective instrumentation trip setpoint limit (or LOSS) which ensures that the established safety limit is not violated; and second, the various technical specification based which refer to the DNBR safety limit or LSSS.

T.S. 2.1.1.1. and Table 2.2–1, "Reactor Protective Instrumentation Trip Setpoint Limits," establish the DNBR safety limit and the LSSS, respectively. The proposed change would revise both values from 1.20 to 1.31. The revision results from a change in the manner in which uncertainties are accounted for in the departure from nucleate boiling (DNB) limit calculation. This revision will be implemented by a revised core protection calculator (CPC) DNBR constant, changes to the CPC thermal margin alogorithm constants, and the use of a consistent set of constants for the thermal-hydraulic computer code used in transient analysis. (Note: the CPC is an integral part of the reactor protective system. During an AOO, it provides trip signals in time to prevent fuel damage.) The proposed change also deletes a portion of Note 5 of Table 2.2–1 which allows the lowering of the DNBR LSSS by an additional 0.01 to 1.19, because this flexibility is no longer needed. The DNBR LSSS values given in T.S. Bases 2.2.1 and 3/4.4.1 are also changed for consistency.

The proposed change is similar to Example (vi) of 48 FR 14870 in that while it may have a slight effect on safety margin, it nevertheless is within the SRP acceptance criteria. Specifically, the proposed DNBR safety limit meets the 95/95 percent probability/confidence requirements of SRP Section 4.4, "Thermal and Hydraulic Design." Further, the results of all safety analyses performed in support of Cycle 2 and specifically those which use DNBR as acceptance criteria are clearly within the limits specified in the SRP. On this basis, the NRC staff proposed to determine that this change does not involve a significant hazards consideration.

2. Proposed Change PCN–168

The proposed change revises Technical Specification ¾.10.4, Special

Test Exceptions—Center CEA Misalignment" an ¾.10.4 Bases. This T.S. permits CEA misalignment during physics tests which will be conducted to determine the isothermal temperature coefficient, moderator temperature coefficient (MTC), and power coefficient (these coefficients are a measure of the effects of changes in temperature and power on reactivity). The physics tests are conducted to meet the requirement that a test program be established to demonstrate that the reactor plant can be operated in accordance with the design requirements important to safety. Periodic measurement of MTC is required by Technical Specification ¾.1.1.3, "Moderator Temperature Coefficient". The proposed change includes an exception to permit insertion of regulating control rod group 6 beyond the transient insertion limit during testing, and a surveillance requirement to continuously monitor departure from nucleate boiling ratio (DNBR) during testing. T.S. 3.10.4 establishes the special test exceptions for the performance of physics tests to determine the isothermal temperature coefficient, moderator temperature coefficient, and power coefficient. T.S. 3.10.4 suspends Technical Specifications 3.1.3.1 and 3.1.3.6 (the CEA position and regulating CEA insertion limit—limiting conditions for operation, respectively) and allows the center CEA (CEA #1) to be purposely misaligned during the physics tests. The proposed revision would allow regulating group #6 to be inserted beyond its transient insertion limit during this testing. In addition, a surveillance requirement to continuously monitor DNBR margin is added. The test procedures for Cycle 2 (which are virtually identical to those used in Cycle 1) require Group 6 to be moved and may result in the transient insertion limit being exceeded due to the application of a more restrictive power dependent insertion limit (PDIL) for Cycle 2 (Figure 3.1–2 of the technical specifications).

The proposed change is similar to Example (vi) of 48 FR 14870 in that although it may increase the consequences of a previously analyzed accident, the results of the change are nevertheless within the acceptance criteria of the SRP. Specifically, SRP Section 4.3, "Nuclear Design" requires physics measurements be made during startup and during the cycle of operation to verify design predictions. Technical Specification 3/4.1.1.3 requires periodic measurement of MTC for this purpose. The proposed change meets these testing requirements by allowing the specified CEA insertion limits for CEA group 6 to be exceeded for the purpose of physics tests. The accident which would be most adversely affected by group 6 insertion beyond the specified limits is the control rod ejection accident, for which the acceptance criteria are delineated in SRP Section 15.4.8. The analysis of the CEA ejection accident shows that the SRP acceptance criteria are met with group; 6 insertion beyond the transient insertion limit to the extent required for the determination of reactivity coefficients. Because the proposed change accommodates special tests required by the SRP and because analysis of the limiting accident has shown the accident consequences to be within the SRP acceptance criteria, the proposed change is similar to Example (vi) of 48 FR 14870. On these bases, the NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration.

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NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 1, 1984 (Reference PCN–150, 151, 153 and 169) and October 11, 1984 (Reference PCN–149).

Description of amendment request: The proposed changes would revise the technical specifications (T.S.) to be consistent with the assumptions used for the Cycle 2 safety analysis. In the analysis of anticipated operational occurrences and accidents, the safety analysis assumes that the plant is in an initial operating space defined by various plant parameters such as power level, control rod configurations, power distribution, cold leg temperatures, etc. Provided that the plant operates within the analyzed range of these parameters, the consequences of anticipated operational occurences and accidents will be bounded by the safety analysis and within the acceptance criteria defined for analyzed anticipated operational occurrences and accidents. The technical specifications define ranges for the various plant parameters to assure that plant operation is bounded by the safety analysis. The proposed changes revise the technical specifications to be consistent with cycle 2 safety analysis assumptions.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations. In this regard, the Commission has provided guidance concerning the application of standards for determining whether or not a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Example (iii) relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for technical specifications, that the analytical methods used to demonstrate conference with the technical specifications and regulations are not significantly changes, and that the NRC has previously found such methods acceptable. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). Each of the proposed changes is similar to one of these examples. On this basis, it is proposed that these changes do not involve significant hazards considerations. The following is a description of each of the proposed changes and how each is similar to one of the examples of 48 FR 14870.

1. Proposed Change PCN–149

The proposed change would revise Technical Specification 3.2.6, "Reactor Coolant Cold Leg Temperature-Limiting Condition for Operation". This T.S. requires that the reactor coolant cold leg temperature (Tc) be maintained between 544°F and 558°F when in Mode 1, above 30% of rated thermal power. This limiting condition for

operation ensures that the cold leg temperature is maintained within the limits assumed in the accident analyses. The proposed change would reduce the lower limit on cold leg temperature from 544°F to 535°F for power levels greater than 30% and less than or equal to 70% of rated thermal power. The proposed change provides additional operational flexibility for plant maneuvering. This proposed change is similar to Exmaple (vi) of 48 FR 14870 in that it may increase the consequences of a previously analyzed accident but where the results are within all acceptance criteria in the SRP. The lower limit of Tc is established taking into account its effect on decreased heat removal events (e.g. a loss of condenser vaccum) and peak clad temperature during a large break loss of coolant accident (LOCA). A lower Tc tends to increase peak reactor coolant system (RCS) pressure in the decreased heat removal events, and peak clad temperature for the LOCA. SRP Section 15.2.1 specifies that peak RCS pressure should not exceed 110% of design pressure (i.e. 2750 psi) as an acceptance criteria for the decreased heat removal events. SRP Section 15.2.6 specifies that peak clad temperatures should not exceed 2200°F during a LOCA. The proposed reduction of Tc is accommodated for by restriction of the applicability of the reduced Tc to power levels of less than or equal to 70%. This restriction results in a peak RCS pressure of less than 2750 psi for the loss of condenser vacuum accident and a peak clad temperature of less that 2,200°F for the large break LOCA. Because the results for these limiting events are within the SRP acceptance criteria, the proposed change is similar to Example (vi) to 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

2. Proposed Change PCN–150

The proposed change would revise Technical Specification 3.2.7, "Power Distribution Limits-Axial Shape Index," which specifies the axial shape index (ASI) limit for power operation (Mode 1) with reactor power level greater than 20% rated thermal power. ASI is a measure of power distribution within the reactor core and has a direct effect on thermal margin. The need for a limiting condition for operation (LCO) on ASI comes from the requirement that reactor design include appropriate margin to ensure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences.

T.S. 3.2.7 specifies the ASI LCO. The proposed change would reduce the upper limit of ASI from +0.50 to +0.28 with the Core Operating Limit Supervisory System (COLSS) in service and from +0.50 to +0.20 with COLSS out of servive. (Note: COLSS is a monitoring system used as an aid to the operator.) Since the lower limit on ASI is not changed, the proposed change would further restrict the allowed range of ASI.

The Cycle 2 safety analysis is based on the revised range of ASI. The proposed change reduces the ASI band from that currently allowed for Cycle 1. Because it constitutes an additional restriction, this change is similar to Example (ii) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

3. Proposed Change PCN–151

The proposed change would revise Figure 3.1–2, "CEA Insertion Limits vs. Fraction of Allowable Thermal Power," of Technical Specification 3.1.3.6, "Reactivity Control Systems—Regulating CEA Insertion Limits." This T. S. specifies the withdrawal sequence and power dependent insertion limits (PDIL) for the regulating control element assembly (CEA) groups. The need for a specified withdrawal sequence and PDIL comes from the requirement that reactor design include appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including anticipated operational occurrences. To this end, Figure 3.1–2 helps to ensure that (1) acceptable power distribution limits are maintained, (2) the minimum shutdown margin is maintained, and (3) the potential effects of CEA misalignments are limited to acceptable levels. The proposed change would revise the short term steady state insertion limit and transient insertion limit specified by Figure 3.1–2. The long term steady state insertion limit would remain unchanged. The existing transient insertion limits of Figure 3.1–2 allow insertion of CEA groups 3, 4, 5 and 6 when the reactor is critical. The revised transient insertion limits would allow only CEA groups 5 and 6 to be inserted when the reactor is critical. The current Figure 3.1–2 restricts overlap between CEA groups to a maximum of 60". Cycle 2 was analyzed with a 60" overlap. However, to be consistent with the overlap used by the plant's automatic rod position controller, revised Figure 3.1–2 limits the CEA positions to a 50" overlap. This limit is more restrictive, and is conservative with respect to the analysis. This proposed change to the short term steady state insertion limit and transient insertion limit constitutes an additional limitation or restriction which is not included in the existing technical specifications, but is included as an assumption in the Cycle 2 accident and transient analysis. Because the proposed change constitutes an additional limitation, it is similar to Example (ii) of 48 FR 14870. On this basis the NRC staff proposes to determine that change does not involve a significant hazards consideration.

4. Proposed Change PCN–153

The proposed change would revise Technical Specification 3.1.1.3, "Reactivity Control Systems-Moderator Temperature Coefficient," which specifies the moderator temperature coefficient (MTC) limits for power operation and startup (Modes 1 and 2, respectively). MTC is a measure of the effect that reactor coolant temperature has on reactivity, which in turn effects reactor power (i.e., in the presence of a negative MTC, a decrease in temperature will cause an increase in power). The need for a limiting condition for operation (LCO) on MTC comes from the requirement that reactor design include appropriate limits on the potential amount and rate of reactivity increase.

T.S. 3.1.1.3 established the MTC LCO. The proposed change would revise the positive MTC limit from less than 0.13x10–4 delta k/k/F for all reactor power levels to less than 0.0 delta k/k/F for reactor power levels greater than 70% rated thermal power and less than 0.5x10–4 delta k/k/F for reactor power levels less than or equal to 70% of rated thermal power. This revision is consistent with the assumptions used in the Cycle 2 accident and transient analysis. For reactor power levels greater than 70% of rated thermal power, the proposed change constitutes an additional limitation or restriction not inlcuded in the existing technical specifications. For reactor power levels less than or equal to 70% of rated thermal power, the proposed change would result in a slight increase in the allowed MTC range.

The part of the proposed change which is applicable during operation at power greater than 70% of rated thermal power is similar to Example (ii) of 48 FR 14870, because it constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The part of the proposed change which is applicable during operation at power less than or equal to 70% of rated thermal power is

similar to Example (vi) of 48 FR 14870 in that although it may result in a reduced safety margin, it nevertheless is within the SRP acceptance criteria. The anticipated operational occurrences (AOO) and postulated accidents that are more adverse in the presence of a positive MTC are affected by this part of the proposed change. The AOO's and postulated accidents that are limiting at zero or low power include (1) the rod ejection accident (Standard Review Plan Section 15.4.8), (2) the uncontrolled control rod assembly withdrawal from a subcritical or low power startup condition (SRP Sectoin 15.4.1), (3) the loss of non-emergency AC power to the station auxiliaries, including a 4-pump loss of flow (SRP Section 15.2.6), and (4) the reactor coolant pump seizure and reactor coolant pump shaft break (SRP Section 15.3.4). During AOO"s the SRP acceptance criteria require that no fuel design limits be violated. During postulated accidents the SRP acceptance criteria require that the core be maintained in a coolable geometry and that doses at the site boundary be within specified limits. The results of all AOO and postulated accident analyses for Cycle 2, including those specifically mentioned above, are clearly within all acceptance criteria with respect to the system or component specified in the SRP. Based on the above, the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

5. Proposed Change PCN–169

The proposed change would revise Technical Specification 5.3.1, "Design Features—Reactor Core—Fuel Assemblies" which specifies various fuel assembly design limits including the maximum total weight of uranium in a fuel rod. The proposed change would increase the maximum total weight of uranium in a fuel rod from 1807 gm to 1900 gm. This change in required to accommodate as-built variations or possible fuel density changes which may be included in cycle 2 and future cycles.

The proposed change does not affect the maximum fuel enrichment specified in T.S. 5.3.1. Further, the actual uranium weight per fuel rod is explicitly accounted for in the core performance analysis and the reactor safety analysis. The maximum weight of uranium in a fuel rod during Cycle 2 operation will be approximately 1820 gm.

The proposed change is similar to example (iii) of 48 FR 14870 in that the change will accommodate fuel density changes which may occur as a result of normal reactor core reloading. The fuel assemblies are not significantly different from those found previously acceptable to the NRC, nor are there any significant changes to the acceptance criteria of the technical specifications or the analytical methodology used to demonstrate conformance with the technical specifications and regulations. On this basis the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

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Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: March 2 and April 2, 1984 (Reference PCN–99, 100, 101 102).

Description of Amendment Requests: The proposed changes would revise the technical specifications (T.S.) relating to radiation and radioactive effluent monitoring instrumentation as follows:

1. Proposed Change PCN–99 is a request to revise Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System (ESFAS)". Instrumentation. The proposed change clarifies requirements for radiation monitors which support the containment purge isolation ESFAS function to improve consistency with the Final Safety Analysis Report (FSAR), Standard Technical Specifications (NUREG–0212, or STS), and technical specifications for other non-ESFAS functions served by the same instrument. The proposed change also reflects the addition of the dedicated purge effluent monitors which are to be installed in accordance with License Conditions 2.C(17) and 2.C(15) for Units 2 and 3, respectively.

2. Proposed Change PCN–100 is a request to revise Technical Specification 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation". The proposed change improves consistency with the FSAR and STS, consolidates NUREG–0737 wide range noble gas monitoring requirements from Specification 3/4.3.3.6, Accident Monitoring Instrumentation, adds increased flexibility to Action statements and revises the applicability for the condenser evacuation system and plant vent stack monitors.

3. Proposed Change PCN–101 is a request to delete from Technical Specification ¾.3.3.6, "Accident Monitoring Instrumentation", those radiation monitors listed in Table 3.3–10 which were installed to satisfy NUREG–0737 wide range noble gas monitoring requirements. Consistent with Standard Technical Specifications and Proposed Change PCN–100, these NUREG–0737 monitors will be covered by Specification ¾.3.3.1, "Radiation Monitoring Instrumentation".

4. Proposed Change PCN–102 is a request to revise Technical Specification ¾.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation". The proposed change increases operating flexibility by crediting recent and near future design changes when implemented, revising Action statements, and eliminating cross referencing to other specifications not relating to effluent monitoring.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed license amendment involves a significant hazards consideration by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to 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. Example (ii) relates to a change which is an additional requirement or restriction not currently included in the technical specifications: for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

Each of the changes proposed by the licensees is similar to one of the above examples, and thus it is proposed that the changes do not involve a significant hazards consideration. These four proposed changes (PCN's) referred to above, collectively affect overall technical specification requirements relating to radiation and radioactive

effluent monitoring instrumentation, and would accomplish the following specific items:

1. Reflect the addition of the dedicated containment purge effluent radiation monitor required by license conditions 2.C(17), Unit 2 and 2.C(15), Unit 3.

2. Achieve consistency in the requirements for containment area radiation monitors between individual technical specifications and the FSAR.

3. Increase the allowed out-of-service time for the containment high range area radiation monitors and main steam line area radiation monitors.

4. Reduce operability requirements for the condenser evacuation system radiation monitors so that they will be required to be operable only in those plant operational modes where the condenser evacuation system is a potential gaseous release pathway.

5. Reduce the minimum required number of plant vent stack wide range radiation monitors from two to one.

6. Revise the action to be taken when a condenser evacuation system or plant vent stack wide range radiation monitor is out of service to clarify when a special report is required.

7. Revise the list of specific instruments which can function as the waste gas holdup system monitor.

8. Revise the action to be taken when waste gas holdup system explosive gas monitoring instrumentation is inoperable. The revised T.S. would require appropriate compensatory measures to be taken, but would no longer require a plant shutdown if both hydrogen or both oxygen analyzers are inoperable.

9. Delete the current limitations on the period for which compensatory measures can be taken when radioactive effluent monitoring instrumentation is inoperable, to eliminate a conflict in the technical specifications.

10. Revise the action to be taken when effluent flow monitoring instrumentation is inoperable to require less frequent flow estimates.

11. Reduce the frequency of required grab sampling when plant vent stack effluent monitoring requirements are not met.

12. Make editorial revisions to the effluent monitoring technical specifications and correct editorial discrepancies between the San Onofre 2 and 3 technical specifications and the standard technical specifications.

The following is a more detailed description of each of the 12 items listed above, and a description of how each is similar to one of the three examples of 48 FR 14870 discussed above.

1. *Addition of Dedicated Containment Purge Effluent Monitor.* License conditions 2.C(17), Unit 2 and 2.C(15), Unit 3, require the installation of a dedicated purge effluent monitor for each unit prior to startup following the first refueling outage. The proposed changes (PCN 90, 100 and 102) make the necessary T.S. revisions to accommodate the installation of this dedicated purge effluent monitor (RT-7828). The proposed T.S. changes also establish requirements for a second radiation monitor when it is modified to automatically terminate purge effluent releases, and provide additional flexibility to avoid a plant shutdown, should the monitor currently performing the purge effluent monitoring function become inoperable prior to installation of the new monitor.

Currently, the containment airborne radiation monitor, RT-7804, is used to monitor the purge effluent. In addition, this containment airborne radiation monitor is also part of the containment purge isolation system (CPIS), an engineered safety feature (ESF) to mitigate the consequences of a fuel handling accident in Mode 6. Further, this monitor is also used for reactor coolant system leakage detection in Modes 1-4. The containment airborne radiation monitor does not directly monitor the containment purge exhaust, but monitors the containment atmosphere near the purge exhaust which is representative of purge releases.

Technical Specification 3/4.3.2 "Engineered Safety Feature Actuation System (ESFAS) Instrumentation" requires that CPIS instrumentation be operable and defines functional tests which must be periodically conducted to verify operability. Likewise, T.S. 3/4.3.3.1, "Radiation Monitoring Alarm Instrumentation", specifies operability requirements for containment airborne radiation monitors. Technical Specification 3/4.3.3.9., "Radioactive Gaseous Effluent Monitoring Instrumentation", specifies operability requirements for the containment purge effluent monitors. Because one instrument, containment airborne radiation monitor RT-7804, now performs all three functions, the most restrictive operability and surveillance requirements (which are required for the effluent monitoring function) are now contained in each of the above technical specifications. With the addition of the dedicated purge effluent monitor, RT-7804 will no longer perform an effluent monitoring function. Thus only CPIS and RCS leakage detection requirements need be specified in T.S. 3/4.3.2 and 3/4.3.3.1, and T.S. 3/4.3.3.9 will define the operability requirements for the new purge effluent monitor, RT-7828.

The specific current requirements of T.S. 3/4.3.2, 3/4.3.3.1 and 3/4.3.3.9 relating to purge effluent monitoring instrumentation, the proposed changes to these requirements reflecting the addition of the dedicated purge effluent monitor, and the basis for the proposed no significant hazards consideration determination for each change are described below:

(a) T.S. 3/4.3.2, Table 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," Item 12.b and T.S. 3/4.3.3.1, Table 3.3-6, item 2.b requires that at least one of two airborne radiation monitors capable of monitoring gaseous, iodine, and particulate radioactivity in containment, be operable in all plant operational modes. The proposed change will require a gaseous and particulate activity monitoring channel to be operable in modes 1-4 for RCS leakage detection and will require that a gaseous, a particulate and an iodine monitoring channel to be operable during refueling (mode 6) to mitigate the consequences of a fuel handling accident. No containment airborne monitoring channel will be required to be operable in mode 5. Thus, this change removes purge effluent monitoring functional requirements from the containment airborne radiation monitors.

(b) T.S. 3/4.3.2, Table 4.3-2 and T.S. 3/4.3.3.1, Table 4.3-3 specify surveillance tests which periodically must be performed to verify the operability of the containment airbrone radiation monitors. Because RT-7804 now serves as a containment purge effluent monitor, containment airborne radiation monitor surveillances are currently required for all modes of plant operation. The proposed change will require surveillances to be performed for the gaseous and particulate channels only in modes 1, 2, 3, 4 and 6, and for the iodine channel in Mode 6. No surveillances will be required in Mode 5.

(c) T.S. 3/4.3.2, Table 3.3-4 and T.S. 3/4.3.3.1, Table 3.3-6 currently reference the Offsite Dose Calculation Manual (ODCM) to determine the setpoints for the containment airborne radiation monitors, because the ODCM specifies methodology for setpoint calculation for the effluent monitors. Since RT-7804 will no longer serve the purge effluent montoring function, reference to the ODCM is no longer appropriate. Therefore, the proposed change would incorporate a different setpoint methodology for the containment

airborne radiation monitors into the Tables 3.3–4 and 3.3–6.

(d) When the minimum operability requirements for containment airborne radiation monitors are not satisfied, T.S. 3/4.3.2 and 3/4.3.3.1 refer to T.S. 3/4.3.3.9 for the action to be taken. T/S 3/4.3.3.9 applies to effluent monitoring and requires closure of the purge valves in this case. This reference is no longer appropriate since the containment airborne radiation monitor no longer serves an effluent monitoring function. The proposed change will require that the action requirements of specification 3/4.4.5.1, "RCS Leakage Detection" be followed when the gaseous and particulate channels are inoperable in Modes 1–4 and will require closure of the purge isolation valves when the minimum operability requirements for gaseous iodine and particulate channels are not met in Mode 6. These actions are based on the containment airborne radiation monitor RCS leakage detection and fuel handling accident mitigation functions.

T.S. 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentations," Table 3.3–13 currently requires that containment airborne radiation monitor RT–7804 be operable at all times to monitor containment purge system releases. Table 4.3–9 specifies the surveillance requirements to verify operability of this monitor. In the event that the containment airborne radiation monitor is inoperable, the plant operators are requried to suspend releases via the containment purge system. Because of the need to purge frequently in order to maintain containment internal pressure within allowable limits, suspension of purging will result in plant shutdown within a few days. License Conditions 2.C(17) (Unit 2) and 2.C(15) (Unite 3) require installation of a dedicated purge effluent monitor prior to start up following the first refueling. The proposed change will require the use of this new monitor (RT–7828) instead of the containment airborne radiation monitor currently used to monitor purge releases. In addition, the proposed change will permit the use of the wide range plant vent stack radiation monitor (provided that it is equipped to automatically terminate purge releases) to monitor purge effluent. The plant vent stack wide range radiation monitor can be aligned to monitor the purge stack but currently is not equipped to terminate purge releases. This proposed change will provide the diversity necessary to avoid unit shutdown due to a purge monitor failure.

Until the dedicated purge effluent monitor is installed, the proposed T.S. would allow the plant vent stack wide range monitor to be used for purge effleuent monitoring, even though it is not capable of terminating purge release, if the containment airborne radiation monitor is inoperable. In this circumstance, the revised T.S. will require that the other Unit's plant vent stack wide range monitor be aligned to the plant vent stack and, in the event of an alarm on either unit's wide range plant vent stack monitor or the normal range plant vent stack monitor, the revised T.S. will require that containment purging be immediately terminated and the plant vent stack monitor be realigned to the plant vent stack. This provision will be in effect only until installation of the dedicated purge effluent monitor. After the dedicated monitor is installed, suspension of containment purging will again be required if the minimum purge effluent operability requirements are not met.

Since the new monitor will not perform an ESFAS function, the surveillance requirements for it are revised to be consistent with the STS surveillance requirements for purge effluent monitors. Specifically, channel checks will be required daily instead of each shift as is required for ESFAS instruments.

The proposed no significant hazards consideration determination for the above described proposed changes is based on their similarity to examples of changes not likely to involve a significant hazards consideration provided in 48 FR 14870. The proposed changes resulting directly from the installation of the dedicated purge effluent monitor (i.e., items (a) through (d), above) are similar to example (ii) in that they incorporate additional restrictions not currently included in the technical specifications. The proposed interim relaxation of the action to be taken when the containment airborne radiation monitor is out of service (i.e., item (e), above) is similar to example (vi) in that it may in some ways reduce a safety margin but the results are within the SRP acceptance criteria. The following discussion gives the basis for this conclusion about item (e), above.

Currently, containment airborne radiation monitor RT–7804 is used as the purge effluent monitor. This is a secondary function. The primary functions of the containment airborne radiation monitor are to mitigate the consequences of a fuel handling accident and to detect RCS leakage. The proposed change does not affect these requirements. RT–7804 does not directlyl sample the purge exhaust but samples the containment atmosphere which is assumed to be homogeneous and therefore representative of purge effluent. The proposed change will no longer allow the use of RT–7804 as the purge effluent monitor but will require either the new dedicated purge effluent monitor, RT–7828, or the wide range plant vent stack monitor, RT–7865, be used for purge effluent monitoring. Both of these monitors directly sample the purge stack. The requirement that only radiation monitors which directly sample the purge stack can be used for purge effluent monitoring is an additional restriction. Therefore, this change is similar to example (ii) of 48 FR 14870, and on this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

The revision to the action to be taken when the purge effluent monitor is inoperable is similar to example (vi) in that it reduces existing requirements but satisfies the applicable SRP acceptance criteria. SRP Section 11.5, "Process and Effluent Radiological Monitoring Instrumentation and Sampling Systems," requires that the constainment purge exhaust be continuously monitored for noble gases and provisions be made to automatically terminate releases. The proposed change would allow vent stack monitor RT–7865 to satify the purge effluent monitoring function when the containment airborne monitor is inoperable, even though it is currently not equipped to terminate purge realease. However, in the event of a significant radioactivity release inside containment, there are three other radiation monitors (the two containment area monitors, and the one other containment airborne monitor) which will automatically isolate containment purging, thereby limiting releases. Thus the containment purge will continue to be monitored and provisions to automatically terminate purge releases continue to exist with the proposed change. Therefore, the SRP acceptance criteria are satisfied and the proposed change is similar to example (vi) of 48 FR 14870. On this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

2. *Containment Area Radiation Monitors.* There are two containment area radiation monitors which are capable of isolating containment purge on detection of high radiation inside containment. Technical Specifications 3/4.3.2, "ESFAS Instrumentation" and 3/4.3.3.1, "Radiation Monitoring Alarm

Instrumentation" specify operability and surveillance requirements, setpoints and actions to be taken in the event of inoperability for the containment area radiation monitors. The function of these radiation monitors is to mitigate the consequences of a fuel handling accident. Additionally, these monitors satisfy the NUREG–0737 requirement to isolate containment purge on a high radiation signal in operating Modes 1–4.

T.S. 3/4.3.2 currently requires that at least one of two-containment area radiation moinitors and associated actuation logic be operable in Mode 6. The actuation logic is currently required to all modes because it supports the purge effluent monitoring requirements for the containment airborne radiation monitor. Applicability in all modes is no longer required with installation of the dedicated purge monitor. T.S. 3/4.3.3.1 requires that at least one containment area radiation monitor be operable in Modes 1, 2, 3, 4 and 6. T.S. 3/4.3.2 specifies a trip setpoint of 2.4 mR/hr in Mode 6 with an acceptable value to allow for drift between surveillances of 2.5 mR/hr. T.S. 3/4.3.3.1 specifies a setpoint of 325 mR/hr for Modes 1–4. The proposed changes make T.S. 3/4.3.2 and T.S. 3/4.3.3.1 containment area radiation monitoring requirements consistent with one another.

The proposed change revises T.S. 3/4.3.2 to: (1) Require at least one containment area monitor to be operable in Modes 1, 2, 3, 4 and 6, i.e. consistent with T.S. 3/4.3.3.1; (2) include a setpoint for Modes 1–4 of 325 mR/hr with an acceptable value of 340 mR/hr to allow for drift between suveillances; (3) require operability of the actuation logic in Modes 1–4; and, (4) require that the containment purge valves be closed in the event that both containment area monitors are inoperable in Modes 1–4.

T.S. 3/4.3.3.1 currently requires initiation of a preplanned alternate method of monitoring in the event that both containment area monitors are inoperable in Modes 1–4. In lieu of initiation of the preplanned alternate method of monitoring, the proposed change will require that the purge valves be closed consistent with revised T.S.3/4.3.2.

With the exception of the incorporation of a containment area monitor trip setpoint allowable value of 340 mR/hr, the proposed changes described above achieve consistency between the containment area monitoring requirements of T.S. 3/4.3.2 and T.S. 3/4.3.3.1. Therefore, these changes are similar to example (i) of 48 FR 14870, and on this basis the NRC staff proposes to determine that they do not constitute a significant hazards consideration.

The proposed change to incorporate an allowable trip value of 340 mR/hr may result in a slightly higher (5%) trip setpoint if instrument drift were to occur. This change is similar to example (vi) of 48 FR 14870 in that it involves a slight reduction in existing requirements, the results of which meets applicable acceptance criterial The STS, NUREG–0212, recommends setpoints and allowable values of less than or equal to twice the background radiation level. On this basis, the final safety analysis report allows a setpoint of 625 mR/hr. Therefore, the proposed allowable value is less than the recommended value of less than or equal to twice the background radiation level. Therefore, this change is similar to Example (vi) in that it may reduce in some way a safety margin, but where the results are clearly within all applicable acceptance criteria. On this basis it is proposed that the above changes relating to containment area radiation monitors do not involve a significant hazards consideration.

3. *Out of Service Time for the Containment Highrange and Main Steam Line Area Radiation Monitors.* Technical Specifications 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," and 3/4.3.3.6, "Accident Monitoring Instrumentation", require two containment high range area radiation monitors and two channels of main steam line area radiation monitors (one channel/steam line) to be operable during plant power operation, startup, hot standby or hot shutdown (Modes 1–4, respectively) and defines the action to be taken when the minimum operability requirements for these monitors are not met. With one containment high range area radiation monitor or one channel of main steam line area radiation monitors inoperable, either the inoperable monitor must be restored within seven days or the plant must be in hot shutdown within the next 12 hours. With both containment high range area radiation monitors inoperable, at least one monitor must be restored to operable status within 48 hours or the plant must be in hot shutdown within the next 12 hours. The proposed change would increase the time allowed when one containment high range area radiation monitor or one channel of main steam area radiation monitors is inoperable from seven to thirty days.

This proposed change is similar to example (vi) of 48 FR 14870 since it represents a reduction in existing requirements but meets the SRP acceptance criteria.

Standard Review Plan (SRP) Section 16.0, Technical Specifications, provides acceptance criteria for technical specifications. In general, proposed technical specifications are acceptable if they conform to the STS. However, SRP Section 16.0 allows deviation from the STS provided that the differences are justified on the basis of uniqueness in plant design or other considerations. At the time of issuance, the San Onofre 2 and 3 technical specifications for the main steam line area radiation monitors and the containment high range area radiation monitors were consistent with the existing STS. However, operational experience to date has indicated that the seven day allowance for an inoperable monitor to be insufficient. These monitors were installed to comply with the high range radiation monitoring requirements of NUREG–0737, "Clarification of TMI Action Plan Requirements" which required the monitors to be qualified to operate in the postulated high post accident radiation fields. The licensee states that the high range radiation monitors have prove to be difficult to repair when inoperable. The difficulty associated with repair of these instruments is due to the requirement that they be environmentally qualified to operate in the postulated high post-accident radiation fields. This requirement precludes the use of pre-amplifiers located at the detectors. As a result, only the very small currents (on the order of a few pico amps) generated by the detectors are carried by the cables to the instrument electronics located in low radiation areas. Because of the small currents involved, troubleshooting is difficult and time consuming.

The proposed increase in the time allowed for the containment or main steam line area monitors to be out of service is justified on the basis that these monitors perform a less significant safety function than other instrumentation to which this action statement applies. The existing action statement applies to many other instruments which would be used to mitigate the consequences of a design bases accident, in addition to the main steam line and containment high range area radiation monitors. It should be noted that the radiation monitoring channels do not directly contribute to the mitigation of consequences of design bases accidents in the same sense as the other instrumentation to which the existing action statement applies. The proposed change does not increase the allowed out of service time for other instrumentation.

In summary, the licensee proposes that the increase in the time allowed to restore an inoperable containment high range or main steam line area radiation monitor to operable status from seven to thirty days is justified because:

(1) NRC requirements regarding environmental qualifications necessitate a design which is inherently difficult and time consuming to trouble shoot; and

(2) The lesser safety significance of these radiation monitors as compared to other instruments to which the same action applies.

Although this change deviates from the STS as issued to San Onofre 2 and 3, this deviation is justified based on the above considerations and therefore is consistent with SRP Section 16 acceptance criteria for deviations from the STS.

Thus, this change is similar to example (vi) of 48 FR 14870 in that it may result in increased accident consequences, but the results of the change are clearly within all acceptance criteria for the system or component specified in the SRP. Therefore, the NRC staff proposes to determine that these changes do not involve a significant hazards consideration.

4. *Condenser Evacuation System Radiation Monitor.* Technical Specifications 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," 3/4.3.3.6, "Accident Monitoring Instrumentation," and 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," delineate operability and surveillance requirements and actions to be taken when the minimum operability requirements for condenser evacuation system monitoring instrumentation are not met.

These T.S. currently require the condenser evacuation system be monitored at all times and require the wide range condenser evacuation monitor be operable when the plant is in Modes 1–3. The purpose of the condenser evacuation system is to draw a vacuum on the condenser thereby removing air and non-condensible gases. During normal plant operation, small amounts of radioactive noble gases can enter the secondary system from the reactor coolant system (RCS) via steam generator tube leakage within allowable limits. When the RCS is depressurized during cold shutdown and refueling (Modes 5 and 6), or when the steam generators are isolated from the turbine and condenser by closure of the main steam isolation valves (MSIV's), there is no driving force or pathway for radioactive noble gases from the RCS to the condenser. There are two condenser evacuation system noble gas radiation monitors. The wide range condenser evacuation noble gas monitor provides post accident noble gas monitoring capability. The normal range monitor provides noble gas monitoring capability during normal plant operation and anticipated operational occurrences. The proposed change would require that the wide range condenser evacuation system monitor be operable when the plant is in Modes 1–3 and any MSIV or MSIV bypass valve is not fully closed. The proposed change would require either the normal range or wide range condenser evacuation system noble gas monitor to be operable when the plant is in Mode 4 and either as MSIV or an MSIV bypass valve is not fully closed. Thus the proposed change would no longer require a condenser evacuation system monitor to be operable when the plant is in Modes 5 or 6 or when the MSIV's and MSIV bypass valves are closed. The proposed change also reduces the operational modes for which surveillances must be performed on the condenser evacuation system to correspond to these reduced operability requirements.

This proposed change is similar to example (vi) of 48 FR 14870 in that the reduction is operability requirements for the condenser evacuation system radiation monitors may in some way reduce a margin of safety but nevertheless meets the acceptance criteria in SRP Section 11.5 and in NUREG–0737. SRP Section 11.5 requires that all major and potentially significant paths for release of radioactive material during normal reactor operation, including anticipated operational occurrences, be monitored, NUREG–0737 required the installation of a wide range noble gas monitor on potential gaseous effluent release paths capable of monitoring postulated post accident concentrations of noble gases.

The condenser evacuation system is monitored because it is a potential gaseous radioactive effluent release path during normal plant operation due to primary-to-secondary steam generator table leakage within allowable limits and in the event of a steam generator tube rupture. However, when the MSIV's and MSIV bypass valves are closed isolating the steam generators from the condenser, or when the RCS is depressurized (Modes 5 and 6), the condenser evacuation system is not a potential gaseous effluent release path. Accordingly, the proposed change requires monitoring of this path when it is a potential gaseous release path. Specifically, in Modes 1–4 with any MSIV or MSIV bypass valve not fully closed. In Modes 1–3, the wide range monitor is required to satisfy NUREG–0737 accident monitoring requirements. In Mode 4, because the potential for an accident is lower and the consequences are less severe, either the normal range or the wide range monitor is required.

The proposed change satisfies the SRP Section 11.5 and NUREG–0737 criteria for condenser evacuation system noble gas monitoring in that it (1) requires monitoring when the condenser evacuation system is a potential release path and (2) requires wide range noble gas monitoring capability. Therefore, the proposed change is similar to example (vi) of 48 FR 14870 and thus the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

5. *Plant Vent Stack Monitors.* Technical Specification 3/4.3.3.1, "Radiation Alarm Monitoring Instrumentation," 3/4.3.3.6, "Accident Monitoring Instrumentation," and 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," define operability and surveillance requirements for plant vent stack radiation monitors and actions to be taken when the minimum operability requirements are not met. Collectively, these specifications require monitoring of the plant vent stack at all times, with both wide range plant vent stack monitors operable with the plant in Modes 1–3 and either the normal range or both wide range monitors operable at all other times. The proposed change will require at least one wide range monitor in Modes 1–3 and either of the wide range plant vent stack monitors or the normal range plant vent stack monitors at all other times.

There are two plant vent stacks, one associated with Unit 2, the other with Unit 3. The two plant vent stacks are fed from a common plenum. Exhaust from the shared auxiliary buildings and the two fuel handling buildings are mixed in a common plenum and released via the Units 2 and 3 plant vent stacks. The normal range plant vent stack noble gas radiation monitor provides noble gas monitoring capability for normal operation and anticipated operation occurrences. Two wide range plant vent stacks noble gas radiation monitors, one for each of the Units 2 and 3 plant vent stacks, provides post accident noble gas monitoring capability. The proposed change would require at least one of the two wide range plant vent stack noble gas radiation monitors to be operable with the plant in Modes 1–3, and at least one of the two wide range monitors or the normal range plant vent stack noble gas radiation monitor to be operable at all other times.

These proposed changes are similar to example (vi) of 48 FR 14870 in that they may in some way reduce a margin of safety but where the results are clearly within all acceptance criteria in the SRP. SRP Section 11.5, "Process and Effluent Radiological Monitoring Instrumentation and Sampling Systems," requires that plant vent stack effluents be continuously monitored for noble gases. In the Standard Technical Specifications (STS), in NUREG–0472, "Standard Radiological Effluent Technical Specifications for Pressurized Water Reactors," and in the San Onofre Units 2 and 3 Technical Specifications, the plant vent stack effluent radiation monitoring requirements are contained in T.S. 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation." T.S. 3/4.3.3.9 requires that plant vent stack effluent monitoring and sampling instrumentation be operable in all modes. Therefore, the proposed change still preserves the effluent monitoring requirements defined in SRP Section 11.

The plant vent stack wide range noble gas radiation monitors were installed to satisfy NUREG–0737, "Clarification of TMI Action Plan Requirements," for wide range noble gas monitoring capability. NUREG–0737 required the installation of wide range noble gas radiation monitors on potential gaseous effluent release paths capable of monitoring postulated post accident concentrations of noble gas. The plant vent stacks are a potential release path and wide range noble gas monitors are installed on each of the two plant vent stacks, one for Unit 2, the other for Unit 3. However, the two plant vent stacks are not independent release paths since they are fed from a plenum common to both units. Because the two plant vent stacks are fed from a common plenum, the noble gas releases from one plant vent stack can be conservatively correlated to measured noble gas releases from the other. Thus, only one wide range noble gas monitor is required to quantify total noble gas releases. Accordingly, the proposed change requires one plant vent stack wide range monitor to be operable in modes 1–3. In Mode 4, where the potential for postulated accidents is lower and the radiological consequences are less severe, the proposed change would continue to allow the normal range plant vent stack noble gas monitor to be used in lieu of a wide range monitor. Because the SRP Section 11.5 effluent monitoring requirements continue to be satisfied by the proposed change, and the NUREG–0737 plant vent stack wide range noble gas monitoring requirements are satisfied, the proposed change is similar to example (vi) of 48 FR 14870. Therefore, the NRC staff proposes to determine that this change does not involve a significant hazards consideration.

6. *Clarification of Special Reporting Requirements for Wide Range Radiation Monitor Inoperability.* In the event that the minimum operability requirements are not met for the plant vent stack and condenser evacuation noble gas radiation monitors in Modes 1–3, and the containment high range and main steam line area radiation monitors in Mode 4, the action statement in T. S. 3/4.3.3.9 currently allows 72 hours to restore the inoperable instruments to operable status or requires that (1) a preplanned alternate method of monitoring be initiated and (2) a special report be submitted within 14 days outlining the aciton taken. It is unclear whether this report is required within 14 days of the instrument inoperability regardless of whether or not the pre-planned alternate was initiated, or within 14 days of initiation of the pre-planned alternate. The proposed change would revise the action statement to require submittal of a special report within 14 days of initiation of the pre-planned alternate. That is, if the instrument was restored to operable status within 72 hours, no special report would be required by the proposed change.

This change clarifies the special reporting requirement. Because this change is being made for clarity and is editorial in nature, it is similar to example (i) of 48 FR 14870 and therefore the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

7. *Waste Gas Holdup System Radiation Monitoring.* Technical Specification 3/4.3.3.9, "Radioactive Gaseous Effluent Monitoring Instrumentation," defines operability and surveillance requirements for the waste gas holdup system radiation monitors and defines the action to be taken if the minimum operability requirements are not met. T.S. 3/4.3.3.9 currently requires that the waste gas holdup system monitor (2/3RT–7814) or the plant vent stack normal range radiation monitor (3/4RT–7808) be operable at all times and capable of terminating waste gas holdup system releases. The proposed change deletes the waste gas holdup system monitor (2/3RT–7814) and in addition would allow either the Unit 2 or Unit 3 plant vent stack wide range radiation monitors (2RT–7865 or 3RT–7865) to perform the waste gas holdup system monitoring function. A recent design change has provided both of the wide range plant vent stack monitors with the capability of terminating waste gas holdup system releases. Because all three plant vent stack monitors are capable of terminating waste gas holdup system releases, and at least one of the three plant vent stack monitors is required to be operable at all times, it is redundant to include the option of using waste gas holdup system radiation monitors (2/3RT–7814) in T.S. 3/4.3.3.9.

These proposed changes are similar to example (i) of 48 FR 14870. Although the proposed change deletes one of the radiation monitors associated with the waste gas holdup system, it does not remove the requirements to monitor waste gas releases. Because the change merely identifies the instruments which can perform this function, it is editorial in nature. Therefore, the proposed change is similar to example (i) and on this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

8. *Waste Gas Holdup System Explosive Gas Monitoring.* T.S. 3/4.3.3.9. requires that the waste gas holdup system explosive gas monitoring system, consisting of two hydrogen and two oxygen monitors, be operable during operation of the waste gas holdup system.

Gaseous radwaste from the RCS accumulates in the waste gas surge tank. Subsequently, the gaseous radwaste is compressed into one of the waste gas decay tanks for holdup to allow for decay of short lived isotopes prior to release. Two hydrogen and two oxygen analyzers are provided. One of each is a continuous analyzer, the other is a periodic analyzer. The continuous hydrogen and oxygen analyzers monitor the waste gas surge tank. The periodic analyzers can monitor either the surge tank or any of the decay tanks and are normally aligned to the decay tank that is in use. Because the decay tanks are operated above atmospheric pressure, thereby preventing oxygen inleakage, an explosive gas mixture cannot exist in the decay tanks unless one first existed in the surge tank before compression. Therefore, monitoring the surge tank is the preferred method of detecting the formation of explosive gas mixtures in both the surge tank and the decay tanks.

When one or more channels of explosive gas monitoring instrumentation is inoperable, Action 39 of T.S. 3/4.3.3.9 becomes applicable. In the event a continuous analyzer on the surge tank becomes inoperable, Action 39 currently does not require alignment of the operable periodic monitor to the

surge tank. Thus operation of the waste gas system could continue, in compliance with Action 39, with the surge tank un-monitored. The proposed revision to Action 39 will require the remaining operable analyzer channel to be aligned to the waste gas surge tank thereby ensuring that the surge tank continues to be monitored.

If both hydrogen analyzers or both oxygen analyzers are inoperable, Action 39 currently requires a plant shutdown within 48 hours. In lieu of the currently required plant shutdown, the proposed change would revise Action 39 to require grab samples be taken at least once per four hours and analyzed within the next four hours until the analyzers are returned to service. This proposed change is similar to example (i) of 48 FR 14870 in that it achieves consistency throughout the technical specifications and corrects an error. The operability requirements for hydrogen and oxygen analyzers and Action 39 are intended to maintain compliance with specification 3/4.11.2.5, "Explosive Gas Mixture".

In the event one hydrogen or oxygen analyzer is inoperable, the current specification does not assure effective explosive gas monitoring. The proposed change corrects this error by requiring correct system alignment of the remaining operable instruments. In addition, the proposed change achieves consistency between Action 39, of T.S. 3/4.3.3.9 and Specification 3/4.11.2.5. Because this change corrects an error and achieves consistency, it is similar to example (i) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards determination.

9. *Deletion of Time Limits in Effluent Monitoring Action Statements.* The applicability of actions to be taken when radioactive gaseous effluent monitoring instrumentation is inoperable is limited to a specified period (e.g. 30 days). If effluent release continues beyond this period, even while continuing to implement the compensatory measures specified by the action, because of the time limit, this action would be outside of the bounds of the T.S. and would therefore invoke Specification 3.0.3. T.S. 3.0.3. would require that action be taken to initiate a plant shutdown, as would suspending releases. T.S. 3/4.3.3.9 has an exception to Specification 3.0.3. Therefore, at the end of the existing action time limit, it would be interpreted that no additional action is required. The 3.0.3 exception conflicts with the time limits in the actions. The proposed change removes the time limits, thereby eliminating the existing conflict. The proposed change will continue to require reporting of effluent monitoring instrumentation inoperabilities of greater then 30 days duration and continued implementation of the specified compensatory measures.

The current actions to be taken in the event of instrument inoperability are limited to specified period (e.g. 30 days) at the end of which, the bounds of the technical specifications would be exceeded, thereby invoking Specification 3.0.3. However, there is a 3.0.3 exception for Specification 3/4.3.3.9. The proposed change deletes the time limits on the actions but continues to require a report to be filed in the event an instrument is inoperable for greater than 30 days. The deletion of the time limits resolves this inconsistency. Because this change achieves consistently within the technical specifications, it is similar to example (i) of 48 FR 14870. On this basis, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

10. *Effluent Flow Instrumentation Action Requirements.* Currently if the flow rate measuring instrumentation is inoperable, T.S. 3/4.3.3.9, Table 3.3–13 requires estimation of the flow each 4 hours but does not specify a method. The proposed change would require flow estimation at least once every 8 hours and would state that system design characteristics (e.g. fan performance curves) may be used to estimate flow. The proposed change would reduce the frequency of flow rate estimations required when a flow monitoring instrumentation is out of service. This reduction in existing requirements is similar to example (vi) of 48 FR 14870 because, although it is a reduction, the applicable acceptance criteria are nevertheless satisfied. The standard radiological effluent technical specifications (NUREG–0472) provide action to be taken in the event of flow instrument inoperability, recommending that the flow rate be estimated at least once per 8 hours. Consistent with NUREG–0472, the proposed change would require that flow estimates be made at least once per 8 hours. Therefore, the proposed change satisfies the acceptance criteria and is similar to example (vi). On this basis, the NRC staff proposed to determine that the change does not involve significant hazards consideration.

11. *Inoperable Plan Vent Stack Monitor Action Requirements.* When the minimum plant vent stack effluent monitoring requirements are not met, Table 3.13–13 of T.S. 3/4.3.3.9 requires that grab samples be taken at least once per 8 hours. The proposed change will reduce the frequency to at least once per 12 hours. This reduction is similar to example (vi) of 48 FR 14870 because although it is a reduction of existing requirements, the change meets the applicable acceptance criteria. NUREG–0472, the generic radiological effluent technical specifications, provide the acceptance criteria for radioactive effluent monitoring instrumentation technical specifications. NUREG–0472 requires grab samples to be taken at least once per 12 hours when plant vent effluent monitoring instrumentation is inoperable. The proposed change is consistent with this and therefore is similar to example (vi) of 48 FR 14870. On this basis the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

12. *Editorial Changes.* The following editorial changes are made to ensure consistency with the substantive changes described above, correct existing errors, and to achieve consistency with the standard technical specifications, and are therefore similar to example (i) of 48 FR 14870. On this basis the NRC staff proposes to determine that the following changes do not involve a significant hazards consideration.

(a) The first proposed editorial changes add an exception to T.S. 3.0.3 for the containment airborne radiation monitors when the plant is in Mode 6 and an exception to T.S. 3.0.4 for the containment airborne radiation monitors and automatic actuation logic when the plant is in Mode 6.

This proposed change is similar to example (i) of 48 FR 14870 in that it achieves consistency within the technical specifications.

The CPIS containment airborne radiation monitors are required to be operable in Mode 6. The governing requirements for the CPIS are found in T.S. 3/4.9.9, "(Refueling Operations) Containment Purge Isolation System," which requires the CPIS to be operable during core alleviations and movements of irradiated fuel inside containment. In the event that the CPIS is inoperable, T.S. 3/4.9.9 requires purge isolation valve closure. If the purge isolation valves cannot be closed, T.S. 3.0.3 as applied to T.S. 3/4.9.9 requires the cessation of core alterations and movements of irradiated fuel. In the event of the inoperability of the CPIS containment airborne radiation monitors, which are required to be operable in Mode 6 by T.S. 3/4.3.2, and the inability of the purge values to close, T.S. 3.0.3 requires the plant to be planted in a mode which does not require

containment airborne radiation monitor operability (i.e., Mode 5). The proposed exception to T.S. 3.0.3 will prevent this and will make the required actions consistent with T.S. 3/4.9.9.

The proposed change will add an exception to T.S. 3.0.4 for containment airborne radiation monitors during operation in Mode 6. The governing CPIS requirements are contained in T.S. 3/4.9.9, which includes an exception to T.S. 3.0.4. Therefore, these proposed changes achieve consistency within the technical specifications and are similar to example (i) of 48 FR 14870.

(b) The second proposed change adds instrument tag numbers to identify specific instruments which perform the radiation and effluent monitoring functions covered by specifications 3/4.3.2, 3/4.3.3.1 and 3/4.3.3.9. This change is editorial and similar to example (i) of 48 FR 14870.

(c) The word "alarm" is deleted from the phrase "radiation monitoring alarm instrumentation" which is used in the titles of Specification 3/4.3.3.1 and Table 3.3-6 and elsewhere in the Specification. The words "alarm/trip" are substituted for the word "alarm" where it is used in the context of a setpoint. In NUREG-0212, "Standard Technical Specifications (STS) for Combustion Engineering Pressurized Water Reactors", T.S. 3/4.3.3.1 is titled "Radiation Monitoring Instrumentation" and uses the words "alarm/trip" in describing setpoints. This proposed change would make the San Onofre 2 and 3 T.S. consistent with the STS in this respect. This change is editorial in nature and has no effect other than to improve consistency with the STS. Because the proposed changes is editorial in nature, it is similar for example (i) of 48 FR 14870.

(d) Another proposed change repeats Actions 13, 16, 17, 17a and 17b from T.S. 3/4.3.2. in T.S. 3/4.3.2. in T.S. 3/4.3.3.1, thereby eliminating the current cross referencing. This proposed change is editorial and similar to example (i) of 48 FR 14870.

(e) Another proposed change deletes from Specification 3/4.3.3.6, "Accident Monitoring Instrumentation," the operability, surveillance and action requirements for the containment high range area radiation monitors, main steam line area radiation monitors, condenser evacuation system wide range monitors and the plant vent/purge stack wide range monitors. Operability requirements for these instruments are also included in T.S. 3/4.3.3.1, "Radiation Monitoring Instrumentation". It is redundant and inconsistent with the STS to include requirements for these instruments in T.S. 3/4.3.3.6. Therefore, this change is editorial and similar to example (i) of 48 FR 14870.

(f) The T.S. 3.3.3.6 Action statement which specifies the actions to be taken when the accident monitoring instrumentation operability requirements are not met, erroneously refers to "radiation monitoring alarm channels". The action should refer to "accident monitoring channels" since T.S. 3.3.3.6 concerns other instrumentation in addition to radiation monitoring instrumentation. The proposed change is similar to example (i) of 48 FR 14870 in that it corrects this error.

(g) Table 3.3-13 currently requires flow rate monitors and/or samples flow rate monitors for the condenser evaluation system, plant vent stack, and containment purge effluent pathways. The proposed change will require a sample flow measuring device and a process flow measuring device to be operable for each of these release pathways. The sample flow rate measuring device verifies sample flow through the monitoring/sampling instrumentation. The process flow rate measuring device measures the total effluent releases via a pathway. The proposed change is editorial in that it more explicitly states the existing requirements. Because this change editorially corrects nomenclature, it is similar to example (i) of 48 FR 14870.

The normal range condenser evaculation system monitor and the normal range plant vent stack monitors are not equipped to measure effluent flow rates. The proposed change notes that these instruments are not so equipped and requires that either another means of flow rate measurement be available or the action covering flow measuring device inoperability be complied with.

This change is similar to example (i) of 48 FR 14870 because it is editorial in nature, in that it restates existing requirements to ensure the effluent flow rates are measured.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

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NRC Branch Chief: George W. Knighton.

Tennessee Valley Authority, Docket No., 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: August 23, 1984.

Description of amendment request: The amendment would revise the Technical Specifications (T.S.) of the operating license to: (1) Modify the core physics, thermal and hydraulic limits to be consistent with the reanalyses associated with replacing about one-third of the core during the Cycle 6 core reload outage and (2) reflect changes in various specifications as a result of plant modifications performed during the outage. Specifically, the amendment would result in changes to the T.S. in the following areas:

1. Changes related to the Cycle 6 core reload involving removal of depleted fuel assemblies in about one-third of the nuclear reactor core and replacement with new fuel with attendant T.S. changes in the core protection safety limits and reactor protection system setpoints. The new fuel will include fuel assemblies of the same type as previously loaded, plus four Westinghouse "QUAD+" demonstration assemblies. The latter assemblies will be located in non-limiting core periphery locations. The actual T.S. changes include changes in the Operating Limit Minimum Critical Power Ratio (OLMCPR), deletion of tables on maximum average planar exposure for fuel types no longer used, and changes to the references cited in the bases to reflect that TVA performed the reload analyses.

2. Changes in the T.S. revising the tables listing instrumentation for suppression pool bulk temperature to reflect the installation of an improved torus temperature monitoring system being installed as part of the Mark I containment program.

3. Changes to the T.S. to reflect modifications to the scram discharge instrument volumes (SDIV); each of the SDIVs will be provided with electronic level switches. The changes to the T.S. are to add operability, surveillance and calibration requirements for the new level instrumentation.

4. Changes to T.S. instrumentation tables to add new instrumentation for high-range gaseous effluent monitors and containment high-range radiation monitors and to replace drywell pressure and suppression chamber water level instruments with new wide-range instruments in response to requirements in NUREG-0737; items II.F.1.1, II.F.1.3, II.F.1.4, and II.F.1.5. Administrative requirements will be

revised to reflect II.F.1.1, and II.F.1.3 reporting requirements.

5. Changes to T.S. Reactor Protection System (RPS) instrumentation tables to delete the Main Steamline Isolation Valve (MSIV) and main condenser low vacuum scram functions when the mode switch is not in the RUN position.

6. Changes to T.S. instrumentation tables to reflect new instrument numbers for new upgraded drywell temperature and pressure instrumentation.

7. Revision to the table of testable penetrations to reflect the new testable penetrations as a result of modifications to the flange side of several isolation valves.

8. Revision of the T.S. table for containment isolation valve surveillance to add two new isolation valves that are part of a newly installed redundant discharge line from the drywell compressor into containment and to delete one isolation valve which was removed from the demineralized water systme.

9. Revision of T.S. to provide limiting conditions for operation and surveillance requirements for monitoring of the reactor protection system power supply.

10. Modify the T.S to apply to the new analog (continuous measuring) instrumentation. The analog instrumentation replaces certain mechanical-type pressure and level switches with a more accurate and more stable electronic transmitter/electronic switch system and will provide improved performance of trip functions for reactor protection system actuation, and containment isolation. The changes to the T.S. include:

a. in the tables on functional test frequencies, calibration frequencies and surveillance requirements, for each switch replaced, add the instrument number beneath the parameter being monitored and/or controlled.

b. add notes to the above tables to specify how the functional and calibration tests are to be conducted.

c. in addition to the above administrative changes, change the calibration requirements to incorporate extended calibration intervals. However, the required setpoints, functional test frequencies and channel check frequencies for the instrumentation will not be changed. The new calibration requirements, together with the new instrumentation, are expected to provide a more reliable instrumentation system.

11. Changes to reflect deactivation of the Residual Heat Removal (RHR) head spray line containment isolation valves. (The head spray line has been removed as a result of a pipe crack study). The head spray containment penetration will become a spare.

12. Changes to the primary containment air lock leak testing requirements.

13. Administrative changes to the T.S. involving changes to the Table of Contents to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing examples of actions that are likely, and are not likely, to involve significant hazards considerations (48 FR 14870). Four examples of actions not likely to involve significant hazards considerations are:

"(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.

"(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

"(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method."

Each of the changes to the T.S. described above is encompassed by one of the above examples of actions not likely to involve a significant hazards consideration or is otherwise bounded by the criteria for such a determination. The basis for this determination for each of the changes is discussed below.

1. Core Reload

The changes to the T.S. associated with removing depleted spent fuel from the reactor and replacing these with new fuel assemblies is encompassed by example (iii) above of those actions not likely to involve a significant hazards consideration.

The proposed reload involves fuel assemblies of the same type (P8X8R) as previously found acceptable by the staff and loaded in the core in previous cycles. The reload also includes four Westinghouse fuel assemblies (QUAD+) in peripheral locations. These assemblies are analytically similar to the P8X8R fuel such that results of analytical methods used by licensee for the P8X8R fuel bound the QUAD+ assemblies. The analytical methods used by the licensee to demonstrate conformance to the technical specifications are applicable to P8X8R and QUAD+ fuel and have not been significantly changed from those previously approved by the staff. Since each replacement fuel assembly is of the same type as previously added to all three Browns Ferry units and other BWRs or is analytically similar to those fuel assemblies, and since the codes, models and analytical techniques used to analyze the reload have been approved by the NRC, the changes to the T.S. associated with the reload are clearly encompassed by example (iii) of the guidance provided by the Commission for an action not likely to involve a significant hazards consideration.

2. Suppression Pool Temperature Monitoring System

One of the changes to the T.S. is to revise the tables that list the instrumentation associated with suppression pool bulk temperature monitoring. This reflects a modification which provides an improved torus temperature monitoring system which consists of 16 sensors. This will provide a more accurate indication of the torus water bulk temperature as required by NUREG–0661 and will replace the suppression chamber water temperature instruments presently listed in the T.S.

This change proposed for Unit 2 is the same as found acceptable for Units 1 and 3. We conclude, based on our review that this change does not result in an increase in the probability or consequences of a previously-analyzed accident, create the possibility or a new kind of accident or result in any reductions in safety margins.

3. Scram Discharge Instrument Volume

The SDIVs are being modified to address inadequacies identified by the partial rod insertion event on Browns Ferry Unit 3 in June 1980. One of the modifications includes adding electronic level switches to initiate a scram on a high level in the SDIV. The electronic type are direct replacements for differential pressure type sensors and are more suitable for the SDIV level sensing application. The Technical Specifications would be amended to reflect the nomenclature of the new sensors and to reflect the functional testing method by which the associated instrumentation channels will be tested. The replacement of a component such as a sensor, with another of a different design may in some way reduce a safety margin. However, the SDIV protection function is designed with sufficient independence and redundancy as required by the Standard Review Plan (Section 7) to ensure reliability. This change is therefore encompassed by example (vi) of the Commission's guidance.

4. Accident Monitoring Instrumentation

Item II.F.1 of NUREG–0737, "Clarification of TMI Action Plan Requirements," requires all licensees to install five new monitoring systems and to provide onsite sampling/analysis capability for a specified range of radionuclides. For all six categories, NUREG–0737 states: "Changes to technical specifications will be required." During this refueling outage, the licensee will install: (a) a gaseous effluent high range radiation monitoring system, (b) a containment high-range radiation monitoring system, (c) a drywell wide-range pressure monitoring system and (d) a suppression chamber wide-range water level monitoring system. These items were required by NUREG–0737, item II.F.1.1, II.F.1.3, II.F.1.4 and II.F.1.5, respectively. The changes to the T.S., which track the model T.S. provided to the licensee by the staff, are to add operability and surveillance requirements on the new monitoring systems.

The revisions also delete the present drywell pressure and suppression chamber water level instruments since they are being replace by items (c) and (d) above. The changes to the technical specifications are necessary administrative follow-up actions required by the Commission. Adding the new surveillance requirements and controls is encompassed by example (ii) of actions not likely to involve significant hazards consideration.

5. MSIV and Condenser Low Vacuum Scram

A number of scram bypasses are provided in the reactor protection system (RPS) to account for the varying protection requirements depending on reactor conditions and to allow for instrument service during reactor operations. Some bypasses are automatic, others are manual. There is an automatic bypass of the scram function associated with main steamline isolation and main condenser low vacuum if the reactor pressure is below 1055 psig. The bypass allows reactor operations at low power with the main steamlines isolated and the main condenser not in operation. These conditions exist during startups, certain reactivity tests during refueling, and hot standby conditions. This is commonly referred to as "bottled-up operation." Although the scram bypass switches are presently set at 1055 psig they were originally set at 600 psig. However, testing conducted in 1974 demonstrated that bottled-up operation was acceptable at pressures up to 1055 psig. The scram bypass switches were therefore reset to 1055 psig as specified in the current T.S.

The setpoint for the reactor high pressure scram function is also 1055 psig. Because the reactor will scram due to high pressure at or above 1055 psig there is no useful purpose served by activating the MSIV isolation and condenser low vacuum scram functions at pressure above 1055 psig. The licensee therefore proposes to bypass the MSIV isolation and low vacuum isolation scram functions for all pressures when in refuel, or startup/hot standby mode.

Due to the presence of the high pressure scram function, deletion of the MSIV isolation and low vacuum scram functions in the startup mode is not likely to affect the probability or consequences of previously-analyzed accidents. Our preliminary evaluation of the proposed change also indicates that it is not likely to reduce a safety margin and will not create the possibility of a new accident. Based on our evaluation of the three factors in 10 CFR 50.92, the staff has made a preliminary determination that the proposed changes to the Technical Specifications involve no significant hazards consideration.

6. Drywell Temperature and Pressure

The drywell temperature and pressure surveillance instrumentation is being upgraded this outage to provide qualified, more reliable instrumentation. The T.S. are being revised to reflect new instrument numbers. The surveillance requirements remain unchanged. The changes to the technical specifications are necessary administrative follow up actions required by the Commission and are clearly encompassed by example (i) of actions not likely to involve significant hazards considerations.

7. Testable Penetrations

Modifications to permit testing are being made to the flange side of fourteen containment isolation valves which cannot be isolated from primary containment to be leak tested. This modification will provide two gaskets with a pressure tap between the gaskets to allow the flange to be leak tested. Operability of the valve will not be affected by this modification. Fourteen new testable penetrations resulted and they are to be added to the table of testable penetrations with double o-ring seals. Since surveillance requirements are being added, the change is encompassed by example (ii) of actions not likely to involve significant hazards considerations.

Several editorial changes were also made to this table. They include revising the identification of penetration X–35 to indicate it is now a spare, adding the drywell head penetration that has been previously included in the test program but was inadvertently left out of the table, and removing penetration X–213A which no longer exists. These changes are purely administrative and are encompassed by example (i) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

8. Redundant Air Supply to Drywell

During the current outage, TVA has installed a second discharge line from the drywell compressor into containment. This line was added to provide the capability for isolation of approximately one-half of the drywell suppression equipment in the case of a drywell line leak. This air supply will be used to supply two inboard MSIVs, and approximately one-half of all other air-operated equipment in the drywell. This will significantly reduce the possibility of any one control air pipe break inside containment from requiring immediate shutdown and isolation due to MSIVs, MSRVs, and drywell coolers being inoperable. Since any line penetrating containment requires two isolation valves, the table in the Technical Specifications listing the isolation valves that must be periodically tested is being revised to add these two new isolation valves. TVA has concluded that this modification will increase the

margin of safety. The changes to the technical specifications are necessary administrative follow up actions essential to the implementation of this improvement. The two isolation valves being added to the T.S. are new valves not presently listed in the T.S. If they were not added to the table of valves to be periodically tested, there would be no T.S. requirement to test these valves. This same change was approved for Unit 1 by Amendment No. 92 issued December 12, 1983. Adding these additional controls is encompassed by example (ii) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

One isolation valve on the demineralized water system was removed from Unit 2. The demineralized water system is no longer used since makeup is supplied from the condensate system. the isolation valve was removed and the line capped. The T.S. are being revised to remove this valve from the table of valves to be tested. The changes to the technical specifications are necessary administrative follow up actions essential to the implementation of the improvement. The changes are clearly encompassed by example (i) provided by the Commission for actions not likely to involve significant hazards considerations. The above changes have been approved for Unit 1 by Amendment No. 92 to Facility Operating License No. DPR–33 issued December 12, 1983.

9. Monitoring of RPS Power Supply

By letter dated September 24, 1980, the staff informed TVA (and most other BWRs) that "we have determined that modifications should be performed to provide fully redundant Class IE protection at the interface of non-Class IE power supplies and the RPS." By letter dated December 4, 1980, TVA committed to install the required modifications. By letter dated October 30, 1981 and July 28, 1982, NRC sent TVA model Technical Specifications for RPS power supply monitoring equipment. During the current outage of Unit 2, the RPS is being modified to provide a fully redundant Cass 1E protection at the interface of the non-Class 1E power supplies and the RPS. This will ensure that failure of a non-Class 1E reactor protection power supply will not cause adverse interaction to the Class 1E reactor protection system.

The Technical Specifications are being revised similar to the model T.S. provided to TVA to reflect the limiting conditions for operation and surveillance requirements associated with the RPS modifications. The changes to the T.S. are necessary administrative follow up actions essential to the implementation of these improvements. The additional limitations and controls, which are presently not in the T.S., are encompassed by example (ii) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations.

10. Analog Trip System

The RPS, the primary containment isolation system (PCIS), and the core standby cooling systems (CSCS) use mechanical-type switches in the sensors that monitor plant process parameters. These mechanical-type switches are very subject to drift in the set point as is evident from the many licensee event reports (LERs) that have been submitted reporting calibration drifts in these switches. Advances in technology make it possible to replace the mechanical-type switches with a more accurate and more stable electronic transmitter/electronic switch system. The modification involves removing one device and substituting other devices to perform the same function. Changes in design bases, protective function, redundancy, setpoints and logic are not involved. Similar modifications have been approved for other BWRs and for Browns Ferry Unit 1 by Amendment No. 93 issued December 16, 1983.

As described previously, most of the changes to the T.S. are administrative in nature (i.e., adding the specific number and types of sensor and adding notes to describe how testing is conducted). As such, they are encompassed by example (i) of the guidance provided by the Commission for actions not likely to involve significant hazards considerations. The changes in surveillance requirements are not encompassed by an example of the guidance provided by the Commission. Some of the surveillance intervals have been increased commensurate with the reduced drift for the new instruments. However because the modification and TS changes will not eliminate or modify any protective functions nor permit any new operational conditions, they do not create the possibility of a new kind of accident or significantly increase the probability or consequences of an accident. Because of the increased reliability and stability, and reduced drift of the analog trip system the increased surveillance intervals would not reduce any safety margin. These changes therefore meet the criteria for a no significant hazards consideration.

11. RHR Head Spray

As a result of a pipe crack study, TVA decided to remove the RHR head spray piping inside containment. This modification in itself requires no T.S. changes. However, because the piping has been permanently capped-off, there is no longer any need for containment isolation valves 74–77 and 74–78 to be operable. Also the penetration, "X–17" should henceforth be identified as "former RHR head spray" or "blank". Because these changes will not (a) increase the probability or consequence of an accident previously evaluated (b) create the possibility of a new kind of accident or (c) decrease any margin of safety, the staff has made a proposed determination that this change involves no significant hazards consideration.

12. Personnel Air Lock Testing

The primary containment airlock surveillance requirement for periodic leak testing would be changed to conform to 10 CFR 50 Appendix J. This change constitutes a more stringent surveillance requirement and is therefore encompassed by example (ii) of actions not likely to involve significant hazards considerations.

13. Administrative Changes

A couple of administrative changes are being made to the Technical Specifications. These include (1) revising the Table of Contents to reflect the changes above, and (2) changing the nomenclature for "safety" valves to "relief" valves since these terms no longer have any distinction. These changes are encompassed by example (i) cited by the Commission as an action not likely to involve a significant hazards consideration.

Since all of the changes to the T.S. given in the areas above are encompassed by an example in the guidance provided by the Commission of actions not likely to involve a significant hazards consideration or otherwise meet the necessary criteria, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: (1) August 20, 1984; (2) August 27, 1984; (3) August 28, 1984.

Description of amendment request: (1) The licensee requested changes to the Technical Specifications for Units 1 and 2 to allow the use of a fifth vital battery system to satisfy limiting conditions for operation when one of the trained vital batteries is out of service. Installation of support systems is also required in order to ensure the operability of the fifth vital battery whenever it is used as a substitute for a training battery system. The installation and use of a fifth vital battery system would substantially reduce the possibility of a two unit shutdown in the event of a battery system outage.

(2) The licensee requested another change that would revise the type of detectors used in certain fire zones throughout Units 1 and 2. Thermal detectors would replace some of the infrared detectors since Sequoyah has experienced high failure rates attributed to temperature and radiation environments surrounding the infrared detectors. The change in detectors is expected to increase the fire detection system availability and reliability.

(3) Finally, the licensee proposed changing the Technical Specifications to allow a change in mode of power operations whenever one steam generator level transmitter is inoperable. This change in the requirements would remove and inconsistency that now exists between requirements for limting conditions for operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed changes (1–3) involved here are similar to this example in that there may be some increase to the probability or consequences of a previously analyzed accident, but the results of the change clearly remain within all acceptable criteria.

For proposed change (1) the addition of a fifth vital battery system enhances plant operations without an expected change in the previously analyzed postulated accident. A second example provided in the Federal Register is a purely administrative change to the Technical Specifications. To some extent proposed change (3) is involved here in that the Technical Specifications is being changed to achieve consistency between limiting conditions of operation.

On this basis, the NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Herbert S. Sanger, Jr., Esa., General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

NRC Branch Chief: Elinor G. Andensam.

Union Electric Company, Docket 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: October 3, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise Technical Specification Table 4.11–1 to include two additional Batch Waste Release Tanks. Presently there are two 100,000 gallon tanks which are required for storage and/or discharge of waste water. Due to an increase in the volume of secondary liquid waste from condensate demineralizer regenerations two additional 100,000 gallon Batch Waste Release Tanks are required Originally, the volume of waste from regeneration of the condensate demineralizers was estimated at 17,000 gallons per day. Two additional 100,000 gallon tanks should provide adequate capability based on revised estimates of the increase of discharge volume.

Basis for proposed no significant hazards consideration determination: The licensee, in his letter of October 3, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; nor create the possibility of a new or different kind of accident or condition over previous evaluations; nor involve a significant reduction in a margin of safety. Based on the foregoing, the requested amendment does not present a significant hazard. The Commission has provided guidance concerning the application of the Standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). For the addition of two 100,000 gallon tanks, the request is similar to the example of a change that constitutes an additional limitation, restriction, or control not presently in the Technical Specifications. The addition of two 100,000 gallon tanks will provide additional liquid waste system control not presently in the Technical Specifications. The staff has made a significant hazards determination and has concluded that this amendment request does not result in a significant hazards consideration because: (1) The construction of two additional batch waste release tanks does not increase the probability or consequences of an accident since the amount of radioactivity resulting from material stored in these tanks will be negligible; (2) the rupture of a waste release tank was analyzed in the FSAR; therefore, this does not create the possibility of a new or different accident; and (3) the margin of safety is not reduced because the new batch tanks will have the same Technical Specification limits as those presently at the plant.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Union Electric Company, Docket 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: October 8, 1984.

Description of amendment request: The purpose of the proposed amendment request is to revise Technical Specification 6.5.1.2 and Figure 6.2–2. The revision of Technical Specification Figure 6.2–2 includes two additional positions, and also revises Technical Specification 6.5.1.2 to include an additional member to the On-Site Review Committee (ORC). The additions to Figure 6.2–2 include the new positions of Assistant Manager, Administrative and the Superintendent, Outages. The addition of the Assistant Manager, Administrative is designed to enhance the effectiveness and capability of the Operations Department by segregating certain administrative and personnel matters from the operation and maintenance of the plant. In the same

effort to enhance plant operations and maintenance, the Superintendent, Outages will be responsible for all aspects of planning and scheduling plant outages. While the amendment request represents changes in reporting relationships and responsibilities, it does not represent a change in any organizational commitments. The addition of the Assistant Manager, Administrative to ORC in Technical Specification 6.5.1.2 is purely administrative since the actual personnel involved are currently members of ORC.

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 (48 FR 14870). One of the examples of actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications.

The revision of Technical Specification Figure 6.2–2 to include two additional positions, and also a revision to Technical Specification 6.5.1.2 to include an additional member to the On-Site Review Committee (ORC) is purely administrative and does not constitute additional organizational controls not presently included in the Technical Specifications. Furthermore, the actual personnel involved are currently members of ORC. This request for Technical Specification change does not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the requested Technical Specification change does not present a significant hazard consideration.

Local Public Document Room Locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 26, 1984.

Description of amendment request: The proposed amendment would add Limiting Conditions for Operation and Surveillance Requirements to incorporate the requirements of Appendix J on the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. The proposed changes were requested by the NRC of all licensees to bring them into conformance with § 50.54(o) and Appendix J of 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

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 (48 FR 14870). The examples of actions which involve no significant hazards consideration include a chance that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement.

The changes proposed in this application for amendment are encompassed by this example because restrictions would be added to conform to the Rules and Regulations of the Commission. The published § 50.54(o) and Appendix J of 10 CFR Part 50 ensure that systems and components which penetrate the containment are tested on a regular interval and the leak tight integrity of the primary reactor containment is ensured.

Therefore, since the application for amendment involves proposed changes similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Bratleboro, Vermont 05301.

Attorney for license: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 19, 1984.

Description of amendment request: The proposed change revises Technical Specification Table 4.1–2A to delete the requirement to test control rod drop times at cold shutdown. The current requirement is for verifying the rod drop time to be no more than 1.8 seconds to dashpot entry for cold conditions, after a refueling shutdown or after maintenance requiring the breach of the Reactor Coolant System integrity (Technical Specifications Table 4.1–2A). The assumption of a specific rod drop time at cold conditions is not incorporated into any safety analysis. To ensure the availability of the negative reactivity, control rod drop time verification is necessary only before the core attains critically following reactor heatup. This requirement will be fulfilled by maintaining the Technical Specifications provision for control rod timing tests at hot shutdown. Therefore, the cold rod drop timing tests can be eliminated without compromising plant safety or any safety analysis.

Basis for proposed no significant hazards consideration determination: The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will 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. Accordingly, the Commission proposes to determine that these changes to not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 5, 1984.

Description of amendment request: Revises earlier request dated May 2, 1984, which was noticed in the **Federal Register** on June 20, 1984 (49 FR 23530 at 23582). The proposed amendments modify the earlier proposed containment tendons in response to NRC staff comments. The revised proposed

Technical Specifications more nearly conform to the Standard Technical Specifications.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations is example (ii), a change which constitutes an additional restriction, limitation or control not currently found in the Technical Specifications. The licensee's revised submittal meets this example by providing additional limiting conditions for operation requiring shutdown in the event of certain tendon surveillance test failures. It also provides additional conditions for conduct of tendon surveillance testing including additional criteria for selection of tendons tested, additional criteria for physical testing of tendons and additional criteria for inspecting sheathing filler grease. These additional criteria constitute additional limitations not presently found in the license's proposed Technical Specifications, therefore, the staff proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 7, 1984.

Description of amendment request: The proposed amendments would modify earlier submittals dated April 19, 1983 and April 13, 1984. Proposed Table 15.3.14–1 "Safe Shutdown Area Fire Protection" has been revised to reflect additional fire protection sprinkler systems which are being installed in the plant auxiliary building.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. Table 15.3.14–1 is incorporated by reference in the Limiting Conditions for Operation (LCOs) proposed in the earlier submittals. Additions to the table such as those proposed by the licensee expand the area of applicability of those LCOs and therefore propose additional controls. Therefore, the staff proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1880 M. Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plants Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 25, 1984.

Description of amendment request: The licensee has requested that the effective date (December 31, 1984) for amendments 84 and 88 to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant Units 1 and 2, respectively be delayed until March 1, 1985. These amendments, issued on April 30, 1984, provided for the use of an improved instrument power supply system by December 31, 1984. The licensee contends that installation has been delayed and that startup testing necessary to declare the systems operable may not be complete by the effective date. The units would then be required to shut down.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (i) a purely administrative change to the Technical Specifications. In this instance, the only change requested to already approved Technical Specifications is the effective date. The effective date of December 31, 1984 was based on installation completion dates projected in March 1984. The licensee has indicated that completion of installation has been delayed and startup testing to assure system operability may not be completed by December 31, 1984 and has requested a delay of two months in the effective date of the Technical Specifications contained in Amendments 84 and 88. The staff has determined that this change is administrative in nature and meets the Commission's example (i) of actions involving no significant hazards considerations. Therefore, the staff proposes to determine that the action involves no significanat hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: August 24, 1983, as supplemented June 29, 1984.

Description of amendment request: The request for amendment was initially noticed on October 26, 1983 48 FR 49598. This action would provide a definition of the term "OPERABLE" in the Kewaunee Plant Technical Specifications. The licensee responded to an NRC request in submitting this proposed amendment. The proposed amendment conforms to the NRC request and provides for a revised definition that is more restrictive in that it extends the definition to include systems that are associated with the system in question.

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 (48 FR 14870). The examples of actions involving no significant hazards consideration include actions which are purely administrative changes to the Technical Specifications, and changes that constitute an additional limitation, restriction, or control not presently included in the Technical Specifications.

The changes proposed in the application for amendment are encompassed by these examples in that: (1) The guidance provided by NRC and proposed in the amendment for the revised definition of the term "OPERABLE" is more restrictive in that the operability of systems associated with the system must also now be considered; and (2) the resulting format and editorial changes are purely administrative changes. Therefore, since the application for amendment involves

proposed changes that are similar to the example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 13, 1984.

Description of amendment request: This amendment responds to NRC Generic Letter 84–13 as related to the deletion of the list of snubbers from the Kewaunee Technical Specifications (TS). Changes are also made in the snubber TS by deleting obsolete references to the initital snubber inspection. The language of the TS is also changed to relate to the TS to safety-related snubbers only.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One example of actions involving no significant hazards consideration is a change that relates to "(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."

The licensee has proposed to delete an unneeded table of snubbers, to change the Table of Contents and make corrections to delete an obsolete requirement and relate the existing requirements to safety-related equipment only, in the Technical Specifications. This requested change is similar to the Commission's example (i) and is intended to achieve consistency of the Table of Contents with the Technical Specifications and to make needed corrections in the Technical Specifications.

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Branch Chief: Steven A. Varga.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket No. 374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of amendment request: September 25, 1984.

Brief description of amendment: The amendment would change the LaSalle Unit 2 Technical Specifications to reflect a reactor scram on low control rod drive pump discharge pressure modification as required for completion by License Condition 2.C.(7).

Date of publication of individual notice in **Federal Register:** October 24, 1984 (49 FR 42810).

Expiration date of individual notice: November 23, 1984.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 19, 1984.

Brief description of amendment: Amendment would change the nomenclature in the Technical Specifications, Tables 3.6–1 and 3.6–2, because newly installed valves in the plant, as replacements or additional valves, will carry different tag numbers. These new valves will be qualified to the same standards as those currently installed and will be tested in accordance with approved technical specifications.

Date of publication of individual notice in **Federal Register:** October 29, 1984 (49 FR 43517).

Expiration date of individual notice: November 28, 1984.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Southern California Edison Company, Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: September 20, 1984, as supported August 14, 1984.

Brief description of amendment: The amendment would incorporate a license condition which modifies the implementation schedule for the post-accident sampling system.

Date of publication of individual notice in **Federal Register:** October 22, 1984 (49 FR 41300).

Expiration date of individual notice: November 21, 1984.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 25, 1981, (Item 1 only), as supplemented September 26, 1983, and September 11, 1984.

Description of amendment request: The proposed amendment submitted by application dated September 25, 1981 (Item 1 only), as supplemented through September 26, 1983, was considered for issuance as discussed at 49 FR 17875. Subsequently, the proposed amendment was modified further on September 11, 1984. The proposed amendment would delete valves MS 603A and MS 611A in the steam generator drain lines from the listing of containment isolation valves that must be demonstrated operable by periodic surveillance tests (Table 3.6–2, Part C, Appendix A Technical Specifications). The proposed amendment would also remove the restriction to intermittent operation under administrative control applicable to valves MS 603 and MS 611, add an isolation time requirement for these valves, and relocate their listing in

Table 3.6–2 from Part C to Part A. Valves MS 603 and MS 611 also are in the steam generator drain lines. The proposed amendment would be effective upon completion of proposed modifications to the steam generator blowdown system.

The original design for the Davis-Besse facility allowed for the periodic draining of the steam generators to control the accumulation of solids in the once-through steam generators (OTSG). The system could also be used for blowdown of the OTSG at power on an intermittent basis under administrative control. An arrangement of two valves in parallel on each OTSG drain line was used to provide for pressure reduction, flow control, and containment isolation. The valves allowed for remote manual operation under administrative control.

To provide improved chemistry control in the OTSG, a new blowdown system is being installed which will permit OTSG blowdown to be used at any power level on a continuous basis, if necessary. The improved circulation from the OTSG to the main condenser and then to the polishing demineralizers will remove dissolved and suspended solids, and, thereby, improve water quality.

In the new system, valves MS 603A and MS 611A and associated piping will be deleted and valves MS 603 and MS 611 (which are in parallel with MS 603A and MS 611A) will be provided with an automatic steam and feedwater rupture control system (SFRCS) closure signal to isolate the OTSG in the event of a loss of main feedwater or a rupture of a main stem line or feedwater line. In the new system, these valves will provide only the containment isolation function described with a maximum isolation time of 80 seconds. A control valve will be installed in each OTSG drain line near the condenser inlet to provide pressure reduction and flow control previously provided by valves MS 603A and MS 611A. With this new system, the drain lines could be full and pressurized up to the control valve at all times when there is no SFRCS signal to valves MS 603 and MS 611.

With the new system, portions of lines outside containment, which previously were pressurized only intermittently, can be pressurized continuously at any power level. This change does, therefore, result in an increase in the probability of a rupture of these lines because of the increased amount of time the lines would be pressurized. The consequences of such a rupture, however, are not likely to be altered materially with the new system.

Date of publication of individual notice in **Federal Register**: November 2, 1984, 49 FR 44169.

Expiration date of individual notice: December 3, 1984.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly 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 udner 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, NW., 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 Licensing.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: April 10, 1984.

Brief description of amendments: Technical Specifications for the reactor coolant system pressure isolation valves (PIV's) allowable leakage criteria are modified to conform to recent Commission guidance. The Farley 1 and 2 Technical Specifications are standardized including the number and identification of PIV's to be tested.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos. 50 and 41.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 20, 1984 (49 FR 25351).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: August 17, 1984.

Brief description of amendments: The Technical Specifications are changed to delete "during shutdown" from surveillance testing to allow scheduling of the surveillance without requiring a plant shutdown on October 10, 1984.

Date of issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 51 and No. 42.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1984 (49 FR 35702).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1984.

No signfiicant hazards consideration comments received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: March 30, 1984, supplemented Mary 29, 1984.

Brief description of amendments: Technical Specification values for reload fuel maximum enrichment are increased from 3.5 weight percent to 4.3 weight percent U–235.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment Nos. 52 and 43.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29903).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No Significant hazards consideration comments were received: No

Local Public Document Room location: Geoge S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama.

Date of application for amendments: May 14, 1984.

Brief description of amendments: Technical Specifications, Section 6 Administrative Controls, are revised to reflect changes in the title of the Vice President Nuclear Generation to be Senior Vice President and to eliminate the former management position.

Date of issuance: November 13, 1984.

Effective date: November 13, 1984.

Amendment Nos.: 53 and 44.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25352).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1984.

No significant hazards consideration comments were received.

Local Public Documents Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: June 15, 1984.

Brief description of amendment: The amendment revises the testing requirements for hydraulic shock suppressors (snubbers) and adds new requirements for mechanical snubber operability and testing to ensure that these devices are operable.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos. 84.

Facility Operating License No. DPR–51. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33355)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received. No.

Local Public Documents Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 73801.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of application for amendment: August 13, 1984.

Brief description of amendment: The amendment modifies the ANO–1 TS for Steam Generator Surveillance to (1) provide clarity, (2) modify the designation of those areas identified as special areas in the steam generator where imperfections have been previously found and (3) allow the sleeving of ten steam generator tubes as part of a demonstration program.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No. 86.

Facility Operating License No. DPR–51. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38391 and 38392).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments were received. No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 73801.

Arkansas Power and Light Company, Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of application for amendments: March 16, 1984.

Brief description of amendments: The amendments revise the Technical Specifications to incorporate administrative controls for shift overtime for all plant staff performing safety-related functions in accordance with NRC Generic Letter 82–16. These amendments are in partial response to the March 16, 1984, application. The other items contained in the application are being considered separately.

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment Nos.: 85 and 57.

Facility Operating License Nos. DPR–51 and NPF–6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21825).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideartion comments received: None.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendments: August 9, 1984, as amended September 21, and October 19, 1984.

Brief description of amendment: These changes to the Technical Specifictions incorporate limiting conditions of operation of, and calibration requirements for, instrumentation added in accordance with Regulatory Guide 1.97 and NUREG–0737, Items II.F.1.1, 3, 4, and 5. The instruments measure temperatures in the torus suppression pool and monitor certain parameters in a post-accident situation.

Date of issuance: November 7, 1984.

Effective date: November 7, 1984.

Amendment No.: 83.

Facility Operating License Nos. DPR–35. Amendment revised the Technical Specifictions.

Date of initial notice in Federal **Register:** August 22, 1984 (49 FR 33357).

Subsequent to the initial notice in the **Federal Register,** the Boston Edison Company, by letters dated September 21 and October 19, 1984, revised its submittal. These revisions substituted note (1) for note (7) in Table 3.2.F for the following instrument channels: Suppression Chamber Water Temperature, Torus Water Level (wide range), Containment Pressure (high range), and Containment Pressure (low range). For these instruments, note 1 is the more consistent with staff guidance in that it requires restoration of an

inoperable channel within 30 days, whereas note 7 does not impose a definite time limit for such restoration. The minimum number of operable instrument channels for Containment High Radiation (drywell) called for in Table 3.2.F was increased from one to two to meet the Commission's requirement stated in NUREG–0737, Item II.F.1–3. The proposed addition to Table 3.2.F for Containment High Radiation (Torus) was deleted since the Commission does not require this measurement to be made.

These revisions are within the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Plymouth Public Library, 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 amendment: June 13, 1984.

Brief description of amendment: The amendments revise the Technical Specifications to reduce the minimum permitted water height covering spent fuel in the spent fuel pool.

Date of issuance: October 25, 1984.

Effective date: October 25, 1984.

Amendment Nos.: 77 and 104.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33359).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: July 25, 1984.

Brief Description of amendment request: These amendments revise the La Salle County Station, Units 1 and 2 Technical Specifications to modify limits on monitors in accordance with guidance in Generic Letter No. 83–36, "NUREG–0737 Technical Specification." The action statements for the accident monitoring instrumentation for (1) Drywell Hydrogen Monitors, (2) Primary Containment Gross Radiation, and (3) Noble Gas Monitors are modified as provided by Generic Letter 83–36.

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment Nos.: 19 and 5.

Facility Operating Licenses Nos. NFP–11 and NFP–18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38390).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: October 29, 1982 and June 8, 1983, as revised on January 19 and 23, 1984.

Description: The amendment modifies the Appendix A Technical Specifications by incorporating radiological effluent technical specifications and certain other administrative changes to clarify existing technical specifications regarding actions to be taken when a nuclear instrumentation channel becomes inoperable.

Date of Issuance: October 18, 1984.

Effective date: 180 days from the date of its issuance.

Amendment No.: 36.

Provisional Operating License No. DPR–45. Amendment revised Appendix A Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38400) October 26, 1983 (48 FR 49584), and June 20, 1984 (49 FR 25358).

The Commission's related evaluation of the amendment is contained in Safety Evaluations dated October 18, 1984.

No Significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 14, 1983 and May 7, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to (1) allow continued plant operation with one air lock door inoperable under certain conditions, (2) add new surveillance requirements to the emergency air lock, and (3) change the existing air lock surveillance requirements. In addition, the amendment also corrects a typographical error on Page ¾ 6–10 of the Technical Specifications.

Date of Issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No.: 82.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49585) and July 24, 1984 (49 FR 29906).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: None.

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: July 14, 1983 and supplemented by letter dated September 22, 1983 and July 3, 1984.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to clarify conditions under which the safety action of protection system channels are manually bypassed or blocked by the protection system logic.

Date of Issuance: November 13, 1984.

Effective date: November 13, 1984.

Amendment No.: 83.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49585).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of application of amendment: June 4, 1984.

Brief description of amendment: The amendment changed the Technical Specifications and authorized the licensee to operate the St. Lucie Plant, Unit No. 2, for Cycle 2.

Date of Issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment No.: 8.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29902 at 29909).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No Significant hazards consideration comments received. No comments were received.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point, Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: June 15, 1984.

Brief description of amendments: The amendments revise Appendix A of the Technical Specifications for the TMI Items in our Generic Letter 83–37 dated November 1, 1983.

Date of Issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 110 and 104.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33364).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 24, 1984.

Brief description of amendment: This amendment changes the Technical Specifications to allow increasing the U–235 enrichment limit in the high density fuel storage racks.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No.: 72.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21830).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 28, 1984 as supplemented September 7, 1984.

Brief descripton of amendment: The amendment to Technical Specification Section 5.3.1.E would remove the weight limitation of the spent fuel shipping cask.

Date of Issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 77.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38400).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unite No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 4, 1984, as supplemented August 8, 1984.

Brief description of amendment: This amendment corrects a clerical error in TS 3.6.7 by changing "Hot Standby" to "Hot Shutdown"; adds a comment to TS Table 4.1–1 to include independent testing of the shunt trip and undervoltage trip features; deletes TS 6.15 on environmental qualification that has been superseded by 10 CFR 50.49; and revises TS 6.16 to cover the Post Accident Sampling Program by adding Particulate Sampling, Reactor Coolant Sampling and Containment Atmosphere Sampling.

Date of issuance: October 31, 1984.

Effective date: October 31, 1984.

Amendment No. 102.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33365).

The Commission's related evalution of the amendment is contained in a Safety Evaluation dated October 31, 1984.

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

Data of application for amendment: July 20 1983, as supplemented January 27 and August 8, 1984.

Brief description of amendment: The amendment revises the Technical Specifications and the bases to permit operation of the Residual Heat Removal (RHR) system with reduced water flow and corrects a discrepancy between the bases to the Technical Specifications and the Updated Final Safety Analysis Report (UFSAR) for DAEC.

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 108.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17863). Subsequent to the initial notice in the **Federal Register**, the license, by letter dated August 8, 1984, submitted a non-proprietary version of the subject application which falls within the scope of the original notice

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 31, 1984.

Brief Description of amendment: The revision to the Technical Specifications makes changes to Section 6.0, "Administrative Controls."

Date of issuance: October 29, 1984.

Effective date: October 29, 1984.

Amendment No.: 65.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 49 FR 17866.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1984

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library-Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date application for amendment: March 2, 1979, superseded by submittal dated February 1, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to add Limiting Conditions for Operating and surveillance requirements for Radiological Effluents.

Date of Issuance: November 2, 1984.

Effective date: January 1, 1985.

Amendment No.: 66.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43140) and August 22, 1984 (49 FR 33366)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield-Documents, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 13, 1984, as supplemented August 3, 1984.

Brief description of amendment: The amendment revises the Technical Specification to add Limiting Conditions for Operation and surveillance requirements for the equipment that provides automatic initiation of the diesel generators.

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment No.: 67.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38403).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library-Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company (NNECO), Docket No. 50–245, Millstone Nuclear Generating Station, Unit No. 1, New London County, Connecticut

Date of application for Amendment: July 17, 1984.

Brief description of amendment: The Technical Specification changes proposed by the amendment request modify the Appendix A Technical Specifications to lower the primary containment oxygen concentration from 5% to 4% and further limit the amount of oxygen in the containment drywell and wetwell to assure sufficient inerting (nitrogen inerted) to prevent combustible gas mixtures due to hydrogen generation following LOCAs.

Date of issuance: November 1, 1984.

Effective date: November 1, 1984.

Amendment No. 101.

Provisional Operating License No. DPR–21. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38406).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 29, 1984, as supplemented August 16, 1984.

Brief description of amendment: The amendment changes the Technical Specifications to add surveillance and operability requirements for the residual heat removal (RHR) intertie line valves and add limitations on use of the intertie line. This amendment also deletes Technical Specifications pertaining to the recirculation system crosstie lines, which have been removed.

Date of Issuance: October 31, 1984.

Effective date: October 31, 1984.

Amendment No.: 27.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 49 FR 38404.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 17, 1984.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to reflect the use of hybrid design hafnium control rod assemblies. These assemblies will be used to replace standard control rod assemblies during the current Monticello refueling outage.

The other change pertaining to site boundaries proposed in the August 17, 1984 application is being handled by separate action.

Date of issuance: November 2, 1984.

Effective date: November 2, 1984.

Amendment No.: 28.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38405).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Northern States Power Company, Docket No. 50-282 Prairie Island Nuclear Generating Plant, Unit No. 1, Goodhue County, Minnesota

Date of application for amendment: July 9, 1984.

Description of amendment: This amendment adds a Technical Specification which considers the steam generator having three tubes containing defects in the tube sheet region to be operable.

Date of issuance: October 18, 1984.

Effective date: October 18, 1984.

Amendment No.: 71.

Facility Operating License No. DPR-42. Amendment revised the Technical Specifications.

No significant hazards consideration comments received: No.

Date of initial notice in **Federal Register.** July 24, 1984 (49 FR 29915).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1984.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: April 12, 1984

Brief description of amendments: These amendments modify surveillance requirements for the station batteries (dc emergency power).

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendments Nos.: 103 and 105.

Facility Operating Licenses Nos. DPR-44 and DPR-56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register.** July 24, 1984 (49 FR 29917).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

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.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: July 13, 1984.

Brief description of amendment: The amendment corrects the height of the meteorological instruments on the tower and revises the necessary remote shutdown instrumentation.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 96.

Facility Operating License No. NPF-1. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register.** August 22, 1984 (49 FR 33353 at 33369).

The Commission related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No comments received.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application of amendment: July 13, 1984.

Brief description of amendment: The amendment makes numerous changes to reporting requirements to conform to revised 10 CFR 50.72 and new § 50.73; adds a requirement to report challenges and failures of pressurizer power-operated relief valves and safety valves; revises the schedule for reporting any degradation of control building connection bolts; and changes the title of the off-site (corporate) review committee.

Date of issuance: October 30, 1984.

Effective date: October 30, 1984.

Amendment No.: 97.

Facility Operating License No. NPF-11: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33353 at 33368).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1984.

No significant hazards consideration comments received: No comments received.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: May 10, 1984.

Brief description of amendment: Modification of the sampling and analysis requirements for secondary coolant radioactivity described in the Technical Specifications. Daily sampling is now required when the activity increases to 10% of the limit instead of the 25% value previously imposed while daily sampling is no longer required if the activity increases by 25% over an equilibrium value.

Date of issuance: October 26, 1984.

Effective date: October 26, 1984.

Amendment No.: 44.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1984 (49 FR 25372).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 5, 1982 and supplemented September 2, 1983.

Brief description of amendments: Amendments add a clarifying note to existing Technical Specifications which delineates operating restrictions when one Main Steam Isolation Valve solenoid vent value is isolated.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment Nos.: 57 and 26.

Facility Operating Licenses Nos. DPR-70 and DPR-75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49593).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 5, 1982.

Brief description of amendments: Change Technical Specifications regarding performance of a Reactor Coolant System water inventory balance.

Date of issuance: October 17, 1984.

Effective date: October 17, 1984.

Amendment Nos.: 58 and 27.

Facility Operating Licenses Nos. DPR–70 and DPR–75: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38420).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1984.

No significant hazards consideration comments have been received.

Local Public Document Room location: Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: April 11, 1983.

Brief description of amendment: The amendment revises the Technical Specifications to (1) revise the allowable leakage limit for components of the Decay Heat Removal System (DHRS), and (2) include test requirements for determining leakage from the Reactor Building Spray System (RBSS).

Date of issuance: October 30, 1984.

Effective date: October 30, 1984.

Amendment No.: 57.

Facility Operating License No. DPR–54. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984 (49 FR 3353).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: November 24, 1982, as supplemented May 11, 1983.

Brief description of amendment: The amendment involves changes to the TSs to revise the Reactor Building post tensioning tendon surveillance requirements.

Date of issuance: November 6, 1984.

Effective date: November 6, 1984.

Amendment No.: 58.

Facility Operating License No. DPR–54. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17872) on August 22, 1984 (49 FR 33369).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: March 30, 1984

Brief description of amendment: The amendment deletes license condition 2.C.(15) which requires control room installation of the residual heat removal system suction isolation valve power lockout capability.

Date of issuance: October 15, 1984

Effective date: October 15, 1984.

Amendment No.: 29

Facility Operating License No. NPF–12. Amendment revised the license.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29919).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: November 16, 1983.

Brief description of amendment: The amendment modifies the Technical Specifications to add additional containment penetration conductor overcurrent protection devices to Table 3.8–1 and to correct typographic errors.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 30.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984 (49 FR 3354).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: March 22, 1984.

Brief description of amendment: The amendment modifies the Technical Specifications to add additional valves to Table 3.8–2, "Motor Operated Valves Thermal Overload Protection and/or Bypass Devices" and to correct typographical errors in the same table.

Date of issuance: October 24, 1984.

Effective date: October 24, 1984.

Amendment No.: 31

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33370).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina.

Date of application for amendment: July 24, 1984.

Brief description of amendment: The amendment modifies Technical Specification Tables 3.3-7, "Seismic Monitoring Instrumentation," and 4.3-4, "Seismic Monitoring Instrumentation Requirements," to allow an installed triaxial peak accelerograph to be moved to an accumulator safety injection line from the pressurizer surge line. A typographical error in Table 3.3-7 is also corrected.

Date of issuance: November 8, 1984.

Effective date: November 8, 1984.

Amendment No.: 32.

Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38409).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 17, 1984 and May 7, 1981.

Brief description of amendment: The amendment approves changes to Appendix A limiting conditions for operation and surveillance requirements related to the auxiliary feedwater system.

Date of issuance: October 24, 1984.

Effective date: November 7, 1984.

Amendment No. 82.

Provisional Operating Licensing No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1984 (49 FR 29920) and March 22, 1984 (49 FR 10743).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: July 9, 1984 with supplemental information dated September 4, 1984 and October 24, 1984.

Brief description of amendment: The amendment approves changes to Appendix A Technical Specifications which incorporate operability and surveillance requirements for the plant modifications addressed by Generic Letter 83-37 as well as other changes for conformity to the Standard Technical Specifications.

Date of issuance: November 2, 1984.

Effective date: January 1, 1985 with full implementation within 60 days of issuance.

Amendment No. 83.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: June 27 and 29, and July 18, 1984.

Brief description of amendments: The amendments modify the Technical Specifications to (1) allow manual coupling and uncoupling of the control element assemblies (CEA's) to the control element drive motor (CEDM) drive shaft extensions during refueling, (2) allow weighing of CEAs during refueling (3) allow the water level during refueling to be as low as 23 feet above the fuel assemblies, (4) allow correction of the measured heat dissipation of the fuel handling building post-accident cleanup filter system (FHBPACFS) heaters to the nominal voltage for purposes of determining heater operability, and (5) specificy a tube thinning criteria of 44% for all steam generator tubes.

Date of issuance: October 26, 1984.

Effective date: October 26, 1984.

Amendment Nos. 26 and 15.

Facility Operating License Nos. NPF-10 and NPF-15: Amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** August 22, 1984 (49 FR 33371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1984.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: September 3, 1982 and January 25, 1983.

Brief description of amendments: The amendments change Technical Specifications 3.4.1.4.1, "REACTOR COOLANT SYSTEM; COLD SHUTDOWN—LOOPS FILLED" to allow removal of both trains of shutdown cooling from service while in MODE 5, provided that one reactor coolant pump is in operation and both reactor coolant loops are operable.

Date of issuance: November 9, 1984.

Effective date: November 9, 1984.

Amendment Nos.: 27 and 16.

Facility Operating License Nos. NPF-10 and NPF-15: Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** February 24, 1984 (49 FR 7042) and July 24, 1984 (49 FR 29922).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1984.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: April 30, 1982 as supplemented June 10, 1982.

Brief description of amendments: These amendments change the appendices A and B Technical Specifications to: (1) Revise the reactor water cleanup system isolation instrumentation operability requirements (2) revise RHRSW pump operability requirements, (3) revise the

suppression chamber water level datum for HPCI suction switchover (4) correct a typographical error, (5) delete surveillance requirements for RWCU system compartment temperature detectors (6) clarify residual heat removal operability and surveillance requirements (7) revise drywell-to-torus leak rate testing bases (8) revise the requirements on control rod drive maintenance when fuel is present around the rods (9) on Unit 2, revise the surveillance requirements for standby coolant supply pumps and (10) revise raw milk sampling requirements.

Date of issuance: October 16, 1984.
Effective date: October 16, 1984.
Amendment Nos.: 114, 108 and 82.
Facility Operating License Nos. DPR-33, DPR-52, and DPR-68. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 20, 1984 49 FR 25375 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: April 3, 1984.
Brief description of amendment: The amendments revise a condition in the license for each one of the Browns Ferry units which requires the licensee to "maintain in effect and fully implement all provisions of the Commission—approved physical security plan * * *" to reflect that the Commission has reviewed and accepted a revised security plan, to replace the licensee's physical security plan dated June 15, 1978. The amendments change this reference, and therefore make operational the revised physical security plan dated May 15, 1982, as revised by letters dated August 31, 1982 and October 19, 1982. In approving the plan the Commission disapproved language in Section 9.1 which would have permitted designating containment as a nonvital area during extended maintenance outages when all fuel was removed from the reactor vessel. Language requiring maintenance of positive access control over containment during refueling outages, has been incorporated into the amendments. Inasmuch as the effect of the disapproval of the plan in this one respect constitutes a partial denial of the amendment as requested, a separate Notice of Denial of Amendments has been issued.

Date of issuance: October 29, 1984.
Effective date: October 29, 1984.
Amendment Nos.: 115, 109 and 83.
Facility Operating License Nos. DPR-33, DPR-52, and DPR-68. Amendments revised licenses.
Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21846).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 21, 1983 (Item 1 only), as supplemented May 2, 1984.
Brief description of amendment: The amendment modifies Technical Specification 4.5.2.d to permit removal of power to the Decay Heat Removal System suction line isolation valves, DH-11 and DH-12, during operation in Modes 1, 2 or 3.
Date of issuance: November 6, 1984.
Effective date: November 6, 1984.
Amendment No. 77.
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38411).

The Commission's related evaluation of the amendment is contained in a Safety evaluation dated November 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 3801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: March 31, 1983, June 16, 1983 and February 9, 1984 (supplemented February 14 and 21, 1984).
Brief description of amendments: These amendments revise the Technical Specifications to add post-accident monitoring equipment as a result of NUREG-0737 (Post-TMI Requirements) reviews.

Date of issuance: October 15, 1984.
Effective date: October 15, 1984.
Amendment Nos. 100 and 99.
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 20, 1983 (48 FR 33091), August 23, 1983 (48 FR 38429) and May 23, 1984 (49 FR 21849).
Significant hazards consideration comments received: No.
Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 2318.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any

required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

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 application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility 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 Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 21, 1984, 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 possibile 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 contents 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 of 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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, D.C. 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 *(Branch Chief):* 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 Executive Legal Director, U.S. Nuclear Regulatory Commision, Washington, D.C. 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 Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of application for amendment: July 23 and August 1, 1984, as supplemented by letters dated August 8, 17, 20(2), and 23, 1984; September 7(2) and 17, 1984; and October 4, 12 and 22, 1984.

Brief description of amendment: The amendment:

1. Authorizes Cycle 10 operation at full power (2300 Mwt) with new steam generators.

2. Revises the Appendix A Technical Specification to:

(1) Increase setpoint limits for hot channel factors F_0 and F delta$_H$ limits;

(2) Increase BOL moderator temperature coefficient limits;

(3) Decrease overtemperature and overpower delta T setpoints;

(4) Provide for use of Power Distribution Control (PDC) II;

(5) Revise Reactor Coolant Pump Operability requirements;

(6) Add additional control rod drive evaluations (tests) while the containment integrity is not intact;

(7) Updated core descriptions; and

(8) General update to correct errors and inconsistencies with the TS and between the TS and FSAR.

Date of issuance: November 7, 1984.

Effective date: November 7, 1984.

Amendment No. 87.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, **Federal Register** Notices, August 24, 1984 (49 FR 33764) and October 5, 1984 (49 FR 39396).

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 7, 1984.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Pennsylvania Power & Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: October 19, 1984.

Brief description of amendment: This amendment changes Technical Specification 4.1.3.1.4 regarding scram discharge volume operability by providing a clarification of intent to permit retest of the scram discharge volume vent and drain valves.

Date of issuance: October 24, 1984.

Effective date: October 19, 1984.

Amendment No.: 25.

Facility Operating License No.: NFP-14.

Amendment revised the Technical Specifications. Public comment requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1984.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Nuclear Generating Plant, Unit No. 3, Westchester County, New York

Date of amendment request: November 1, 1984, as supplemented November 6, 1984.

Description of amendment request: This amendment revises the Technical Specifications, Section 4.1.A.1.f to change the steam generator tube plugging limit for pitting from an imperfection plugging depth of 50% to 63%.

Date of Issuance: November 9, 1984.

Amendment No. 50.

Effective Date: November 9, 1984.

Facility Operating License No. DPR-64. Amendment revised the Technical Specifications.

Press release issued requesting comments as to propose no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 6, 1984.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Southern California Edison Company, Docket No. 50206, San Onofre Unit 1, San Diego County, California

Date of application for amendment: July 23, 1984.

Brief description of amendment: The amendment revises limiting conditions for operation for snubbers in accordance with GL-84-13. In addition, some changes to surveillance requirements are made.

Date of issuance: October 15, 1984.

Effective date: October 15, 1984.

Amendment No. 81.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. Press Release.

Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated October 15, 1984.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida del Mar, San Clemente, CA 92676.

Dated at Bethesda, Maryland this 15th day of November 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch #3 Division of Licensing.

[FR Doc. 84-30560 Filed 11-20-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Storage Equities, Inc., Common Stock, $.10 Par Value; Notice of Application To Withdraw From Listing And Registration

November 15, 1984.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The Registration's common stock has been listed on the Amex. On October 16, 1984, the Commission declared effective a registration statement on Form 8-A pursuant to which the common stock became registered on the New York Stock Exchange ("NYSE").

(2) In making the decision to withdraw its common stock from listing on the Amex, the Registrant considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Registrant does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

(3) Amex has informed the Registrant that it has no objection to the withdrawal of the Registrant's common stock from listing on the Amex.

Any interested person may, on or before December 7, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date

mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30538 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. SR-Amex-84-33; Rel. No. 21493]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc.

November 16, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1984, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Amex proposes to change its rules applicable to the use of index option escrow receipts ("escrow receipts") for short call positions on broad-based index options that permit a customer to carry, on a covered basis, short call options contracts overlying a broad-based index without deposition margin with the carrying broker-dealer.[1] Under existing rules, the bank or trust company issuing the escrow receipt certifies that it holds for the customer at least ten qualified equity securities, each issued by a different entity, with a fixed aggregate dollar value at trade date and that it agrees to meet customer's settlement obligation upon assignment. The proposed rule change would, among other things, reduce the number of equity securities required to be held by the bank or trust company from 10 qualified equity securities to one or more qualified equity securities and would also permit the use of cash, cash equivalents or a combination thereof. In addition, such securities, cash or cash equivalents deposited in the bank by the customer must have an aggregate market value, at the time the option is written, of not less that 100 percent of the aggregate current index value.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-Amex-84-33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the Amex.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30542 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] The Chicago Board Options Exchange, Incorporated filed a substantially similar proposal with the Commission. *See* File No. SR-CBOE-84-28, Securities Exchange Act Release No. 21309, October 15, 1984, 49 FR 41128 October 19, 1984.

[Release No. 34-21480; SR-NASD-84-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing Requirements of the Interpretation of the Board of Governors—Review of Corporate Financing

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 November 5, 1984, the National Association of Securities Dealers, Inc. ("Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing the 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 proposed rule changes the filing requirements of the Interpretation of the Board of Governors—Review of Corporate Financing ("Corporate Financing Interpretation") pursuant to Article III, Section 1 of the Rules of Fair Pracitice of the Association for the purpose of exempting from the requirements all debt and equity offerings of securities offered by a corporate, foreign government, or foreign government agancy issuer which has senior non-convertible debt or preferred securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these comments may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Corporate Financing Interpretation under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH ¶2151) requires that most public offerings of debt and equity securities which involve member participation be filed with the Association for a review of the underwriting terms and arrangements. Certain types of offerings have been exempted from the filing requirements where market forces or other constraints were present to assure the fairness and reasonableness of underwriting terms and arrangements, including specifically the amount of underwriting compensation.

The Corporate Financing Interpretation exempts from the filing requirements straight debt issues rated "B" or better by a recognized rating service. In addition, pursuant to Notice-to-Members 83-12 (March 8, 1983), securities registered as part of a "shelf" registration on Form S-3 are exempt

from the filing rquirements. This rule change was approved by the Commission as a clarification of the filing requirement of the NASD's Corporate Financing Interpretation.

In early 1982, the Association determined that a review of the filing requirements under the Corporate Financing Interpretation should be initiated. This determination was based on several of the comments received on a proposal for codification of the Corporate Financing Rule distributed to the membership for comment in Notice-to-Members 81–16 (April 17, 1981) which included a number of additional proposed exemptions from the filing requirements.

The Association is proposing a rule change to exempt from the filing requirements of the Corporate Financing Interpretation, securities offered by a corporate, foreign government of foreign government agency issuer which has senior non-convertible debt or preferred securities which are rated in one of the four highest generic rating categorie considered by the securities industry to denominate the securities as "investment grade." The term "investment grade" refers to securities which have been rated "AAA" through "BBB" by Standard & Poor's and "Aaa" through "Baa" by Moody's.

It is the determination of the Association to limit the exemption of offerings of corporate and government securities, as compared to offerings of direct participation programs and real estate investment trusts. It is the experience of the Association that the terms of such latter offerings often approach the maximum limits on underwriting compensation permitted under the Association's compensation guidelines. In addition, offerings of securities by direct participation programs are subject to the provisions of Appendix F of Article III, Section 34 of the Rules of Fair Practice and require review to assure compliance with its affirmative suitability and due diligence provisions. Thus, the Association concluded that such offerings by direct participation programs and real estate investment trusts shoud be subject to review of underwriting terms and arrangements.

Foreign private issuers offer equity securities in the United States in the form of American Depository Receipts representing the securities being issued. With respect of offerings of debt securities, it is the understanding of the Association that foreign private issuers generally will not offer debt securities in the United States unless such debt receives a rating in one of the four highest generic rating categories by a nationally recognized statistical rating organization.

The exemption is also proposed to be available to foreign government and foreign government agency issuers. Foreign governments and their agencies do not offer their debt securities in the United States unless such securities receive an investment grade rating. Agencies of foreign governments are enumerated separately to clarify that the exemption is available to offerings by agencies of a foreign government which may not be considered an offering by that government itself nor by a foreign private corporate entity.

In order to quailfy for the proposed exemption, an enumerated issuer must have senior non-convertible debt or preferred equity securites rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. This reflects the Association's determination that an investment grade debt rating on senior debt or preferred equity securities of a corporation can be relied upon to assure the fair pricing of offerings of both debt and equity and the reasonableness of underwriting compensation, given the forces in the market, the corresponding requirement of competitive pricing, and the ability of the issuer to bargain for competitive compensation to the underwriter. This requirement would narrow the currently available exemption for debt offerings by corporate, non-corporate and foreign government and foreign government agency issuers. Thus, offerings rated "B" and "BB" by Standard and Poor's and rated "B" and "Ba" by Moody's would no longer be exempt from the Association's filing requirements. The exemption would, however, be expanded with respect to offerings of equity securities by corporate issuers which have investment grade senior non-convertible debt or preferred securities who are now required to file.

The investment grade rating is required with respect to an outstanding or a current offering of debt securities which is senior to other debt security obligations of the corporation. Alternatively, this condition may be satisfied by an investment grade rating of non-convertible preferred equity securities of the corporation. Thus, not only would an offering of investment grade senior debt or preferred equity securities be exempt from the filing requirements, but so too would any subsequent offering of debt or equity securities of a corporate issuer.

The association believes that a rating by a nationally recognized statistical rating organization which focuses on the financial characteristics of the issuer can be relied upon as a basis for an exemption from the filing requirements with the Corporate Financing Interpretation. In order to qualify for the exemption a rating must be received in one of the "four highest general rating categories", i.e. "AA" through "BBB" by Standard & Poor's and "Aaa" through "Baa" by Moody's. A "generic" rating category is a major rating category and does not include subcategories. A "nationally recognized statistical rating organization" refers to firms engaged in the business of providing ratings on securities which have been recognized by the Securities and Exchange Commission for this purpose. The language of this part of the exemption is compatible with that in Section B(2) of the Instructions to the Form S–3 Registration Statement. The four highest generic rating categories are considered investment grade as the ratings reflect confidence regarding the ability of the corporation to meet dividends and to redeem the obligations when required to do so.

The proposed amendments relate only to the filing requirements and do not constitute exemptions from the substantive requirements of the Corporate Financing Interpretation. Members will still be expected to assure compliance with those requirements in any offerings in which they participate. Additionally, the proposed exemptions relate only to the filing requirement under the Corporate Financing Interpretation; these exemptions do not extend to offerings which are subject to Schedule E to Article IV, Section 2 of the NASD By-Laws concerning offerings by members of their own securities or those of affiliates.

The proposed rule change is being made pursuant to Sections 15A(b)(2) and 15A(b)(6) of the Securities Exchange Act of 1934 in furtherance of the Association's responsibility for promulgating rules which prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and generally protect investors.

(B) Self-Regulatory Organizations Statement on Burden on Competition

The proposed amendment results in the exemption from the filing requirements of the Corporate Financing Interpretation of debt and equity securities offered by a corporate, foreign government, or foreign government agency issuer which has senior non-convertible debt or preferred securities which are rated in one of the four

highest generic rating categories by a nationally recognized statistical rating organization. This change would relieve certain issuers which must currently file with the Association from the obligation of compliance with these requirements. Conversely, certain other offerings currently exempt from filing, would be required to do so.

Under the present Corporate Financing Interpretation, "shelf" offerings of securities registered on Form S-3 and straight-debt issues rated "B" or better by a recognized rating service need not be filed with the Association. Accordingly, by amending the filing requirements to exempt a narrower class of issuers, debt instruments rated "B" or "BB" by Standard and Poor's and "B" or "Ba" by Moody's would become subject to NASD review. Issuances of such non-investment grade, speculative fixed income securities usually involves higher underwriting compensation. Such speculative debt is often marketed much like equity. Filing and review of underwriting terms and arrangements for such issuings are considered by the Association to be justified. It should be noted however, that should the issuer of a debt offering which is not of investment grade also have outstanding investment grade senior debt, the issuer would not be required to file the lesser debt offering.

The proposed amendment would extend the filing requirement exemption to corporate equity offerings of issuers with outstanding investment grade senior debt. Thus, such seasoned corporate equity issuers which are currently required to comply with both the substantive and filing requirements of the Interpretation would be relieved of the filing requirements. With respect to offerings of non-convertible debt and preferred securities, the association believes that regardless of the issuing entity, the issurance of securities rated investment grade is unlikely to require review of the underwriting terms and arrangements. Underwriting compensation in connection with investment grade debt offerings is traditionally modest in terms of the permissible level of compensation.

For the foregoing reasons, the Association believes that the proposed rule change presents no impact in competition which is not necessary in furtherance of the purposes of the Exchange Act as amended.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

A proposed rule change to exempt debt and equity offerings of seasoned issuers was published for member comment in Notice-to-Member 83–25 (May 27, 1983). The Association received one comment on the rule proposal. After due consideration of the comment received, the Board of Governors approved the proposed rule change. Due to recent evolutionary changes in the use of registration forms by seasoned issuers, the proposed rule change was substantially altered which required the withdrawal of the initial proposal and the filing of this proposed amendment to the filing requirement. The Association has concluded that no additional publication for comment is necessary.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this Notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve 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, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filings will also 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 on or before December 12, 1984.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: November 14, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30535 Filed 11–20–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Boston Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

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 stocks:

Adams-Russell Co., Inc.
Common Stock, $.50 Par Value, File No. 7–8119

American International Group, Inc.
Common Stock, $.2.50 Par Value, File No. 7–8120

National Convenience Stores, Inc.
Common Stock, $.41 ⅔ Par Value, File No. 7–8121

Lorimar
Common Stock, No Par Value, File No. 7–8122

T Bar, Inc.
Common Stock, $.25 Par Value, File No. 7–8123

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, 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, D.C. 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30539 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

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 stocks:

Mestek, Inc.
Common Stock, $5.00 Par Value, File No. 7-8139
General Motors Corporation
Class E Common Stock, File No. 7-8140
Harris Graphics Corporation
Common Stock, $.01 Par Value, File No. 7-8141
AGS Computers Inc.
Common Stock, $.10 Par Value, File No. 7-8142
Storage Equities, Inc.
Common Stock, $.10 Par Value, File No. 7-8143
Wilfred American Educational Corporation
Common Stock, $.10 Par Value, File No. 7-8144
TNP Enterprises, Inc.
Common Stock, $.10 Par Value, File No. 7-8134
Ozark Holdings, Inc.
Common Stock, $.50 Par Value, File No. 7-8135
American International Group, Inc.
Common Stock, $2.50 Par Value, File No. 7-8136
Bergen Brunswig Corp.
Class A Common Stock, $1.50 Par Value, File No. 7-8137
Korea Fund
Common Stock, $.01 Par Value, File No. 7-8138

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30540 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

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 stocks:

Amdahl Corporation
Common Stock, $.05 Par Value, File No. 7-8124
Bankers Trust NY
Common Stock, $10.00 Par Value, File No. 7-8125
Chesebrough-Ponds
Common Stock, $1.00 Par Value, File No. 7-8126
Coleco Industries
Common Stock, $1.00 Par Value, File No. 7-8127
Dun & Bradstreet
Common Stock, $1.00 Par Value, File No. 7-8128
Horn & Hardart
Common Stock, $.666 Par Value, File No. 7-8129
Illinois Power
Common Stock, No Par Value, File No. 7-8130
Kroger Company
Common Stock, $1.00 Par Value, File No. 7-8131
Public Service of Indiana
Common Stock, No Par Value, File No. 7-8132
Telesphere International
Common Stock, $.01 Par Value, File No. 7-8133

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, 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, D.C. 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30536 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 14, 1984.

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 stocks:

Pulte Home Corporation
Common Stock, $1.00 Par Value, File No. 7-8117
The Quaker Oats Company
Common Stock, $5.00 Part Value, File No. 7-8118
Security Pacific Corporation
Common Stock, $10.00 Par Value, File No. 7-8114
GenRad, Inc.
Common Stock, $1.00 Par Value, File No. 7-8115
Club Med, Inc.
Common Stock, $1.00 Par Value, File No. 7-8116

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 6, 1984, 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, D.C. 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30537 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organization; Philadelphia Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 16, 1984.

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 stocks:

Pan Am Corp.

Common stock, $.25 Par Value, File No. 7-8145

Burroughs Corp.

Common stock, $5.00 Par Value, File No. 7-8146

Helene Curtis Industries, Inc.

Common Stock, $1.00 Par Value, File No. 7-8147

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 10, 1984, 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, D.C. 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.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30541 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23479; 70-7003]

Central Power & Light Co.; Supplemental Notice of Proposal Requesting Approval of Pollution Control Financing

November 14, 1984.

Central Power and Light Company ("Company"), 120 North Chaparral Street, Corpus Christi,Texas, 78401, a wholly owned subsidiary of Central and South West Corporation, a registered holding company, has filed an amendment to a proposal pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

An aggregate of $139,200,000 amount of Matagorda County Navigation District Number One Adjustable Rate Pollution Control Revenue Bonds (Central Power and Light Company Project) Series 1984 ("Series 1984 Bonds") were issued in October 1984 pursuant to an order of the Commission (HCAR No. 23462) under which the Commission reserved jurisdiction for the issuance of an additional $60,800,000 aggregate principal amount of bonds. The Company now requests authority for the issuance of up to $160,000,000 aggregate principal amount of bonds ("Additional Bonds"), which amount includes the $60,800,000 over which the Commission has reserved jurisdiction. Such bonds will have substantially the same terms as the Series 1984 Bonds previously approved, however, based on market conditions, the first date on which the initial interest rate may be changed and the first right of bondholders to cause redemption of or put the Additional Bonds may be up to five years after the issuance, rather than one year as is the case for the Series 1984 Bonds. As a result of the extended initial put, market conditions may require that the Additional Bonds provide for refunding protection for up to the first five years through the issuance of debt securities at a lower interest cost than the Additional Bonds or otherwise.

The Company also proposes to issue, as security for the payment of the Additional Bonds, First Mortgage Bonds by executing a Supplemental Indenture to its Mortgage Indenture dated November 1, 1943 to The First National Bank of Chicago and A.R. Bohm, Trustee. The First Mortgage Bonds will be issued to the Trustee (RepublicBank, Dallas, N.A.) under the Indenture of Trust in respect of the Additional Bonds, between First Mortgage Bonds will be held by the Trustee solely for the benefit of the holders of Additional Bonds and will not be transferable except to a successor Trustee. The First Mortgage Bonds will be issued in the exact amount and have the same terms as the Additional Bonds and payments thereon will be used to make the necessary payments of interest and principal on the Additional Bonds.

If market conditions change drastically between now and the issuance of an order in this file, an event the Company considers highly unlikely, the Company will issue the Additional Bonds as conventional fixed interest term bonds of from a 5 to 30 year term. Any such term bonds issued would also have First Mortgage Bonds issued as a security backup.

The supplemental proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the supplemental proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30489 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14236; 812-5886]

Midland Capital Corp. and Midland Venture Capital Ltd.; Filing of Application for an Order Amending a Prior Order Exempting Applicants

Notice is hereby given that Midland Capital Corporation ("Midland"), and its

wholly-owned subsidiary, Midland Venture Captial Limited ("Ventures"), 950 Third Avenue, New York, NY, 10022, a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") under the Small Business Investment Act of 1958, as amended ("SBI Act") (jointly, under Act of 1940 ("Act") as business development companies, filed an application on June 29, 1984, and an amendment thereto on November 6, 1984, for an order of the Commission, pursuant to Section 6(c) of the Act, modifying certain conditions of a prior order ("Second Order") of the Commission dated February 9, 1983 (Investment Company Act Release No. 13021/Securities Exchange Act Release No. 19498) to the extent necessary to exempt Applicants from the asset coverage requirements of Section 18(a), as modified by Section 61, of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Midland provides ventures capital equity financing and managerial advisory services to selected independent businesses which, in the opinion of Midland's board of directors, have a significant potential for long-term growth. Midland is a publicly-held company whose common stock is traded on the over-the-counter market.

Applicants state that Ventures, as an SBIC, has obtained financing through subordinated debentures issued to, or guaranteed by, the SBA in accordance with the provisions of the SBI Act and the exemption from Section 18(a) of the Act afforded by Section 18(k) of the Act. Under the SBI, Ventures is eligible to issue SBA-guaranteed debentures in an aggregate principal amount of at least up to 300% of its "private capital" (defined in § 107.3 of the Regulations under the SBI Act as its combined paid-in capital and paid-in surplus), subject to a maximum of $35,000,000 principal amount outstanding at any time.

Applicants state that they are successors of Midland Capital Corporation, a New York corporation ("Old Midland"), which, prior to the close of business on December 31, 1981, was a business development company under the Act and an SBIC licensed under the SBI Act. As of the close of business on December 31, 1981, Old Midland was reorganized into a two-tier structure ("Reorganization") by the merger of Old Midland into Ventures, which continued as a wholly-owned subsidiary of Midland.

Applicants state that, in connection with the Reorganization, Applicants and Old Midland, on December 29, 1981, obtained an order of the Commission (Investment Company Act Release No. 12131) ("First Order") granting exemptions from Section 57(a) of the Act of the extent necessary to permit Applicants and Old Midland to consummate the Reorganization and to permit Applicants to engage in certain affiliated or joint transactions subsequent to the Reorganization. The First Order was issued, subject to certain conditions, including, *inter alia*, the compliance of Midland, individually, of Midland and Ventures, on a consolidated basis, with the asset coverage requirements of Section 18(a), as modified by Section 61 of the Act.

Applicants state that the First Order severely restricted their ability to issue senior securities representing indebtedness, and, since Midland and Ventures intended to raise funds for investment through the issuance of indebtedness, including in the case of Ventures, SBA-guaranteed debentures, Applicants sought and received the Second Order of the Commission which, *inter alia*, modified the First Order to exempt Midland and Ventures from the asset coverage requirements of Section 18(a), as modified by Section 61 of the Act on the condition, *inter alia*, that Midland would not itself, and would not cause or permit Ventures to, issue any senior security representing indebtedness or sell any security representing indebtedness of which Midland or Ventures is the issuer, except that Midland and Ventures may issue and sell to banks, insurance companies and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof, made by private arrangement, provided: (a) Such notes or evidences of indebtedness are not intended to be publicly distributed, (b) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security, except as otherwise permitted by Section 61(a)(3) of the Act, and (c) immediately after the issuance or sale of any such notes or evidences of indebtedness by either of Midland or Ventures, Applicants on a consolidated basis, and individually, shall have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, except that, in determining whether Midland and Ventures, on a consolidated basis, have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, any borrowings by Ventures pursuant to SBA-guaranteed debentures shall not be considered senior securities and, for purposes of the definition of "asset coverage" in Section 18(h) of the Act, shall be treated as indebtedness not represented by senior securities.

The Second Order further stated that (a) Ventures may obtain financing through the issuance of SBA-guaranteed debentures on such basis and in such amount as the SBA may from time to time permit for SBIC's, (b) Ventures may borrow from Midland and Midland may borrow from Ventures, and (c) Midland may guarantee any borrowings by Ventures, provided that at the time of any such guarantee, and so long as any such guarantee shall be outstanding, 90% of the total assets of Midland are represented by its investment in Ventures or by securities similar to those in which Ventures invests. None of the borrowing or other arrangements permitted by this paragraph were to be deemed senior securities for purposes of the Second Order or Section 18 of the Act.

Applicants proposed to modify the conditions of the Second Order in accordance with the terms and conditions stated herein. The application indicates that Applicants would continue to be permitted to borrow from each other, Ventures would continue to issue SBA-guaranteed debentures, and Midland would continue to be permitted to guarantee the borrowings of Ventures.

If the Order requested by the application is granted by the Commission, Applicants stated that Midland intends to issue a convertible debenture in the principal amount of $2,000,000 as consideration for the purchase of 18,904 shares of common stock of Arrowhead Jewelry ("Arrowhead") from a minority shareholder of Arrowhead. Midland currently owns a majority of the capital stock of Arrowhead. If issued, the debenture would be convertible at any time after February 1, 1986, into 100,000 shares or Midland's common stock at an initial conversion price of $20.00 per share, subject to standard anti-dilution adjustments and to compliance with the provisions of Section 61(a)(3) of the Act. Applicants further state that at Midland's Annual Meeting of Stockholders on April 25, 1984, Midland's stockholders adopted a proposal to permit Midland to issue up to $10,000,000 principal amount of debentures which are convertible into common stock of Midland and which would be issuable in one or more series, provided that no series could have a preference or priority over any other series.

Applicants state, as a condition to the granting of an order pursuant thereto, they will comply with the following: (1) Midland may issue, and may cause or permit Ventures to issue, senior securities representing indebtedness or sell any senior security representing indebtedness of which Midland or Ventures is the issuer either in a privately arranged transaction in which such senior securities are not intended to be publicly distributed or in a public offering so long as Midland or Ventures, as the case may be, has outstanding only one class of senior securities representing indebtedness or, in the alternative, Midland may issue, and may cause or permit Ventures to issue, more than one class of senior securities representing indebtedness or sell more than one class of senior securities representing indebtedness of which Midland or Ventures is the issuer, so long as such senior securities are issued and sold to banks, insurance companies or other institutional investors in privately arranged transactions and are not intended to be publicly distributed and Midland or Ventures, as the case may be, does not have outstanding any publicly held indebtedness; provided that, in either case, (a) any such senior security representing indebtedness shall not be convertible into, exchangeable for, or accompanied by any options, warrants or rights to subscribe or acquire any equity security, except as otherwise permitted by Section 61(a)(3) of the Act, and (b) immediately after the issuance or sale of any such senior security representing indebtedness by either of Midland or Ventures, Midland and Ventures, on a consolidated basis, and Midland and Ventures, individually, shall have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, except that in determining whether Midland and Ventures, on a consolidated basis, have the asset coverage required by Section 18(a), as modified by Section 61 of the Act, any borrowings by Ventures pursuant to SBA-guaranteed debentures shall not be considered senior securities and, for purposes of the definition of "asset coverage" in Section 18(h) of the Act, shall be treated as indebtedness not represented by senior securities. (2)(a) Ventures may obtain financing through the issuance of SBA-guaranteed debentures on such basis and in such amount as the SBA may from time to time permit for SBIC's, (b) Ventures may borrow from Midland, and Midland may borrow from Ventures, and (c) Midland may guarantee any borrowings by Ventures, provided that at the time of any such guarantee, and so long as any such guarantee shall be outstanding, 90% of the total assets of Midland are represented by its investment in Ventures or by securities similar to those in which Ventures invests. The application indicates that none of the borrowings or other arrangements permitted by this subparagraph (2) shall be deemed senior securities for purposes of any order issued pursuant to this application or Section 18 of the Act.

In support of their exemptive request, Applicants state that the restrictive conditions of the Second Order go beyond the provisions of Section 18 and Section 61 of the Act which govern the capital structure of a business development company, such as Midland or Ventures. Applicants further state that since all of the senior securities currently issued or proposed to be issued by Midland rank *pari passu*, they do not give rise to the abuses Section 18(c) of the Act was designed to prevent. Applicants represent that, as business development companies, they will be subject to the restrictions of Section 18 of the Act, as modified by Section 61 of the Act, in issuing or selling any senior security representing indebtedness, and to the 200% asset coverage requirements and the exemption afforded by Section 18(k) of the Act so that the requested exemption is consistent with the purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 10, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30488 Filed 11-20-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Bulk Operating-Differential Subsidy Operators; Invitation for Comments and Applications for Permission to Carry Dry Bulk Preference Cargoes Without Subsidy

The Maritime Subsidy Board is considering an amendment to all bulk operating-differential subsidy (ODS) contracts that Article I-2(a) be amended to permit vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241, and 46 U.S.C. 1241a, at fair and reasonable rates for U.S.-flag commercial vessels but without ODS. The Board is currently considering two applications for a similar amendment.

By letter dated June 7, 1984, Equity Carriers I, Inc., Asoc-Falcon II Shipping Company and Equity Carriers III, Inc. (collectively Equity) requested an amendment to their Operating-Differential Subsidy Agreement, Contract No. MA/MSB-439, in order to allow their vessels to carry dry bulk preference cargoes at fair and reasonable rates but without ODS. Notice of Equity's June 7, 1984 application was published in the Federal Register of June 25, 1984 (49 FR 25913) Docket S-755 Sub. 1. A protest was filed on behalf of the American Maritime Association.

By letter dated April 2, 1984, Aeron Marine Shipping Company (Aeron) amended its application of February 8, 1984, to request that its new dry bulk carrier ARCHON be permitted to operate in worldwide dry bulk service with operating-differential subsidy except that the company does not request subsidy when transporting preference cargo. Notice of the amended February 8, 1984, application was published in the Federal Register on May 30, 1984 (49 FR 22587) Docket S-756. Comments were received from Equity requesting equal treatment for Equity and other subsidized bulk vessel operators. Protests were received by American Trading Transportation Company, Inc. concerning the substitution of the ARCHON for the GOLDEN DOLPHIN in the ODS contract but not mentioning the preference cargo without ODS issue. AMA protested the preference cargo part of the application. The California and Hawaiian Sugar Co. joined in AMA's protest.

The Maritime Administrator invites all other bulk operators with ODS agreements to submit comments if they

wish to have their ODS agreements amended in the manner set forth above.

Any person, firm or corporation having any interest and desiring to offer views and comments on the amendment to all bulk ODS contracts of Article I–2(a) to permit vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States at fair and reasonable rates for U.S.-flag commercial vessels, but without ODS for consideration by the Maritime Subsidy Board should submit them in writing.

All submissions should be sent, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300, 400 Seventh Street, SW, Washington, D.C. 20590 by 5:00 p.m. on December 7, 1984. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Subsidy Board.

Dated: November 15, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84-30512 Filed 11-20-84; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 36-84]

Treasury Notes of November 30, 1986; Series AB-1986

Washington, November 15, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of November 30, 1986, Series AB-1986 (CUSIP No. 912827 RN 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated November 30, 1984, and will bear interest from that date, payable on a semiannual basis on May 31, 1985, and each subsequent 6 months on November 30 and May 31 until the principal becomes payable. They will mature November 30, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 21, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 20, 1984, and received no later than Friday, November 30, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purposes are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and field range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate

will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Friday, November 30, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 28, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, November 30, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-30521 Filed 11-20-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 226
Wednesday, November 21, 1984

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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:37 p.m. on Thursday, November 15, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider an application for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 16, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-30669 Filed 11-19-84; 12:06 pm]

BILLING CODE 6714-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Nov. 14, 1984, 49 FR 45097.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 15, 1984, 10:00 a.m.

CHANGE IN THE MEETING: The following docket number has been added to the item below:

Item No., Docket No. and Company

CAG-3; RP84-120-000, West Texas Gas, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30594 Filed 11-16-84; 4:59 pm]

BILLING CODE 6717-02-M

3

FEDERAL HOME LOAN BANK BOARD

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., November 30, 1984.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 49, No. 223, page 45522, November 16, 1984.

PLACE: Board Room, Sixth Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677)

CHANGES IN THE MEETING: The following item has been added to the agenda for the accounting for mortgage backed securities.

John F. Ghizzoni,

Assistant Secretary.

No. 100, November 19, 1984.

[FR Doc. 84-30727 Filed 11-19-84; 3:36 pm]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30668 Filed 11-19-84; 12:06 pm]

BILLING CODE 6210-01-M

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FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 26, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW. Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

An additional item has been added to this meeting:

Studies of (1) futures and options markets, and (2) federal margin regulations (Public Docket No. R-0427).

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-30670 Filed 11-19-84; 12:18 pm]

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Wednesday
November 21, 1984

Part II

Department of Transportation

Office of the Secretary

14 CFR Ch. II

Transfer of Civil Aeronautics Board Functions to the Department of Transportation; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Ch. II

[Docket No. 82; Notice No. 84-17]

Transfer of Civil Aeronautics Board Functions to DOT

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 14 CFR Parts 300 through 326, which set forth the procedural regulations of the Civil Aeronautics Board (CAB). On January 1, 1985, the CAB will cease to exist and a number of its remaining functions will transfer to DOT consistent with the requirements of the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984. The proposed amendments are necessary to facilitate the efficient transfer of those CAB functions to DOT. While the Department does not have the authority to make changes to these regulations effective until January 1, 1985, comments on these matters are invited at this time so that the changes can be made expeditiously upon transfer of authority. Changes will also be required in the CAB's economic regulations to reflect the procedures that will apply to DOT's administration of the transferring functions. Commenters are encouraged to provide comments on these matters, which will be the subject of subsequent notices. The Department, however, will not consider substantive changes to the economic regulations governing the transferring CAB functions at this time. Those regulations will be carried over by the Department after the CAB ceases to exist.

DATES: Comments on this notice must be received on or before December 11, 1984.

ADDRESS: Comments should be submitted to the Docket Clerk, Room 10105, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Warren Dean, Assistant General Counsel for International Law, (202) 426-2972, or Vance Fort, Director, Special Programs, Office of the Assistant Secretary for Policy and International Affairs, (202) 426-4341, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Invitation for Comments

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. All comments received on or before the closing date for comments will be considerd by the Secretary before taking action on the proposed rule. The proposals contained in this notice may be changed or withdrawn in the light of comments received. All comments received 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 substantive contact with DOT personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the Department to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 82." The postcard will be date/time stamped and returned to the commenter.

Background

The Airline Deregulation Act of 1978 (ADA) mandated regulatory reform for the air transportation industry. As part of the regulatory reform process, the ADA provides for the sunset of the Civil Aeronautics Board (CAB) and the transfer to other agencies, effective January 1, 1985, of those CAB functions that are to continue. As amended by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984) (Sunset Act), the ADA provides that most of the CAB's remaining functions will transfer to DOT, with certain other functions transferring to the United States Postal Service. This proposal would amend the CAB's procedural regulations for DOT consistent with the jurisdictional scheme established by the ADA.

Under the terms of the ADA, as amended, the following CAB functions will transfer to DOT:

- *International aviation,* including participation in bilateral negotiations, selection and certification of U.S. carriers to serve on international routes; granting foreign air carriers authority to serve the United States; regulation of international fares and rates; investigation of unfair or deceptive practices or unfair methods of competition in foreign air transportation; action on unfair, deceptive, or discriminatory practices complaints in foreign air transportation; and regulation of international air mail rates.
- *Essential Air Service Program,* a ten-year subsidy program expiring October 1988, which guarantees a minimum level of air service to all communities that had certificated air carrier service when the ADA was enacted, and to certain other communities.
- *Section 43 Employee Protection,* which provides for the determination of whether the termination of airline employees is due primarily to deregulation, thereby making them eligible for certain Federal financial benefits.[1]
- *Consumer Protection and Air Carrier Fitness,* programs affecting both foreign and domestic air transportion which were specifically transferred to the Department by the Sunset Act.
- *Antitrust authority,* which provides for approval and antitrust immunity for mergers and similar transactions, interlocking relationships, and intercarrier agreements. This authority, except as it relates to agreements in foreign air transportation, expires on January 1, 1989, under the provisions of the Sunset Act.

These and most other functions previously performed by the CAB will be carried out within the Office of the Secretary of Transportation. International aviation functions, Section 43 labor determinations, air carrier fitness demonstrations, antitrust functions and economic analysis of the airline industry will be performed by the Office of the Assistant Secretary for Policy and International Affairs. The Essential Air Service Program will be carried out within a new office to be established by the Office of the Secretary. Most consumer functions will be performed by the Office of the Assistant Secretary for Governmental Affairs. The Department's Research and Special Programs Administration

[1] On May 17, 1984, the U.S. District Court for the District of Columbia held section 43 of the Airline Deregulation Act unconstitutional. *Alaska Airlines v. Donovan* (Civ. Action No. 84-0485 (D.D.C. May 17, 1984)).

The Department of Justice has filed a notice of appeal from this decision in the U.S. Court of Appeals for the Disrict of Columbia.

In addition, the Civil Aeronautics Board responded to the District Court's decision by issuing a show cause order on August 20, 1984. The order stayed all further steps in one of the ten employee protection cases assigned to Administrative Law Judges. The order further directed all parties to show cause by August 30 why the Board should not stay all further procedural steps in the other nine cases.

In the event that the Empolyee Protection Program is reinstated by action of the Courts or of the Congress, responsibility for it will still transfer to the Department of Transportation, which will make its determinations in accord with the final rules adopted pursuant to this notice.

(RSPA) will continue the CAB's information gathering functions.

Proposed Adoption of Amended CAB Procedural Regulations

In order to succeed to the CAB functions with a minimum of disruption, it is proposed that DOT adopt the CAB's current procedural regulations (appearing as Parts 300 through 326 of Title 14, Code of Federal Regulations) to carry out these functions with as few changes as possible. As explained below, certain modifications are necessary to reflect the organizational structure of DOT and its operating administrations and as technical corrections to omit references to terminating functions and functions transferring to other agencies. More importantly, DOT is proposing certain additional procedural arrangements to minimize any perception that improper influence could affect the administrative decisions of the Department in hearing cases, such as carrier selection for limited designation foreign air transportation route authority. This concern arises because these decisions are transferring from an independent agency with collegial decisionmaking to a single Cabinet officer within the Executive Branch. A more detailed discussion of the issue and the Department's resolution of it appears in the DOT Plan for Sunset of the Civil Aeronautics Board, dated February 1984, a copy of which is in the rulemaking docket.

This notice is only the first of several rulemaking documents to be issued by the Department in the coming weeks to effectuate the transfer of CAB functions to DOT. Under the Sunset Act, the Department was assigned several additional functions, including the carrying out of the CAB's antitrust authority. The Department will soon issue an NPRM proposing regulation to implement this antitrust authority.

The changes proposed to CAB's procedures reflect a delegation of the CAB functions by the Secretary to the Assistant Secretary for Policy and International Affairs in most cases. This is consistent with the delegation of most international decisions and other significant transportation issues to the DOT Policy Office, to be acted upon on behalf of the Secretary subject to her implicit authority to revoke the delegation. A few delegations would be made to other elements of the Department, such as the delegation of data collection to RSPA. A new office would be constituted to administer EAS functions, although review of its final actions would be assigned by the Secretary to the Assistant Secretary for Policy and International Affairs. The delegations will later be prescribed in a separate notice setting forth revisions to 14 CFR Part 385, but this proposal for changes to the CAB procedural regulations constitutes notice of these proposed arrangements.

This notice proposes one significant departure from routine delegations to assure adequate insulation against potential improper influence on DOT decisions in hearing cases. In the case of limited designation carrier selections under section 401 of the Act in international markets, enforcement proceedings and other determinations required by statute regulation or DOT order to be made upon the record of an oral evidentiary hearing, this notice proposes a special delegation. In those cases, the authority to make final binding decisions would be lodged at the level of the senior career official in the Policy Office, and review of exercises of such delegated authority would be limited to the alternatives of (1) unqualified approval by the Assistant Secretary, or (2) remand to the career official for action consistent with such remand. The order of remand would be without specific recommendation for final action by the Assistant Secretary but with a full explanation of the basis for remand. The Secretary could exercise this delegated review authority in place of the Assistant Secretary but would be subject to the same restrictions. Generally, the Secretary would exercise the review authority only where the decision involves significant national transportation policy issues. As in all cases involving formal evidentiary hearings, this decisionmaking process would be in conformity with the requirements of 5 U.S.C. 556 and other applicable provisions of the Administrative procedure Act (APA), and decisions will be based solely upon the record of the proceeding. These proposed changes to CAB's regulations are set forth in § 302.22a of the proposed rule.

As noted, most of the CAB functions delegated to the Policy Office would be delegated in the normal fashion to the Assistant Secretary. In addition to carrier authority in markets without limited designation, these functions include—

(1) Formal and informal rulemaking;

(2) International fares, rates, and tariff approvals;

(3) International mail rate determinations;

(4) Unfair trade practices complaint proceedings under sections 9 and 23 of the International Air Transportation Competition Act;

(5) Charter application determinations; and

(6) Exemption actions under section 416 of the Federal Aviation Act.

It is recognized that some other cases may warrant treatment as hearing cases under the special delegation to the senior career official discussed above. The CAB, for example, is currently conducting its employee protection proceedings pursuant to section 43 of the ADA under formal hearing procedures. For this reason, the Department proposes to delegate the authority to initiate and decide these cases to the senior career official, and to retain the option of making such a delegation in other exceptional cases.

One other noteworthy modification to CAB organizational arrangements is proposed in this notice. In the absence of international and domestic bureaus that are separately organized from the line of decisionmaking (as at CAB) to provide a separate advocate of the public interest in adversarial proceedings, the Department is proposing to constitute a new Office of the Assistant General Counsel for Aviation Enforcement and Proceedings within the General Counsel's office to undertake the public counsel role. This office would be supervised by an Assistant General Counsel and the Deputy General Counsel only, and not by the General Counsel who would instead provide counsel to the decisionmakers in the Policy Office and to the Secretary on agency decisions. The public counsel would take responsibility for litigating formal hearing cases and enforcement matters before the administrative law judges (ALJ's) or other duly constituted decisionmakers. The public counsel's participation in the decisionmaking phase would be limited to on-the-record submissions. The actions of this new office would not be reviewable or reversable, except by the Deputy General Counsel. Staff of the Office of the Assistant Secretary for Policy and International Affairs responsible for assisting this new office in the performance of its responsibilities also would be segregated from staff participating in the decisionmaking process. A comparable arrangement is already in use at the CAB for initiation of enforcement proceedings by the General Counsel's Office.

An Office of Hearings would be established in the Office of the Assistant Secretary for Administration and would be staffed by administrative law judges who would conduct all formal hearing

cases. The CAB docket section functions, with the exception of Sunshine Act functions which are not applicable to DOT proceedings, would be carried out in a newly established Documentary Services Division in the Office of the General Counsel.

A brief summary of the important decisionmaking procedures follows:

Carrier Selection Decisionmaking at DOT

The carrier selection process for foreign air transportation would be similar to that now used by the CAB; *i.e.*, a quasi-judicial process subject to the requirements of the APA would apply, including separation of functions, on-the-record decisionmaking, and rules governing *ex parte* contacts. This process and the APA requirements would ensure fairness and integrity in carrier selection decisions.

In hearing cases, the senior career official in the Office of the Assistant Secretary for Policy and International Affairs would draft and issue an instituting order establishing the public goals, policies, and criteria for the proceeding. This will be done in consulation with the Office of the General Counsel and Office of the Assistant Secretary for Policy and International Affairs.

DOT staff would appear in such proceedings, as appropriate, in a public counsel role similar to that currently performed by the CAB's Bureau of International Aviation. The DOT staff position would be prepared for presentation to the ALJ by the Office of the General Counsel's new Office of the Assistant General Counsel for Aviation Enforcement and Proceedings in conjunction with staff of the Office of the Assistant Secretary for Policy and International Affairs. Public counsel, airlines, and other interested parties would present their positions to the ALJ. In each hearing case, an ALJ would conduct a formal, on-the-record hearing and issue a recommended decision regarding the carrier to be selected. This recommendation would be reviewed by the senior career official in the Office of the Assistant Secretary for Policy and International Affairs who would issue a decision.

The Assistant Secretary for Policy and International Affairs would have discretionary authority, delegated by the Secretary, to review each decision issued by the senior career official, but his authority would be limited to approving the decision or remanding it for reconsideration. The Secretary, in her discretion, may exercise this review authority in place of the Assistant Secretary, subject to the same limitations and consistant with the criteria established for the exercise of this discretion.

Presidential review would continue to be limited, under Section 801 of the Federal Aviation Act, to national security and foreign relations considerations. Judicial review would continue to be available to any party dissatisfied with the outcome of the decision, to the same extent as under present law.

Essential Air Service Decisionmaking At DOT

A new Office of Essential Air Service (EAS) would be established as a separate office within the Office of the Secretary to administer the EAS subsidy program. This new office would conduct negotiations with carriers, set subsidy and service levels, establish community EAS standards, process carrier selection cases, evaluate and monitor air carrier performance, and perform other related EAS functions currently carried out by the CAB. EAS community hearings, conducted by senior staff members from the Office of EAS, the Office of the General Counsel, and the Office of the Assistant Secretary for Policy and International Affairs, would be instituted when necessary to consider appeals of the essential air transportation service level determinations. The Assistant Secretary for Policy and International Affairs, acting pursuant to authority delegated by the Secretary, would have the discretion to review service level determinations as well as make decisions on carrier selection and subsidy levels. The Secretary, at her discretion, could exercise this review authority in place of the Assistant Secretary.

Section 43 Employee Protection Decisionmaking at DOT

Initial determinations of whether the termination of airline employees is due primarily to deregulation, thereby making them eligible for certain Federal financial benefits, would be the responsibility of the senior career official in the Office of the Assistant Secretary for Policy and International Affairs. As in the case of carrier selection decisionmaking at DOT, an ALJ would conduct a hearing and present a recommended decision to the senior career official. Thereafter, the Assistant Secretary for Policy and International Affairs, or the Secretary, would have discretionary authority to review each decision of the senior career offical but his or her action would be limited to approving the decision or remanding it for reconsideration. DOT staff would appear in proceedings before the ALJ in a public counsel role similar to that currently exercised by the CAB's staff.

Regulatory Evaluation And Regulatory Flexibility Act Determination

This proposal was evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures dated February 26, 1979. The proposal is not considered to be "major," as defined by E.O. 12291, because it would not have an annual effect on the economy of $100 millon or more; it would not cause a major increase in costs or prices for consumers, individual industries, government agencies, or regions; and it would not have a significant adverse effect on competition or any other aspect of the economy. In fact, the economic impact is expected to be so minimal as not to warrant a full regulatory evaluation. The proposal is considered to be significant under DOT's Regulatory Policies and Procedures because it concerns a matter in which there is substantial public interest.

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal merely transfers certain continuing CAB functions to appropriate offices within DOT. Small entities should be virtually unaffected.

List of Subjects in 14 CFR Chapter II

Air carriers, Administrative practice and procedure.

Amendment to DOT Order 5610.1C

This order implements the National Environmental Policy Act and will apply to transferring Board Functions. The order will be updated to include provisions currently covered in 14 CFR 312.10, 312.11 and 312.18 and Appendix I.

Proposed Amendment

Accordingly, it is proposed to revise 14 CFR Chapter II, Subchapter B to read as set forth below. (It should be noted that this notice is based on the CAB regulations in effect in May 1984. Later amendments will be reflected in the final rule that will be issued based on this notice.)

(Airline Deregulation Act of 1978 (Pub. L. 95-504, October 24, 1978); Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984); Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et. seq.*), and 49 U.S.C. Subtitle I)

Issued in Washington, D.C. November 9, 1984.

Jim Burnley,

Acting Secretary of Transportation.

SUBCHAPTER B—PROCEDURAL REGULATIONS

PART 300—RULES OF CONDUCT IN DOT PROCEEDINGS UNDER THIS CHAPTER

Sec.

300.0 Applicability.
300.0a Applicability of 49 CFR Part 99.
300.1 Judicial standards of practice.
300.2 Prohibited communications.
300.3 Reporting of communications.
300.4 Separation of functions.
300.5 Prohibited conduct.
300.6 Practitioners' standards of conduct.
300.7 Conciseness.
300.8 Gifts and hospitality and other conduct affecting DOT employees.
300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.
300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT or the Civil Aeronautics Board.
300.10a Permanent and temporary disqualification of DOT employees.
300.11 Disqualification of Government officers and employees.
300.12 Practice of special Government employees permitted.
300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.
300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.
300.15 Opinions or rulings by the General Counsel.
300.16 Waivers.
300.17 Disqualification of partners of DOT employees.
300.18 [Reserved].
300.19 Use of confidential information.
300.20 Violations.

Authority: Secs. 204, 401–419, 901, 903, 1001, 1002, and 1007, Pub. L. 85–726, as amended; 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 783, 786, 788, 796; 76 Stat. 145; 91 Stat. 1284; 92 Stat. 1732; (49 U.S.C. 1324, 1371–1389, 1471, 1473, 1481, 1482, and 1487), unless otherwise noted.

§ 300.0 Applicability.

The rules of conduct set forth in this part except as otherwise provided in this or any other DOT regulation shall govern the conduct of the parties and their representatives, and the relationships between the Office of the Secretary of Transportation, the Office of the Assistant Secretary for Policy and International Affairs, and the Office of the General Counsel, including regular personnel, special Government employees, consultants, or experts under contract to the Department of Transportation (DOT) and administrative law judges (hereinafter referred to as "DOT employee(s)") and all other persons in all DOT matters resulting from the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended by the Civil Aeronautics Board Sunset Act of 1984.

§ 300.0a Applicability of 49 CFR Part 99.

(a) Except as provided in paragraph (b) of this section, each DOT employee involved in matters covered by this chapter shall comply with the rules on "Employee Responsibilities and Conduct" in 49 CFR Part 99.

(b) The rules in this Part shall be construed as being consistent with those in 49 CFR Part 99. If a rule in this Part is more restrictive than a rule in 49 CFR Part 99, the more restrictive rule shall apply.

§ 300.1 Judicial standards of practice.

Under the transfer of authority under Section 1601(b)(1) of the Federal Aviation Act of 1958, certain of DOT's functions are similar to those of a court, and parties to cases before DOT and those who represent such parties are expected—in fact and in appearance—to conduct themselves with honor and dignity as they would before a court. By the same token, any DOT employee or administrative law judge carrying out DOT's quasi-judicial functions and any DOT employee making recommendations or advising them are expected to conduct themselves with the same fidelity to appropriate standards of propriety that characterize a court and its staff. The standing and effectiveness of DOT in carrying out its quasi-judicial functions are in direct relation to the observance by DOT, DOT employees, and the parties and attorneys appearing before DOT of the highest standards of judicial and professional ethics. The rules of conduct set forth in this part are to be interpreted in light of those standards.

§ 300.2 Prohibited communications.

(a) *Basic requirement.* Except as provided in paragraphs (c), (d) and (e) there shall be no substantive communication in either direction between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding, until after final disposition of the proceeding, other than as provided by Federal statute or published DOT rule or order.

(b) *Definitions.* For purposes of this part:

(1) A "substantive communication" is any written or oral communication relevant to the merits of the proceeding.

(2) The "DOT decisionmaker" is defined in 14 CFR 302.22a.

(3) A "concerned DOT employee" is a DOT employee who is or may reasonably be expected to be directly involved in a decision which is subject to a public proceeding.

(4) A "public proceeding" is one of the following:

(i) A proceeding for which a Federal statute requires a hearing, after the filing of the document initiating the proceeding, or a matter on which DOT has ordered a hearing at which an employee presides at the taking of evidence, after the issuance of the order (such a proceeding is referred to as a "hearing case," with any other proceeding sometimes referred to as a "nonhearing case").

(ii) A rulemaking proceeding, after the issuance by DOT of a notice requesting public comment.

(iii) A tariff filing after DOT has ordered an investigation or a complaint has been filed or docketed.

(iv) A proceeding initiated by DOT show-cause order, after the filing in the docket of an identifiable written opposition to the order's tentative findings.

(v) Any other proceeding initiated by a docket filing, after the filing in the docket of an identifiable written opposition to the initiating document.

(c) *General exceptions.* Paragraph (a) of this section shall not apply to the following:

(1) Informal communications between legal counsel, including discussions about stipulations and other communications considered proper in Federal court proceedings.

(2) Information given to a DOT employee who is participating in a hearing case on behalf of an office that is a party, to another DOT employee who is reviewing that work, or to his supervisors within that office.

(3) Communications made in the course of an investigation to determine whether formal enforcement action should be begun.

(4) Settlement discussions and mediation efforts.

(5) Information given at the request of a DOT employee acting upon a specific direction of DOT, in a nonhearing case, where DOT has decided that emergency conditions exist and this rule would otherwise prevent the obtaining of needed information in a timely manner.

(6) Information given at the request of a DOT employee in a tariff matter after a complaint is filed but before an

investigation is ordered, or in a rulemaking proceeding.

(7) Nonhearing cases that are to be decided within 30 days after the filing of the initiating document.

(8) Nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389.

(9) In nonhearing cases, communications with other Federal agencies not exempted by paragraph (e) of this section.

(d) *Status and expedition requests.* Paragraph (a) of this section shall not apply to oral or written communications asking about the status, or requesting expeditious treatment, of a public proceeding. However, any request for expeditious treatment should be made in accordance with the Rules of Practice, particularly Rules 14 and 18, §§ 302.14 and 302.18 of this chapter.

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects to or from DOT employees involved in intergovernmental negotiations that would be barred by paragraph (a) are permitted if the communicator's position with respect to those negotiations cannot otherwise be fairly presented, but those communications shall not be considered as part of the record on which decisions must be made.

(f) *Communications not considered.* A communication in violation of this section shall not be considered part of a record, or included as available material, for decision in any proceeding.

§ 300.3 Reporting of communications.

(a) *General.* The following types of substantive communication shall be reported as specified in paragraph (b) of this section:

(1) Any communication in violation of § 300.2(a) of this chapter.

(2) Information given upon determination of an emergency under § 300.2 (c)(5) of this chapter.

(3) Information given at the request of a DOT employee in a rulemaking or tariff matter under § 300.2(c)(6) of this chapter.

(4) Communications in nonhearing cases to be decided within 30 days under § 300.2(c)(7) of this chapter.

(5) Communications in nonhearing cases arising under section 419 of the Federal Aviation Act, 49 U.S.C. 1389, made under § 300.2(c)(8).

(6) Communications in nonhearing cases with other agencies of the Federal government under § 300.2(c)(9).

(b) *Public filing.* (1) A written communication shall be put into the correspondence or other appropriate file of the proceeding, which shall be available for inspection and copying during business hours in the Documentary Services Division.

(2) An oral communication shall be summarized by the DOT employee receiving it. One copy shall be put into a public file as described in paragraph (b)(1) of this section, and another copy shall be mailed to the communicator.

(3) In addition, copies of written communications and oral summaries shall be filed in chronological order in a "Part 300" file maintained in the Documentary Services Division.

(4) Copies of all filings under this part dealing with discontinuances or reductions of air transportation shall be mailed to the directly affected local communities, State agencies, and airport managers.

(c) *Status and expedition requests.* A DOT decisionmaker who receives a communication asking about the status or requesting expeditious treatment of a public proceeding, other than a communication concerning national defense or foreign policy (including international aviation), shall either:

(1) Refer the communicator to the Documentary Services Division.

(2) If the DOT decisionmaker responds by advising on the status, put a memorandum describing the exchange in the public file as described in paragraph (b)(1) of this section.

§ 300.4 Separation of functions.

(a) A DOT employee who is participating in a hearing case on behalf of an office that is a party, another DOT employee who is in fact reviewing the position taken, or who has participated in developing the position taken in that case, or, in cases involving accusatory or disciplinary issues (including all enforcement cases) such employees' supervisors within that office, shall have no substantive communication with any DOT decisionmaker, administrative law judge in the case, or other DOT employee advising them, with respect to that or any factually related hearing case, except in accordance with a published DOT rule or order. In addition, each bureau or office supervisor of a DOT employee who is participating in a hearing case on behalf of that office when it is a party shall have no substantive communication with any administrative law judge in the case, or DOT employee advising the judge, in that or any factually related hearing case, except in accordance with a published DOT rule or order. For each hearing case, or office heads shall maintain a publicly available record of those employees who are participating or are in fact reviewing the position taken, or who have participated in developing the position taken in that case.

(b) In hearing cases involving fares or rates, or applications for a certificate or permit under sections 401 or 402 of the Act, or applications by a holder for a change in a certificate or permit, a supervisor who would not be permitted to advise the DOT decisionmaker under paragraph (a) may advise the DOT decisionmaker in the following manner. The supervisor's advice must either be made orally in an open DOT meeting or by a memorandum placed in the docket or other public file of such matter. Oral advice must be summarized in writing by the supervisor and placed in the docket or file of the matter. A copy of such written memorandum or summary or oral advice must be served on each party to the proceeding within 3 business days after such advice is given to the concerned DOT decisionmaker. Each of the parties may comment in writing on such advice within 5 business days after service or the summary. In no event, however, may a supervisor advise the DOT decisionmaker if he or she acted as the office's counsel or witness in the matter.

(c) In enforcement cases, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, under the supervision of the Deputy General Counsel, will conduct all enforcement proceedings and related investigative functions, while the General Counsel will advise the DOT decisionmaker in the course of the decisional process. The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will report to the Deputy General Counsel. To ensure the independence of these functions, this Office and the Deputy General Counsel, for the purpose of this section, shall be considered an "office" as that term is used in paragraph (a), separate from the General Counsel and the rest of the Office of the General Counsel.

(Sec. 204, 1001, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 788; 49 U.S.C. 1324, 1481)

§ 300.5 Prohibited conduct.

No person shall: (a) Attempt to influence the judgment of a concerned DOT employee by any unlawful means such as deception or the payment of money or other consideration; or

(b) Disrupt or interfere with the fair and orderly disposition of a DOT proceeding.

§ 300.6 Practitioners' standards of conduct.

Every person representing a client in matters before DOT in all contacts with DOT employees, should:

(a) Strictly observe the standards of professional conduct;

(b) Refrain from statements or other actions designed to mislead DOT or to cause unwarranted delay;

(c) Avoid offensive or intemperate behavior;

(d) Advise all clients to avoid improprieties and to obey the law as the attorney believes it to be; and

(e) Terminate the professional relationship with any client who persists in improprieties in proceedings before DOT.

§ 300.7 Conciseness.

Every oral or written statement made in a DOT proceding shall be as concise as possible. Verbose or redundant presentations may be rejected.

§ 300.8 Gifts and hospitality and other conduct affecting DOT employees.

(a) No person, otherwise than as provided by law for the proper discharge of official duty, shall directly or indirectly give, offer, or promise anything of value to any DOT employee for or because of any official act performed or to be performed by DOT employee (18 U.S.C. 201).

(b) Subject to 49 CFR Part 99, it is improper for persons interested in the business of DOT to provide hospitality, gifts, entertainment, or favors to any DOT employee.

(c) Persons interested in the business of DOT should familiarize themselves with (49 CFR Part 99), in order that they shall not encourage or cause any violation of the provisions of that Part by any DOT employee.

§ 300.9 Permanent disqualification of employees from matters in which they personally participated before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall permanently disqualify himself from participation in every matter before the Department in which he previously personally and substantially participated for an interested person or entity, including other agencies of the United States Government, before joining the DOT or the Civil Aeronautics Board. Such disqualification shall be applicable also if a person is closely related to is a DOT employee as partner, associate, employer, or the like, personally and substantially participated in a matter before DOT prior to the employee's employment by the Department or the Civil Aeronautics Board and the circumstances were such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his participation would be affected by his prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee, including any member of a DOT employee's personal staff or a special Government employee, whose prior personal and substantial participation in a DOT or Civil Aeronautics Board proceeding or whose relationship to one who so participated occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding unless participation could fairly be said to create the appearance that his or her participation would be affected by his or her prior relationship.

§ 300.10 Temporary disqualification of employees from matters in which they had official responsibility before joining DOT or the Civil Aeronautics Board.

Any DOT employee shall temporarily disqualify himself from participation in any matter before DOT if he represented, was associated with or was employed by an interested person or entity including other agencies of the United States Government before joining DOT or the Civil Aeronautics Board, and, although he did not personally and substantially participate in the matter, the matter was within his "official responsibility," as that term is defined in § 300.14 of this chapter except that the action referred to therein shall be private action as well as "Government" action. Such disqualification shall be applicable also if a person closely related to the DOT employee as partner, associate, employer, or the like, who, while not personally and substantially participating in the matter, had it within his "official responsibility" as that term is defined in § 300.14 of this chapter, and modified above, and the circumstances are such that the DOT employee's subsequent participation in the matter as a DOT employee could fairly be said to create the appearance that his participation would be affected by his prior relationship. Notwithstanding the foregoing, the disqualification of any DOT employee whose prior "official responsibility" or relationship to one with such responsibility occurred on behalf of another agency of the United States Government shall only be applicable with respect to issues on which the prior governmental employer took a position in the proceeding. The temporary disqualification shall run for a period of one year from the date of the termination of the representation, association, or employment with the interested person or entity.

§ 300.10a Permanent and temporary disqualification of DOT employees.

Due to the transfer of authority under 1601(b)(1) of the Federal Aviation Act of 1958, the terms of §§ 300.9 and 300.10 shall not be construed to apply to DOT employees who previously personally and substantially participated in matters before the Board, which has become the subject of DOT proceedings.

§ 300.11 Disqualification of Government officers and employees.

No officer or employee of the Federal Government, other than a "special government employee" as defined in 18 U.S.C. 202, shall represent anyone, otherwise than in the proper discharge of his official duties, in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest.

(18 U.S.C. 205)

§ 300.12 Practice of special Government employees permitted.

A special Government employee, who qualifies as such under the provisions of 18 U.S.C. 202(a), may participate in DOT proceedings only to the extent and in the manner specified in 18 U.S.C. 205.

§ 300.13 Permanent disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters in which they personally participated.

No former Board member or employee or DOT employee shall act as agent or attorney before DOT for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter, involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise as a Board member or employee or DOT employee.

(18 U.S.C. 207(a))

§ 300.14 Temporary disqualification of former Civil Aeronautics Board members and employees and DOT employees from matters formerly under their official responsibility.

Within one year after termination of employment with the Board or DOT, no

former Board member or Board employee or DOT employee shall appear personally before DOT on behalf of any person other than the United States in any DOT proceeding or matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility at any time within one year preceding termination of such responsibility. The term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(18 U.S.C. 202(b), 207(b))

§ 300.15 Opinions or rulings by the General Counsel.

(a) The General Counsel is authorized to render opinions or rulings to the public on the application of the provisions of this part. When written request is made for such opinions and rulings, they shall be transmitted to DOT and shall be available to the public in the Documentary Services Division after any appeal to or review by the Secretary has been completed or after the time for review has expired. Identifying details shall normally be stricken from copies available to the public unless the public interest requires disclosure of such details.

(b) If any person is disqualified from a particular proceeding under the provisions of §§ 300.9, 300.10, 300.13, 300.14, and 300.17 of this chapter by a ruling of the General Counsel, or by such person's own action, such disqualification shall be memorialized in a writing filed in the appropriate file of the matter by the General Counsel or such person.

§ 300.16 Waivers.

(a) A former Board member, Board employee or DOT employee with outstanding scientific or technological qualifications who is disqualified from acting in a representative capacity under the provisions of § 300.13 or § 300.14 of this chapter may nevertheless participate in a proceeding in a scientific or technological field pursuant to the terms of a certificate issued in compliance with the proviso following 18 U.S.C. 207 (a) and (b).

(b) An employee who believes his prior employment relationships will not affect the integrity of his services may request that the prohibition of § 300.9 or § 300.10 of this chapter be waived by the appropriate Ethics Counselor under 49 CFR 99.735–71.

§ 300.17 Disqualification of partners of DOT employees.

No partner of a DOT employee shall act as agent or attorney for anyone other than the United States in any DOT proceeding or matter in which such employee participates or has participated personally and substantially through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise, or which is the subject of his official responsibility.

(18 U.S.C. 207(c))

§ 300.18 [Reserved]

§ 300.19 Use of confidential information.

No former CAB member or employee or DOT employee, or any person associated with him or her, shall ever use or undertake to use in any DOT proceeding or matter any confidential facts or information which came into the possession of such Member or employee or to his attention by reason of his employment with the CAB or DOT without first applying for and obtaining the consent of the appropriate ethics counselor for the use of such facts or information.

§ 300.20 Violations.

(a) DOT may disqualify, and deny temporarily or permanently the privilege of appearing or practicing before it in any way to, any person who is found by DOT after written notice of charges and hearing to have engaged in unethical or improper professional conduct. Any violation of this part shall be deemed to be such conduct.

(b) When appropriate in the public interest, DOT may deny any application or other request of a party in a proceeding subject to this part where DOT finds after hearing that such party has, in connection with any DOT proceeding, violated any of the provisions of this part or any of the provisions of Chapter 11 of Title 18 of the United States Code. DOT may also condition its further consideration of such party's application or other request or the effectiveness of any order granting such application or other request upon such party's first taking such action as DOT may deem necessary or appropriate to remedy the violation of this part or Chapter 11 of Title 18 of the United States Code to prevent or deter any repetition of such violation. DOT may in addition issue a cease and desist order against any repetition of such or similar misconduct.

(c) The actions authorized by this section may take place within the framework of the matter during or concerning which the violations occur or in a separate matter, as the DOT decisionmaker or the presiding administrative law judge may direct. A complaint alleging that a violation has occurred in the course of a matter shall be filed in the docket or appropriate public file of such matter unless such complaint is made after DOT's decision of the matter has become final, in which event such complaint may be filed pursuant to Part 302, Subpart B of the rules of practice. A violation in the course of a matter which may be attributable to or affect the fitness of a party will ordinarily either be disposed of within the framework of such matter or be considered within the context of any subsequent matter involving the interests of such party. Other violations will ordinarily be disposed of in a separate proceeding.

(d) In the case of any violation of the provisions of this part, the violator may be subject to civil penalties under the provisions of section 901 of the Act. The violator may also be subject to a proceeding brought under section 1002 before the Department and under sections 903 and 1007 of the Act before a U.S. district court to compel compliance with civil penalties which have been imposed.

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Appendix A—Index to Rules of Practice

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85-726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 763, 770, 783, 788, 794; 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91-90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all economic proceedings before DOT whether instituted by order of DOT or by the filing with DOT of an application, complaint, petition, or a section 412 contract or agreement. This part also contains delegations to administrative law judges and to the DOT decisionmaker of DOT's function to render the agency decision in certain cases. The decision of administrative law judges is subject to review by the DOT decisionmaker, pursuant to authority delegated by the Secretary. Decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Policy and International Affairs. In appropriate cases, the Secretary may exercise the discretionary review authority. The provisions of Part 263 of this chapter of the Economic Regulations are applicable to participation of air carrier associations in proceedings under this part. Proceedings involving "Alaskan air carriers" are governed by the rules in this part, except as modified by Part 292 of this chapter.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to Subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT relating to the proceeding.[2] Wherever there is any conflict between one of the general rules in Subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

§ 302.2 Reference to part and method of citing rules.

This part shall be referred to as the "Rules of Practice". Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule". The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "302.8 *Service of documents*", shall be referred to as "Rule 8". Paragraph (a)(2) of that rule, relating to service documents by the parties, shall be referred to as "Rule 8 (a)(2)".

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of Transportation, Washington, D.C. 20590. Such documents shall be deemed to be filed on the date on which they are actually received by DOT. The hours of DOT are from 9:00 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) *Formal specifications of documents*—(1) *Typewritten documents.* All typewritten documents, except briefs before DOT, filed under this part shall be on strong, durable paper not larger than 8½ by 14 inches, except that tables, charts and other documents may be larger if folded to the size of the document to which they are physically attached. Typewritten briefs before DOT shall be on paper not larger than 8½ by 11 inches except that tables, charts, and maps physically attached to the brief may be on paper not larger than 8½ by 14 inches and folded to the size of the brief. Requirements as to contents and style of briefs are contained in § 302.31. Text shall be double-spaced except for footnotes and long quotations which may be single-spaced. Type not smaller than elite shall be used. The left margin shall be at least 1½ inches; all other margins shall be at least 1 inch. If the document is bound, it shall be bound on the left side.

(2) *Printed documents.* Printed (typeset) documents that are limited as to number of pages under these rules shall be on paper not larger than 6⅛ inches by 9¼ inches, with all margins of at least 1 inch. The text, footnotes, and all physical attachments to any printed document shall be printed in clear and readable type, not smaller than 11 point, adequately leaded.

(3) *Reproduction of documents.* Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Documentary Services Division, except that an original and five (5) copies of third party complaints, answers, documents dealing with discovery, and motions addressed to an administrative law judge may be filed in proceedings under Subpart B—Rules Applicable to Enforcement Proceedings. In any route proceeding that affects a point in Alaska, the person filing shall send an additional copy to: Department of Transportation, 701 C Street, Box 27, Anchorage, Alaska 99513. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he or she represents, shall also be typed or printed on all copies below the space provided for signature.

(d) *Table of contents.* All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

[2] The Federal Aviation Act of 1958 may be found at 72 Stat. 731, and at 49 U.S.C. 1301 *et seq.* The Department's substantive rules may be found in its Economic Regulations and Special Regulations (Subchapters A and D of this chapter, respectively).

§ 302.4 General requirements as to documents.

(a) *Contents.* In case there is no rule, regulation, or order of DOT which prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required by § 312.12 or § 312.14 of this subchapter, such document shall, at the appropriate time, be accompanied by an Environmental Evaluation, a representation and explanation with respect to § 312.9(a)(2) of Part 312, or an Environmental assessment, in conformity with those sections or orders issued thereunder.

(b) *Subscription.* Every application, petition, complaint, motion or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person; *Provided,* That, if signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) *Designation of person to receive service.* The initial document filed by a person shall state on its first page the name and post office address of the person or persons who may be served with any documents filed in the proceeding. It is requested, but not required, that the telephone number of that person also be included.

(d) *Prohibition of certain documents.* No document which is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters shall be filed with DOT unless:

(1) Such document and its filing by the person submitting it has been expressly authorized or required in the Federal Aviation Act of 1958, any other law, this part, other Department regulations, or any order or other document issued by the DOT decisionmaker, the chief administrative law judge or an administrative law judge assigned to the proceeding, and

(2) Such document complies with each of the requirements of §§ 302.3 and 302.8, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication: *Provided, however,* That for good cause shown, pleadings of any public body or civic organization may be submitted in the form of a letter: *Provided further,* That comments concerning tariff agreements, which have not been docketed, may be submitted in the form of a letter.[3]

(e) *Documents improperly filed.* A document which is filed in violation of the prohibition imposed by paragraph (d) of this section, or in violation of a requirement imposed by any other provision of this part, will not be accepted for filing by DOT and will not be physically incorporated in the docket of the proceeding. The sender of such document and all persons who have been served therewith will be notified informally of DOT's action thereon.

(f) *Motions for leave to file otherwise unauthorized documents.* (1) DOT will accept otherwise unauthorized documents for filing only if leave has previously been obtained, from the administrative law judge or the DOT decisionmaker, on written motion and for good cause shown. The written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(2) After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, these motions shall be addressed to the administrative law judge. At all other times, such motions shall be addressed to the DOT decisionmaker. The administrative law judge or DOT decisionmaker will promptly pass upon such motions.

(3) Such motions shall be filed within seven days after service of any document or order or ruling to which the proposed filing is responsive, and shall be served on all parties to the proceeding. Answers thereto may not be filed.

(4) Such motions shall contain a concise statement of the matters relied upon as good cause and there shall be attached thereto the pleading or other document for which leave to file is sought.

[3] See Subpart L, § 302.1206 providing for the filing of comments with respect to undocketed agreements.

(Secs. 102, 402, 404, and 412 (72 Stat. 740, 757, 760, 770, (49 U.S.C. 1302, 1372, 1374, 1382)); National Environmental Policy Act of 1969 (Pub. L. 91-90, 42 U.S.C. 4321 *et seq.*) and E.O. 11514)

§ 302.5 Amendment of documents and dismissal.

If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of DOT as to the contents thereof, or is otherwise insufficient but not subject to rejection under § 302.4(e), DOT, on its own initiative, or on motion of any party, may strike or dismiss such document, or require its amendment. An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to its designation for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.18. If properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required. Protests or memoranda of opposition or support, permitted by statute, shall be filed in lieu of answers or shall be combined with answers.

Note: DOT does not grant formal intervention in nonhearing matters, such as applications for exemption under section 416(b) of the Act, and any interested person may file documents authorized under this part without first obtaining leave.

(b) Further responsive documents: Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any further responsive document is not fileable, all new matter contained in such answer shall be deemed controverted. A party to a proceeding whose application has been the subject of a protest or memorandum of opposition or support, permitted by statute, may respond thereto before the close of the hearing in the case to which such documents relate, orally, in writing, or by introducing evidence, subject to appropriate rulings by the

administrative law judge. Once such response has been made, such party may also discuss the protest or memorandum in his brief to the administrative law judge or the DOT decisionmaker or in his or her oral argument.

(c) *Time for filing.* Except as otherwise provided, an answer or any further responsive document shall be filed within seven days after service of the document to which such responsive filing is directed. Protests or memoranda of opposition or support, permitted by statute, shall be filed before the close of the hearing in the case to which they relate.

§ 302.7 Retention of documents by DOT.

All documents filed with or presented to DOT may be retained in the files of the Documentary Services Division. However, DOT may permit the withdrawal of original documents upon the submission of properly authenticated copies to replace such documents.

§ 302.8 Service of documents.

(a) *Who makes service*—(1) *DOT.* Formal complaints, notices, orders to show cause, other orders, and similar documents issued by DOT will be served by DOT upon all parties to the proceeding.

(2) *The parties.* Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with DOT shall be served by such party or other person upon all parties to the proceeding in which it is filed: *Provided,* That motions to expedite filed in any proceeding conducted pursuant to sections 401 and 402 of the Act, shall, in addition, be served on all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are tendered for filing.

(b) *How service may be made.* Service may be made by regular mail, by registered mail, or by personal delivery. In the case of mailing to or from persons located in the territories or west of the Mississippi River to or from persons located in other territories or east of the said river mailing shall be by air mail. The means of service selected must be such as to permit compliance with section 1005(c) of the Act, which provides for service of notices, processes, orders, rules, and regulations by personal service or registered or certified mail.

(c) *Who may be served.* Service upon a party or person may be made upon an individual, or upon a member of a partnership, or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier under section 1005(b) of the Act, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(c) once a proceeding has been commenced.

(d) *Where service may be made.* Personal service may be made on any of the persons described in paragraph (c) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his office or usual place of residence. Service by regular or registered or certified mail shall be made at the principal place of business of the party to be served, or at his usual residence if he is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by air carrier under section 1005(b) of the Act, or at the post office address stated for a person designated to receive service pursuant to § 302.4(c).

(e) *Proof of service.* Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service.* Whenever proof of service by mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery is made, the date of such delivery shall be the date of service.

§ 302.9 Parties.

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings.

§ 302.10 Substitution of parties.

Upon motion and for good cause shown, DOT may order a substitution of parties, except that in case of death of a party, substitution may be ordered without the filing of a motion.

§ 302.11 Appearances; rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person or by attorney. No register of persons who may practice before DOT is maintained and no application for admission to practice is required. Any person practicing or desiring to practice before DOT may, upon hearing and good cause shown, be suspended or barred from practicing.

(b) Any person appearing in person in any proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may be accompanied, represented and advised by counsel and may be examined by his own counsel after other questioning.

(c) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpena or by request or permission of DOT, may retain or, on payment of lawfully prescribed costs, procure a copy of any document submitted by him or a copy of any transcript made of his testimony.

§ 302.12 Consolidation of proceedings.

(a) *Initiation of consolidations.* DOT upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties, or issues which are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although DOT may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and DOT will not undertake to search its docket for all applications which might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless DOT has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or considerations of issues which enlarge, expand and change the nature of the proceeding shall be addressed to the DOT decisionmaker,

unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion which is not filed at or prior to the prehearing conference, or within the time prescribed by the DOT decisionmaker in a particular proceeding, as the case may be, shall be dismissed unless the movant shall clearly show good cause for his failure to file such motion on time. A motion which does not relate to an application pending at the time of the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested, or on the date specifically prescribed by the DOT decisionmaker in a particular proceeding for filing of motions for consolidation or contemporaneous consideration, shall likewise be dismissed unless the movant shall clearly show good cause for his failure to file the application within the prescribed period.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with DOT, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act (5 U.S.C. 551 *et seq.*))

§ 302.13 Joinder of complaints or complainants.

Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The DOT decisionmaker he or she may separate or split complaints if it finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of its business or the ends of justice.

§ 302.14 Participation in hearing cases by persons not parties.

(a) *Requests for expedition.* In any case to which the DOT's principles of practice. Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served as provided in § 302.8 of this part.

(b) *Participation in hearings.* Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements, or protests or memoranda in opposition or support where permitted by statute, shall be filed and served on all parties prior to the close of the hearing.

§ 302.15 Formal intervention in hearing cases.

(a) *Who may intervene.* Petitions for leave to intervene as a party will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing. Any person who has a statutory right to be made a party to such proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene. DOT does not grant formal intervention, as such, in nonhearing matters, and any interested person may file documents authorized under this part without first obtaining leave.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order which may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issue or delay the proceeding.

These criteria will be liberally interpreted to facilitate the effective participation by members of the public in DOT proceedings.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he thinks he should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by DOT, any petition for leave to intervene shall be filed within the following time limits:

(i) In a proceeding where DOT issues a show cause order proposing fair and reasonable mail rates, such petition shall be filed within the time specified for filing notice of objection.

(ii) In all other proceedings, including mail rate proceedings where no show cause order is issued, the petition shall be filed with DOT prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(iii) A petition to intervene in any Board proceeding filed by a city, other public body, or a chamber of commerce shall be filed with DOT not later than the last day prior to the beginning of the hearing thereon.

A petition for leave to intervene which is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by DOT that the intervening

party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

(Secs. 203 and 204, Federal Aviation Act of 1958, as amended, 72 Stat. 742 and 743; 49 U.S.C. 1323 and 1324)

§ 302.16 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation of the DOT or DOT decisionmaker the chief administrative law judge or an administrative law judge, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for DOT, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 302.17 Continuances and extensions of time.

(a) *Generally.* Whenever a party has the right or is required to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker, the head of the Documenting Services Division or the administrative law judge assigned to the proceeding may: (1) Before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of the specified period, where the failure to act is clearly shown to have been the result of excusable neglect.

(b) *Procedures.* Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a)(1) or (2) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.18 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. After the assignment of an administrative law judge to a proceeding and before the issuance of a recommended or initial decision, or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein.

Note: This paragraph is not construed as authorizing motions in the nature of petitions for reconsideration.

(a–1) *Motions to disqualify DOT employee in review of hearing matters.* In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision shall file a motion supported by an affidavit setting forth the grounds for such disqualification within the periods hereinafter prescribed. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions shall be filed on or before the date answers are due pursuant to § 302.28. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions shall be filed on or before the date briefs are due pursuant to § 302.31 or § 302.1755, as applicable. Failure to file a timely motion shall be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee shall be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except (1) where incorporation of a motion in another document is specifically authorized by a rule or order of DOT, or (2) where a document is filed which requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately entitled and identified to indicate that it incorporates a motion, otherwise the motion will be disregarded.

(c) *Answers to motions.* Within seven days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Unless the DOT decisionmaker or the administrative law judge provides otherwise, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where a reply to an answer or any other responsive document is not fileable, all new matter contained in such answer shall be deemed controverted.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Disposition of motions.* The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if he finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, he or she may refer such motion to that person for decision. The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision.

(f) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to its consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs

otherwise. The rulings of the administrative law judge on motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding irrespective of the filing of an appeal or any action taken on it.

(g) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time fixed by this part (or any extension granted thereunder) to take action.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481) Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.19 Subpenas.

(a) An application for a subpena requiring the attendance of a witness or the production of documentary evidence at a hearing may be made without notice by any party to the administrative law judge designated to preside at the reception of evidence or, in the event that an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge, for action by herself or himself or by the DOT decisionmaker.

(b) A subpena for the attendance of a witness shall be issued on oral application at any time.

(c) An application for a subpena for documentary or tangible evidence shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpena sought which shall describe the documentary or tangible evidence to be subpenaed with as much particularity as is feasible.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpena shall issue the subpena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpena. It is the purpose of this section, on the one hand, to make subpenas readily available to parties, and, on the other hand, to prevent the improvident issuance of subpenas to secure evidence which is unrelated to the issues of the proceeding or wholly unreasonable in its scope.

(e) Where it appears at a hearing that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge or chief administrative law judge may issue on his own motion a subpena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpenas issued under this section shall be served upon the person to whom directed in accordance with § 302.8(b). Any person upon whom a subpena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpena with the administrative law judge designated to preside at the reception of evidence or, in the event an administrative law judge has not been assigned to a proceeding or the administrative law judge is not available, to the chief administrative law judge for action by himself or herself or by the DOT decisionmaker. If the person to whom the motion to modify or quash the subpena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may at any time order that the return date of a subpena which he or she has elected to review be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. Applications therefor shall be addressed to the administrative law judge in writing and shall set forth the need of the moving party for such evidence and the relevancy to the issues of the proceeding. Such applications shall be processed as motions in accordance with § 302.18 except that a grant of such motion by an administrative law judge, in whole or in part, shall be immediately reviewed by the DOT decisionmaker on his or her own initiative and shall be subject to his or her final action. No application will be required for the attendance of DOT personnel or the production of records in their custody when requested by an enforcement attorney. Where a DOT employee has testified in an enforcement proceeding that he or she used documents in his or her custody, or parts thereof, to refresh his or her recollection, a ruling by the administrative law judge for their production shall be final in the absence of an objection by the enforcement attorney. In the event of such objection, the DOT decisionmaker's review will be limited to the documents, or portions thereof, to which objection is taken by the enforcement attorney.

§ 302.20 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned as a hearing officer in a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to an administrative law judge designated to preside at the reception of evidence or, in the event that a hearing officer has not been assigned to a proceeding or is not available, to the DOT decisionmaker setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the DOT decisionmaker or the administrative law judge may, in its or his discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, and the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall

be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevance of evidence, and he shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the officer. If the deposition is not subscribed to by the witness, the officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to the Documentary Services Division and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will only be authorized if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his objections, if any, to such interrogatories and may file such cross-interrogatories as he desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issue and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the stenographer, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.21 Attendance fees and mileage.

(a) *Where tender of attendance fees and mileage is a condition of compliance with subpena.* No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpena unless upon a service of the subpena he is tendered attendance fees and mileage by the party at whose instance he is called in accordance with the requirements of paragraph (b) of this section: *Provided,* That a witness summoned at the instance of DOT or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his public employment, need not be tendered such fees or mileage at that time.

(b) *Amount of mileage and attendance fees to be paid.* (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like service in the courts of the United States, as provided in paragraphs (b)(1) (i) through (iii) of this section: *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: *And provided further,* That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) *Per diem for attendance.* There shall be tendered $20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided,* That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the coach rate available at the time of reservation plus the required per diem attendance fees: *And provided further,* That in Alaska where permitted by section 403(b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

(2) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, who are summoned to testify at the instance of DOT or one of its employees or the United States or one of its agencies shall be paid in accordance with the provisions of paragraph (b)(1) of this section. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence and mileage from the Government before the close of the proceedings which they are required to attend. Only persons summoned by subpena shall be entitled to claim attendance fees, subsistence or mileage from the Government.

(3) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(4) Whenever the sums tendered to a witness are inadequate for reimbursement under the requirements of this section, and such witness has complied with the summons, he shall upon request within a reasonable period of time be entitled to such additional sums as may be due him under the provisions of this section. Whenever the sums tendered and paid to a witness are excessive under the above requirements, either because the witness traveled under the free or reduced rate provisions of section 403(b) of the Act, or for any other reasons, the witness shall upon request within a reasonable period of time refund such sums as may be excessive under the provisions of this section.

§ 302.22 Administrative law judges.

(a) *Defined.* The term "administrative law judge" as used in this part includes presiding officers, administrative law judges, or any other DOT employee assigned to hold a hearing in a proceeding.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he deems himself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

(c) *Powers.* An administrative law judge shall have the following powers, in addition to any others specified in this part:

(1) To give notice concerning and to hold hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpenas and to take or cause depositions to be taken;

(5) To rule upon offers of proof and to receive relevant evidence;

(6) To regulate the course and conduct of the hearing;

(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) To make initial or recommended decisions as provided in § 302.27;

(10) To take any other action authorized by this part, by the Administrative Procedure Act, or by the Federal Aviation Act.

The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision may be filed, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(d) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render an initial decision but shall recommend a decision to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act unless, in rulemaking or determining applications for initial licenses, the office advises him that it intends to issue a tentative decision.

§ 302.22a DOT decisionmaker.

(a) *Hearing cases.* In proceedings to be conducted on-the-record after notice and opportunity for an evidentiary hearing, the DOT decisionmaker is a senior career official in the Office of the Assistant Secretary for Policy and International Affairs authorized to issue final decisions of the Department under this Part. In addition, the DOT decisionmaker shall have all the powers of an administrative law judge and those additional powers delegated by the Secretary. Final decisions of the DOT decisionmaker are subject to review at the discretion of the Assistant Secretary for Policy and International Affairs. The Assistant Secretary may remand the decision to the DOT decisionmaker for further action consistent with such order or remand. The Secretary or the Deputy Secretary may exercise this review authority in lieu of the Assistant Secretary for Policy and International Affairs.

(b) *Nonhearing cases.* In all other proceedings, the DOT decisionmaker is the Assistant Secretary for Policy and International Affairs. The Assistant Secretary may delegate this authority in appropriate cases to officials within the Office of the Assistant Secretary for Policy and International Affairs.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.23 Prehearing conference.

(a) *Purpose and scope of conference.* Prior to any hearings there will ordinarily be a prehearing conference before an administrative law judge, although in economic enforcement proceedings where the issues are drawn by the pleadings such conference will usually be omitted. Written notice of the prehearing conference shall be sent by the chief administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The purpose of such a conference is to define and simplify the issues and the scope of the proceeding, to secure statements of the positions of the parties with respect thereto and amendments to the pleadings in conformity therewith, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters which the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuiness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing, etc.

The administrative law judge may require further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to hearing by subpena issued in accordance with the provisions of § 302.19 as though at a hearing. Applications for the production prior to hearing of documents in DOT's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.19(g), in the same manner as provided therein for production of documents at a hearing.

The administrative law judge may also on his own motion or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(b) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection which has not been met by a revision of the report if they are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.24 Hearings.

(a) *Notice.* The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

(b) *Evidence.* Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice and shall not be unduly repetitious. Evidence shall be presented in written form by all parties wherever feasible, as the administrative law judge may direct.

(c) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(d) *Exceptions.* Formal exceptions to the rulings of the administistrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he desires the administrative law judge to take or his objection to an action taken, and his grounds therefor.

(e) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(f) *Exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(g) *Substitution of copies for original exhibits.* In his discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(h) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy, of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or document, and to offer in evidence in like manner other portions thereof.

(i) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified; and

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (i) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the above requirement with the consent of the parties.

(j) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge.

(k) *Transcripts of hearings.* (1) Hearings shall be recorded and transcribed, under supervision of the administrative law judge, by the reporting firm under contract with DOT. Copies of the transcript shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(2) The administrative law judge shall determine whether "ordinary transcript" or "daily transcript" (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and DOT will pay the reporting firm the full cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(i) The nature of the proceeding itself; (ii) the DOT decisionmaker's needs as

well as the reasonable needs of the parties; and (iii) the requirements of a fair hearing.

(3) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with DOT, the reporting firm will be obligated to furnish to the DOT daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(4) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which DOT currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(5) Copies of transcripts ordered by parties other than DOT shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(l) *Corrections to transcript.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with the Documentary Services Division, within ten (10) days after receipt of the completed transcript by DOT. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the stenographic record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

(m) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and its administrative law judges to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to Subpart B of this part. Each such category shall include any document antedating final DOT decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Official Guide of the Airways for each month prior to and including April 1943; Universal Airline Schedules for each month from May 1943 to September 1944, inclusive; American Aviation Air Traffic Guide for each month from October 1944 to August 1948, inclusive; and Official Airline Guide.

2. Official Guide of the Railways and Russell's Official National Motor Coach Guide.

3. Book of Official CAB Airline Route Maps and Airport to Airport Mileages published by Air Transport Association of America.

4. Shuler Guide and Official Airline Guide Quick Reference Edition.

5. All schedules and amendments thereof, and all tariffs and amendments thereof, of all carriers, on file with DOT.

6. Air Carrier operating certificates or applications therefor, of all carriers, together with any requests for amendment thereof.

7. Monthly reports, Forms 2380 and 2780, for each month through December 1946, and monthly and quarterly reports, Forms 41 and 41(a) (including monthly and annual reports required to be filed by all carriers in connection therewith), filed with DOT.

8. Recurrent Reports of Mileage and Traffic Data of all Domestic Airline Carriers from 1945 and all similar reports issued by the Civil Aeronautics Board, or DOT.

9. Certified Air Carrier Traffic Statistics from 1955, prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of statistics issued by the Civil Aeronautics Board, or DOT.

10. Recurrent Reports of Financial Data of all Domestic Airline Carriers from 1947 through the quarter ended September 30, 1953; issued by the Civil Aeronautics Board, and all such other similar recurrent reports issued by the Civil Aeronautics Board, or DOT.

11. Certificated Air Carrier Financial Data from the quarter ended December 31, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other similar compilations of data issued by the Civil Aeronautics Board, or DOT.

12. Annual Airline Statistics, Domestic Carriers, fiscal years 1936–1941; Annual Airline Statistics, Domestic Carriers, calendar years 1938–1947; prepared by the Bureau of Pricing and Domestic Aviation Civil Aeronautics Board; and all such other similar compilations of statistics issued by the Civil Aeronautics Board, or DOT.

13. Quarterly Report of Air Carrier Operating Factors, for the quarter ended September 30, 1953; prepared by the Office of Carrier Accounts and Statistics, Civil Aeronautics Board, and all such other reports for quarterly periods as may be made available to the public by the Civil Aeronautics Board, or DOT.

14. Passenger, mail, express, and freight data submitted to the Board on Form 2787 or on punch cards submitted in lieu of such forms, by all carriers for any months subsequent to March 1955 and any similar data submitted to DOT.

15. Airline Traffic Surveys, compiled by the Civil Aeronautics Board, from September 1946, and any other such surveys made available to the public by the Civil Aeronautics Board or DOT.

16. The publication Competition Among Domestic Air Carriers, March 1–14, 1955, compiled by the Civil Aeronautics Board and published by the Air Transport Association of America, and any other compilations of similar data made available to the public by the Civil Aeronautics Board or DOT.

17. Service Mail Pay and Subsidy for United States Certificated Air Carriers from 1955, published by the Civil Aeronautics Board, and any supplemental data and subsequent issues published by the Civil Aeronautics Board or DOT.

18. Airport Activity Statistics of Certificated Air Carriers, from December 31, 1955; compiled by the Civil Aeronautics Board, and published by Air Transport Association of America, and any subsequent issues thereof published, by DOT.

19. Enplaned Airline Traffic, by community, by year, 1948–1951; Air Commerce Traffic Pattern, fiscal years 1953–1955 and calendar years 1952–1955, published by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereof published by the Federal Aviation Agency.

20. Population Volumes I and II of the Eighteenth (1960) Census of the United States, issued by the Census Bureau, Department of Commerce; and similar publications of the Census Bureau relating to the Seventeenth (1950) Census.

21. The Rand McNally Commercial Atlas and Marketing Guide, from 1958, and the Rand McNally Road Atlas, United States, Canada, and Mexico, from 1956.

22. Survey of Buying Power, from 1955, published by Sales Management Magazine.

23. Volumes II and III of the Census of Manufacturers, 1954, issued by the Bureau of Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1947 and 1958 Census of Manufacturers.

24. Volumes II, IV and VI of the Census of Business, 1954, issued by the Bureau of the Census of the U.S. Department of Commerce; and similar publications of the Bureau of the Census relating to the 1948 and 1958 Census of Business.

25. Federal Airways Air Traffic Activity, from 1953–1956 (fiscal year) issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and subsequent

editions thereof issued by the Federal Aviation Agency.

26. National Airport Plan, from 1956, Civil Aeronautics Administration, U.S. Department of Commerce and subsequent editions thereof issued by the Federal Aviation Agency.

27. Record of Airport Facilities, Form ACA–29A, issued by the Civil Aeronautics Administration, U.S. Department of Commerce and by the Federal Aviation Agency.

28. International Section, Airline Traffic Surveys prepared by the Civil Aeronautics Board from March and September 1959, and any such surveys issued or otherwise made available to the parties by the Civil Aeronautics Board or published privately.

29. The ABC World Airways Guide, Thomas Skinner and Co., Ltd., from June 1950.

30. ICAO Statistical Summary, Preliminary Issue and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by the International Civil Aviation Organization, Montreal, Canada, with all changes and additions.

31. Foreign-Commerce Yearbook, from 1951, U.S. Department of Commerce, office of International Trade.

32. Statistical Abstract of the United States, from 1953, U.S. Department of Commerce, Bureau of Census.

33. Yearbook of International Trade Statistics, from 1956.

34. Annual Reports of the Immigration and Naturalization Service, U.S. Department of Justice, from fiscal year ended June 30, 1945.

35. Official Steamship and Airways Guide International. Transportation Guides, Inc., from June 1945.

36. The Airman's Guide, from 1950, issued by the Civil Aeronautics Administration, U.S. Department of Commerce, and any subsequent editions thereto, issued by the Federal Aviation Agency.

37. Plant and Product Directory of the 500 Largest U.S. Industrial Corporations, from 1961, published by Time Inc.

38. Thomas' Register of American Manufacturers, from 1955, published by Thomas Publishing Company.

39. First and Second Class Post Offices, July 1, 1939–July 1, 1946 and Receipts and Classes of Post Offices, from July 1, 1947, issued by the U.S. Post Office Department.

40. Quarterly Report on Federal Aid to Highways, from March 1960, issued by the Bureau of Public Roads of the U.S. Department of Commerce.

41. All forms and reports required by the Post Office Department to be filed by air carriers certificated to transport mail.

42. All orders of the Postmaster General designating schedules for the transportation of mail.

43. Handbook of Airline Statistics from 1961, prepared by the Bureau of Accounts and Statistics, Civil Aeronautics Board or DOT.

44. CAB Forms 242, 243, 244, and 244A (including all monthly, quarterly, semiannual, and annual reports required to be filed by carriers in connection therewith), filed with the Board or DOT.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (m)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act.

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (m)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed.

§ 302.25 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he may, either of his or her own motion, or at the request of a party, permit the presentation of oral argument. He or she may impose such time limits on the argument as he or she may determine, having regard for other assignments for hearing before him or her. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the DOT decisionmaker for consideration in deciding the case.

§ 302.26 Proposed findings and conclusions before the administrative law judge or the DOT decisionmaker.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his consideration briefs to include proposed findings and conclusions of law which shall contain exact references to the record and authorities relied upon. The provisions of this section shall be applicable to proceedings in which the record is certified to the DOT decisionmaker without the preparation of an initial or recommended decision by the administrative law judge.

§ 302.27 Delegation to administrative law judges and action by administrative law judges after hearing.

(a) *Delegation of authority to make the agency decision subject to discretionary review.* Pursuant to the authority conferred on DOT under Section 1601(b)(1) of the Federal Aviation Act of 1958, as amended, there is hereby delegated to each administrative law judge assigned to a particular case subject to this part the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without a recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 801 of the Act. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters which have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.18. The term "initial decision," as used in this part, shall encompass the administrative law judge's decision pursuant to this delegation of authority on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Action by administrative law judge after hearing.* (1) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every initial decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (c) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file proposed findings and conclusions with the DOT decisionmaker and supporting briefs.

(2) Except where the DOT decisionmaker directs otherwise, after the taking of evidence and the receipt of proposed findings and conclusions, if any, the administrative law judge shall take the following action:

(i) *Cases subject to section 801 of the Act.* In cases where the action of the Department is subject to the approval of the President pursuant to section 801 of

the Act, the administrative law judge shall render a recommended decision orally on the record or in writing.

(ii) *Other matters.* If the proceeding relates to any matter not provided for in paragraph (b)(2)(i) of this section, the administrative law judge shall render an initial decision in writing.

(c) *Effect of initial decision.* Unless a petition for discretionary review is filed pursuant to § 302.28, exceptions are filed pursuant to § 302.1754, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department 30 days after service thereof. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision is stayed until the further order of the DOT decisionmaker.

§ 302.28 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but of the sound discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review of the DOT decisionmaker of an initial decision or recommended decision within 21 days after service thereof, except that the DOT decisionmaker may fix a different period in any decision involving a foreign air carrier where the action of DOT is subject to the approval of the President pursuant to section 801 of the Act. Such petitions shall be accompanied by proof of service on all parties.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, DOT rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but which the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker or the Chief Administrative Law Judge, petitions shall not exceed 20 pages including appendices and other papers physically attached to the petition. Petitions of more than 10 pages shall contain a subject index with page references.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answer.* Within 15 days after service of a petition for discretionary review, any party may file and serve an answer of not more than 15 pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he shall do so in a single document of not more than 20 pages.

(c) *Orders declining review.* DOT orders declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of DOT. A petition for reconsideration of a DOT order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of DOT in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may exercise his or her right of review upon petition for review or on his or her own initiative. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review which will:

(i) Specify the issues to which review will be limited. Such issues shall constitute one or more of the issues raised in a petition for discretionary review, and/or matters which the DOT decisionmaker desires to review on his or her own initiative. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.31, and considered by the DOT decisionmaker.

(ii) Specify the portions of the administrative law judge's decision, if any, which are to be stayed as well as the effective date of the remaining portions thereof.

(iii) Designate the parties to the review proceeding.

§ 302.29 Tentative decision of DOT.

(a) Except as provided in paragraph (b) of this section, whenever the administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any proposed findings and conclusions submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision may be filed, the time within which briefs in support of the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed (which in no event shall be less than 10 days), it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) Notwithstanding the provisions of paragraph (a) of this section, in rule making proceedings or proceedings determining applications for initial licenses, the DOT decisionmaker may omit a tentative decision in any case in which he or she finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires. The DOT decisionmaker may also, in DOT's discretion, omit a tentative decision in proceedings under Subpart Q. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.22a.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973 (49 U.S.C. 1324, 1371, 1372, 1481 (Administrative Procedure Act) 5 U.S.C. 551 *et seq.*))

§ 302.30 Exceptions to tentative decisions of DOT.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several repetitive exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto. *Provided, however,* That exceptions shall specify any matters of law, fact or policy which were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion which is not expressly made the subject of an exception in compliance with the provisions of this section. *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.31 Briefs before DOT.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial decisions or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.28(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within 30 days after date of service of the order granting discretionary review. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker or the administrative law judge (where the administrative law judge's decision was not made under delegated authority) may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs*—(1) *Contents.* Each brief shall discuss every point of law, fact or precedent which the party submitting it is entitled to raise and which it wished the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed 5 pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading: *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with the Documentary Services Division a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length and index.* Briefs shall comply with the formal specifications set forth in § 302.3(b). Except by permission or direction of the DOT decisionmaker, brief shall not exceed 50 pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case "map" means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation. Any brief that exceeds 10 pages shall contain a subject index of its contents, including page references.

§ 302.32 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he shall request leave to make such argument in his exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be presented to the DOT decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued. All such material shall be served on all parties to the proceeding and eight copies transmitted to the Documentary Services Division at least five (5) calendar days in advance of the argument. As used herein "material" includes, but is not limited to, maps, charts included in briefs, and exhibits which are enlarged and used for demonstration purposes at the argument, but does not include the enlargements of such exhibits.

§ 302.33 Waiver of procedural steps after hearing.

The parties of any proceeding may agree to waive any one or more of the following procedural steps provided in §§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the DOT decisionmaker, a recommended decision of the administrative law judge, a tentative decision of the DOT decisionmaker, a petition for discretionary review of or exceptions to ab initial decision or recommended decision, and the filing of briefs with the DOT decisionmaker, or oral argument before the DOT decisionmaker.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95–504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C.

1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

§ 302.35 Shortened procedure.

In cases where a hearing is not required by law, §§ 302.23 through 302.33, relating to prehearing, hearing, and post-hearing procedures, shall not be applicable except to the extent that DOT shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice.

§ 302.36 Final decision of DOT.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order which will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed "final orders" within the purview of § 302.37(a), unless reviewed pursuant to § 302.22a.

§ 302.37 Petitions for reconsideration or review by the DOT decisionmaker.

(a) *DOT orders subject to reconsideration; time for filing.* Unless an order or a rule of the Department specifically provides otherwise, any interested person may file a petition for reconsideration, of any interlocutory order issued by the Department which institutes a proceeding. Any party to a proceeding, unless an order or rule of the Department specifically provides otherwise, may file a petition for reconsideration, rehearing, or reargument of (1) final orders issued by the Department, or (2) an interlocutory order which defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department. Unless the time is shortened or enlarged by the Department, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument or shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences which would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto which exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by the Office of the Documentary Services.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition which has been considered or denied by the Board, will not be entertained.

§ 302.38 Petitions for rulemaking.

Any interested person may petition DOT for the issuance, amendment, modification and repeal of any regulation, subject to the provisions of Part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.1 et seq.)

§ 302.39 Objections to public disclosure of information.

(a) *General.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of DOT to the public. (49 CFR 7.1 et seq.)

(b) *Information contained in paper to be filed.* Any person who objects to the public disclosure of any information contained in any paper filed in any proceeding, or in any application, report, or other document filed pursuant to the provisions of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the DOT thereunder, shall segregate, or request the segregation of, such information into a separate paper and shall file it, or request that it be filed, with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed, separately in a sealed envelope, bearing the caption of the enclosed paper, and the notation "Classified or Confidential Treatment Requested Under § 302.39." At the time of filing such paper, or when the objection is made by a person not himself filing the paper, application, report or other document, within five (5) days after the filing of such paper, the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (e) of this section, or in accordance with the procedure outlined in paragraph (d) of this section if objection is made by a Government department or a representative thereof. Notwithstanding any other provision of this section, copies of the filed paper and of the motion need not be served upon any other party unless so ordered by the DOT.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and lay representative of each party as the administrative law judge or the person before whom the deposition is being taken, as the case may be, shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation "Classified or Confidential Treatment Requested Under § 302.39 Testimony Given by (name of witness or deponent)." Within five (5) days after such testimony is given, the objecting person shall file a motion, except as hereinafter provided in paragraph (d) of this section, in accordance with the procedure outlined in paragraph (e) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the DOT.

(d) *Objection by Government departments or representative thereof.* In the case of objection to the public

disclosure of any information filed by or elicited from any United States Government department, or representative thereof, under paragraph (b) or (c) of this section, the department making such objection shall be exempted from the provisions of paragraphs (b), (c), and (e) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, or person representing said department, if it so desires, may file a memorandum setting forth the reasons on the basis of which it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

(e) *Form of motion to withhold information from public disclosure.* Subject to the exception of paragraph (d) of this section, no information covered by paragraphs (b) and (c) of this section need be withheld from public disclosure unless written objection to such disclosure is filed with the DOT in accordance with the following procedure:

(1) The motion shall be headed with the title and docket number of the proceeding and shall be signed by the objecting person, any duly authorized officer or agent thereof, or by counsel representing such person in the proceeding.

(2) The motion shall include (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9); and (iii) and a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(3) Such motion shall be filed with the administrative law judge or the person conducting the hearing or proceeding, as the case may be, or with the person with whom said application, report, or document is required to be filed.

If such motion relates to contracts, agreements, understandings, or arrangements an executed original copy and two copies of such motion shall be filed.

(f) *Motions referred to DOT.* The order of DOT containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which order shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the DOT 's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by DOT, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the DOT's order.

(g) *Objections in proceeding before the DOT.* Notwithstanding any of the provisions of this section, whenever the objection to disclosure of information shall have been made, in the first instance, before the DOT itself, the written motion of objection contemplated by paragraphs (b), (c), and (e) of this section shall not be necessary but may be submitted if the parties so desire or if DOT, in a particular case, shall so direct.

§ 302.40 Saving clause.

Repeal, revision or amendment of any Economic Regulation of the DOT shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart B—Rules Applicable to Enforcement Proceedings

§ 302.200 Applicability of this subpart.

(a) *In general.* This subpart contains the specific rules that apply to DOT proceedings to enforce the act and the rules, regulations, orders and other requirements issued by DOT. Subpart A of this part contains other rules that apply to these proceedings.

(b) *Informal complaints.* Informal complaints may be made in writing with respect to anything done or omitted to be done by any person in contravention of any provision of the act or any requirement established pursuant thereto without compliance with this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.201 Formal complaints.

Any person may make a formal complaint to the Assistant General Counsel for Aviation Enforcement and Proceedings about any violation of the economic regulatory provisions of the act or of DOT's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of § 302.3, concerning the form and filing of documents. The filing of a complaint shall result in a formal enforcement proceeding only if the Assistant General Counsel for Aviation Enforcement and Proceedings issues a notice instituting an enforcement proceeding as to all or part of the complaint under § 302.206(a) or the Deputy General Counsel does so under § 302.206(b). A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel for Aviation Enforcement and Proceedings. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.18.

§ 302.202 [Reserved]

§ 302.203 Insufficiency of formal complaint.

In any case where the Assistant General Counsel for Aviation Enforcement and Proceedings is of the opinion that a complaint does not sufficiently set forth the material required by any applicable rule, regulation or order of the DOT, or is otherwise insufficient, he or she may advise the party filing the same of the deficiency and require that any additional information be supplied by amendment.

§ 302.204 Third-party complaints.

(a) A third-party complaint, and any amendments thereto, submitted pursuant to § 302.201 shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel for Aviation Enforcement Proceeding.

(b) Within fifteen (15) days after the date of service of a third-party complaint, each person complained of shall file an answer in conformance with and subject to the requirements of § 302.207(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for Aviation Enforcement and Proceedings for good cause shown.

(c) A person complained against in a third-party complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served,

within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(d) Motions to dismiss a third-party complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.205 Procedure when no enforcement proceeding is instituted.

(a) Within a reasonable time, but not more than 60 days, after an answer to a formal third-party complaint is filed, or such extension of that 60-day period as may be granted pursuant to § 302.206(b), the Assistant General Counsel for Aviation Enforcement and Proceedings shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.206(a) or issue a notice dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) A notice dismissing a complaint issued pursuant to paragraph (a) of this section shall become effective as a final order of DOT 30 days after service thereof.

§ 302.206 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel for Aviation Enforcement and Proceedings, there are reasonable grounds to believe that any provision of the Act, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that, in the case of third-party complaints, efforts to satisfy a complaint insofar as required by § 302.204 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel for Aviation Enforcement and Proceedings may issue a notice instituting a formal enforcement proceeding. The notice shall incorporate by reference a formal complaint submitted pursuant to § 302.201 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant. The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures which it may deem necessary or proper.

(b) The Assistant General Counsel for Aviation Enforcement and Proceedings may at any time move, upon a showing of good cause, for an extension of the time within which to act upon a third-party complaint. Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings has failed to act on a third-party complaint within 60 days of the date when the answer is due, or within such extension of that period as may have been granted, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute a proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(c) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.206a Assessment of civil penalties.

(a) Whenever the Assistant General Counsel for Aviation Enforcement and Proceedings seeks an assessment of civil penalties in an enforcement proceeding, the Deputy General Counsel shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under § 302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

(Secs. 204, 901, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 742, 783, 788, 92 Stat. 1705; (49 U.S.C. 1324, 1471, 1481))

§ 302.207 Answer.

(a) Within 15 days after the date of service of a notice issued pursuant to § 302.206, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.204. Any requests for extension of time for filing of answer to a complaint attached to or incorporated in a notice instituting an enforcement proceeding shall be filed with DOT in accordance with § 302.17.

(b) All answers shall conform to the requirements of § 302.8(a)(2) an shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the person complained of is without knowledge, in which case, his answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted.

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the DOT decisionmaker or administrative law judge may permit late filings of an answer for good cause shown.

§ 302.209 Reply.

The DOT decisionmaker (or the administrative law judge) may, in his or her its discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

§ 302.210a Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or

more enforcement proceedings which involve substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(a) At any time after answer has been filed, any party may file with DOT and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevent documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement or any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

(b) At any time after answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

§ 302.213 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

§ 302.214 Appearances by persons not parties.

With consent of the administrative law judge or the DOT decisionmaker, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.215 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.216 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.217 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.218 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 1007, believes that changed conditions of fact or law, or the public interest, require that said order or judicial action be modified, or set aside, in whole or in part, such party may file with DOT a motion requesting that DOT take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. DOT shall dispose of the motion by such procedure as it deems appropriate.

(Sec. 1005, 72 Stat. 794, as amended; 49 U.S.C. 1485)

Subpart C—Rules Applicable to Mail Rate Proceedings

§ 302.300 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings for the

establishment of mail rates by DOT for foreign air transportation and air transportation between points in Alaska. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of DOT.

§ 302.301 Parties to the proceeding.

The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the Postmaster General, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom DOT permits to intervene. (See § 302.15.)

Final Mail Rate Proceedings

§ 302.302 Participation by persons other than parties.

In addition to participation in hearings in accordance with § 302.14, persons other than parties may, within the time fixed for filing notice of objections to an order to show cause in a mail rate proceeding as provided in § 302.305, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

§ 302.303 Institution of proceedings.

Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the Postmaster General, or upon the issuance of an order by DOT.

(a) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(b) In any case where a carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the Department, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(c) All petitions, amended petitions, and documents relating thereto shall be served upon the Postmaster General by sending a copy to the Assistant General Counsel, Transportation, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the Postmaster General shall consist of a statement in the document that the person filing it has served a copy on the Assistant General Counsel, Transportation, as required by this section. The petition need not be accompanied by any further proof of service, but upon setting any petition down for public hearing, the Department will cause notice of such hearing to be given to such interested person as it deems appropriate in a particular case.

(d) Answers to petitions shall be filed within 20 days after service of the petition.

Procedure When an Order To Show Cause Is Issued

§ 302.304 Order to show cause.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT may issue an order directing the respondent to show cause why it should not adopt such provisional findings and conclusions, and such rates, as may be specified in the order to show cause.

§ 302.305 Objections and answer to order to show cause.

(a) Any person having objections to the provisional rates specified in such order shall file with the Department a notice of objection within ten (10) days after the date of service of such order.

(b) If such notice is filed as aforesaid, written answer and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause. The Department may specify different times for filing a notice of objection or an answer. An answer to an order to show cause shall contain specific objections, and exhibits in support thereof, and shall set forth the findings and conclusions, the rates, and the supporting exhibits which would be substituted for the corresponding items in the Statement of Provisional Findings and Conclusions, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene shall be treated as a memorandum filed under § 302.302.

§ 302.306 Effect of failure to timely file notice and answer raising material issue of fact.

If no notice, or, if after notice, no answer is filed within the designated time, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision of the Department fixing rates, and, in such case, or if an answer timely filed raises no material issue of fact, the Department may thereupon, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the fair and reasonable rate or rates as specified in the order to show cause.

§ 302.307 Procedure when material issue of fact is timely raised.

If an answer raising a material issue of fact is filed within the time designated in the Department's order, a prehearing conference and hearing shall be held unless waived by all parties. The issues shall be limited to those specifically raised by the answer, except that at the prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he deems necessary to a full and fair determination of a fair and reasonable rate. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.308 Evidence.

All direct evidence shall be in writing and shall be filed in exhibit form in advance of the hearing unless, for good cause shown, the administrative law judge otherwise directs.

Procedure When No Order To Show Cause Is Issued

§ 302.309 Hearing to be ordered.

When no order to show cause is to be issued by the Department, the Department will order a hearing before an administrative law judge similar to that provided for in §§ 302.307 and 302.308, except that the issues at such hearing shall be formulated initially at a prehearing conference.

Temporary Rate Proceedings

§ 302.310 Procedure for fixing temporary service and subsidy mail rates.

(a) At any time during the pendency of a proceeding for the determination of final mail rates, the Department, upon its own initiative, or on petition by the carrier whose rates are in issue or the Postmaster General, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

(b) Temporary service mail rates: The procedure for determining temporary mail rates involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the Act shall be the same as for the determination of final mail rates, except that:

(1) Notice of objections to the Department's show cause order proposing temporary service mail rates must be filed by any party or petitioner for intervention within 8 days, and an answer within 15 days, of the time such order is served;

(2) Failure to file notice of objections within the 8-day period shall be deemed to be a waiver of all further procedural steps before final decision, including hearing and initial or tentative decision, and the proceeding will stand submitted to the DOT decisionmaker for final decision.

(3) In the absence of a convincing showing that it will result in substantial prejudice to any party or delay the proceeding, the administrative law judge shall require the parties to submit all their testimony in writing and shall closely limit cross-examination to the essential issues (bearing in mind the purpose and urgency of fixing temporary mail rates together with the fact that such temporary rates are subject to downward or upward adjustment upon the fixing of final rates), and shall in all other respects urgently expedite the proceeding.

Informal Mail Rate Conference Procedure

§ 302.311 Invocation of procedure.

Conferences between DOT employees, representatives of air carriers, the Post Office Department and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

§ 302.312 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers the Department has in the processing of rate cases not involving a rate conference. The employee function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employee's analyses and recommendations.

§ 302.313 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postmaster General, and the authorized DOT employees. No other person will attend unless the DOT employees deems his presence necessary in the interest of one or more purposes to be accomplished, and in such case his participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.314 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for 90 days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself, his immediate family, members of his firm or company, or as a trustee, in securities of the carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the Department; and (3) shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused. The word "information", as used in paragraph (b) of this section, shall refer only to information obtained at the conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference.

(b) *Signed statement required.* Every representative of a carrier actually present at any conference shall sign a statement that he has read this entire instruction and promises to abide by it and advise any other participant to whom he discloses any confidential information of the restrictions imposed above. Every representative of the Postmaster General actually present at any conference shall, on his own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any carrier, which has had a representative at the conference, who deals either directly or indirectly for himself, his immediate family, members of his firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth above, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed above; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential every participant, as defined in this section, shall file a verified compliance report with the Documentary Services Division stating that he has complied in every respect with the conditions of this section, or if he has not so complied, stating in detail in what respects he has failed to comply.

(e) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include (1) any representative of any carrier and any representative of the Postmaster General actually present at the conference; (2) the carrier and the officers of any carrier which has had a representative at the conference; (3) the directors of any carrier, which has had a representative at the conference, the members of any firm of attorneys or consultants, which has had a representative at the conference, and the members of the Postmaster General's staff, who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.[4]

§ 302.315 Information to be requested from carrier.

With respect to the rate for the future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the carrier's past experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the carrier shall be certified by a responsible officer.

§ 302.316 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the carrier what might be termed a statement of exceptions showing areas

[4] Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.

of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound ratemaking principles.

§ 302.317 Availability of data to Post Office Department.

The representatives of the Postmaster General shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the carrier, and a reasonable time shall be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary. *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the Postmaster General pursuant to section 406(c) of the Act or Reorganization Plan 10 of 1953, or those involving any period prior to October 1, 1953, representatives of the Postmaster General shall be furnished with copies of data under this provision only upon their written request.

§ 302.318 Post-conference procedure.

The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Department. The form, content and time of the staff's presentation to the Department are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The Department will grant such requests whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the act and the rules of practice.

§ 302.319 Effect of conference agreements.

No agreements or understanding reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.23.

§ 302.320 Waiver of §§ 302.313 and 302.314.

After the termination of a mail rate conference hereunder, the carrier, whose rates were in issue, may petition the Department for a release from the obligations imposed upon it and all other persons by §§ 302.313 and 302.314. The Department will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the Department will grant or deny the request without assigning reasons therefor.

§ 302.321 Time of commencing and terminating conference.

At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conferences shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

Subpart D—Rules Applicable to Exemption Proceedings

§ 302.400 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings on applications for exemption orders pursuant to section 101(3) or section 416(b)(1) of the Act. It further provides for the granting of exemptions upon the Department's own initiative and for the granting of emergency exemptions. As far as is consistent with this subpart, the provisions of Subpart A of this part also apply to such proceedings. Proceedings for the issuance of exemptions by regulation shall remain subject to the provisions governing rule making. Additional requirements for applications for interim extension of fixed-term temporary route authorizations granted by exemption are set out in § 302.909. See also §§ 377.10(c) and 399.18 of this chapter.

§ 302.401 Filing of application.

(a) *Filing.* An application for exemption shall conform to the formal requirements of §§ 302.3 and 302.4. Such application shall be assigned a docket number and any additional documents filed in connection with such exemption shall be identified by the assigned docket number.

§ 302.402 Contents of application.

(a) *Title.* An application filed pursuant to this subpart shall be entitled "Application for Exemption".

(b) *Factual detail.* The application shall set forth the section or sections of the act, or the rule, regulation, term, condition, or limitation prescribed thereunder from which exemption is desired and shall state in detail the facts relied upon to establish that the enforcement of the provisions from which exemption is sought, is or would be an undue burden upon the applicant by reason of the limited extent of, or unusual circumstances affecting, the operations of such applicant and that enforcement of such provision is not in the public interest.

(c) *Supporting evidence.* The application shall be accompanied by a statement of economic data or other matters which the applicant desires the Department to officially notice, and by affidavits establishing such other facts as the applicant desires the Department to rely upon. Applications of air carriers for temporary route authority shall contain at least the following economic and operating data on an annual basis:

(1) Present and proposed schedules, by type of aircraft;

(2) Number of departures, planemiles, passengers and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues; and

(5) Estimate of impact of proposal on operating expenses which, in the case of local service carriers, should be computed according to Subpart K of this part.

In addition, for local service carriers the following:

(6) Estimate of allowance for return on investment and taxes, computed according to Subpart K of this part;

(7) Increase or decrease in subsidy requirements; and

(8) Increase or decrease in subsidy payments under the applicable class rate formula.

(d) *Record of service.* An application shall contain the names of the parties served as required by § 302.403, and a notice to such parties that they may, within 10 days of the date the application was filed, file and serve an answer in support of, or in opposition to, the application.

§ 302.403 Service of application.

(a) *Manner of service.* An application for exemption shall be served as provided by § 302.8.

(b) *Persons to be served.* Except in the case of an application for an exemption from sections 403 and 404 of the Act or an application for exemption which will permit the applicant to render irregular services only other than between specified points, a copy of an application shall be served on the following parties who shall be presumed to have an interest in the subject matter of the application:

(1) Any air carrier which is authorized to render regular service to any point involved in the application;

(2) Any person whose application for a certificate of public convenience and necessity, or for an exemption, authorizing regular service to or from any such point has been filed with, and which has not been finally disposed of by, the Department;

(3) The chief executive of any State, territory, or possession of the United States in which any such point is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, service shall be made on such commission or agency, rather than the chief executive of the State;

(4) The chief executive of the city, town, or other unit of local government at any such point located in the United States or any territory or possession thereof;

(5) The DOT, commission, manager, or other body or individual having direct supervision over and responsibility for the management of the airport located in the United States and which is being used to serve such point at the time the application is filed; and

(6) Any commuter air carrier that operates under Part 298 of this chapter or other exemption authority, provides at least five round-trips per week between two or more points, one of which is involved in the application, and publishes schedules in the "Official Airline Guide," or in the "Air Cargo Guide," that include service to the point involved in the application.

EXCEPTION: Applications for exemption authority to serve a point outside North America need not be served on commuter air carriers.

(c) *Additional service of notice.* The Department may, in its discretion, order additional service made on such person or persons as the facts of the situation warrant.

§ 302.404 Posting of application.

The Department shall cause a copy of every application for exemption filed with it to be posted promptly on a public bulletin board at its principal offices in Washington, D.C.

§ 302.405 Dismissal of incomplete application.

(a) *Dismissal.* The Department may, on its own motion or the motion of any party in interest, dismiss an application for exemption which fails in any material respect to comply with the requirements of this part.

(b) *Additional data.* The Department may request the filing of additional data with respect to any application for exemption or any answer or reply filed by a party in interest in connection therewith.

§ 302.406 Answers to applications for exemptions.

Within ten (10) days after filing of an application for exemption, any party in interest may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the party believes the exemption should be granted or denied. The answer shall be accompanied by a statement of economic data or other matters which it is desired that the DOT decisionmaker officially notice, and by affidavits establishing such other facts as are relied upon.

§ 302.407 Reply.

Within 7 days after the last date for filing an answer under § 302.406, an applicant for exemption may file a reply to one or more answers.

§ 302.408 Request for hearing.

Although in the usual course of disposition of an application for exemption no formal hearing will be granted to the applicant or to a party in interest opposing such exemption, the DOT decisionmaker may, in his or her discretion order such proceeding set down for hearing. Any applicant, or any party in interest opposing an application, who desires to request a hearing on an application for exemption shall set forth in detail in his request the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application, and, to the extent that such request is dependent upon factual assertions, shall accompany such request by affidavits establishing such facts. In the event a hearing is ordered by the DOT decisionmaker, Subpart A of this part shall govern the proceedings.

§ 302.409 Exemptions on the Department initiative.

Where required by the circumstances and the public interest, the DOT decisionmaker may enter exemption orders on his or her own initiative.

§ 302.410 Emergency exemptions.

(a) *Applicability.* Where required by the circumstances and the public interest, the Department may, upon request or upon its own initiative, enter exemption orders pursuant to section 101(3) or section 416(b) of the Act or deny applications therefor, upon less than the normal period provided for filing answers (§ 302.406) and replies thereto (§ 302.407) and upon no notice. In particular proceedings the DOT decisionmaker may specify a lesser time within which answers and replies thereto may be filed and notify interested persons of this time period. Where the public interest so requires, the DOT decisionmaker may act without awaiting the filing of answers or replies thereto.

(b)(1) *Applications.* Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part except that they must be in writing and must set forth, with detailed facts and evidence in support thereof, the grounds on which the exemption is requested. In addition, any applicant requesting such action shall state the reasons it deems adequate to justify departure from the normal procedures and shall state which air carriers have been notified in accordance with paragraph (c) of this section. The DOT decisionmaker, moreover, may require additional information from any applicant before acting on the application.

(2) The DOT decisionmaker, shall consider oral requests, including telephonic requests, for emergency exemption authority under this section in circumstances where time does not permit the immediate filing of a written application. All oral requests, however, must provide the information required by paragraph (b)(1) of this section, except that evidence in support thereof need not be tendered at the time such request is made. All oral requests must be confirmed by written application within three (3) days.

(c) *Notice.* Except where the DOT decisionmaker consents that no notice need be given, applicants for emergency exemption shall notify any air carrier

which is authorized to render route-type service between points or areas involved in the application that such request has been filed. Such notification shall be made in the same manner of communication, contain the same information, and be dispatched at the same time, as the application made with the Department.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges

§ 302.500 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations and orders of DOT.

§ 302.501 Institution of proceedings.

A proceeding to determine rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by DOT.

§ 302.502 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the carrier against whose tariff provision the petition or complaint is filed.

§ 302.503 Dismissal of petition or complaint.

If DOT is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.504 Order of investigation.

The Department on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and assigning the proceeding for hearing before an administrative law judge. (Reference should be made to Subpart A of this part for rules applicable to hearings.)

§ 302.505 Complaints requesting suspension of tariffs—answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 1002(j) of the Act shall fully identify the tariff and include reference (1) to the issued or posting date, (2) to the effective date, (3) to the name of the publishing carrier or agent, (4) to the DOT number, and (5) to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 1002(j) of the Act, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Department and to the carrier against whose tariff provision the complaint is made. Such a telegraphic complaint shall state the grounds relied upon, and must immediately be confirmed by complaint filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

(Secs. 204, 403, 404, 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 765, and 788, as amended (5 U.S.C. 553); secs. 204, 403, 1002; 72 Stat. 743, 758, 788 (49 U.S.C. 1324, 1373, 1482, as amended))

§ 302.506 Burden of going forward with the evidence.

At any hearing involving a change in a rate, fare, or charge for the transportation of persons or property by aircraft, or the lawful classification, rule, regulation, or practice affecting such rate fare, or charge, the burden of going forward with the evidence shall be upon the person proposing such change to show that the proposed changed rate, fare, charge, classification, rule, regulation or practice is just and reasonable, and not otherwise unlawful.

§ 302.508 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.505, with respect to tariffs which do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for DOT, in which event the period for filing shall be extended to the next successive day which is neither a Saturday, Sunday, nor holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.16.

Subpart F—[Reserved]

Subpart G—Rules Applicable to Adequacy of Service Petitions

§ 302.700 Applicability of this subpart.

This subpart sets forth the special rules applicable to proceedings with respect to the adequacy of the service, equipment and facilities provided by a certificated air carrier at a duly authorized point. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules, regulations, and orders of the Department.

§ 302.701 Institution of proceedings.

A proceeding to determine the adequacy of the service, equipment and facilities being provided by a certificated air carrier at a duly authorized point may be instituted by the filing of a petition or complaint, or by the issuance of an order by the Department on its own initiative pursuant to section 1002 of the Act.

§ 302.702 Contents of petition.

If a petition or complaint is filed, it shall state the reason why the service, equipment or facilities complained of are inadequate and shall support such reasons with a full factual analysis. Within fifteen (15) days after the date of service of a petition or complaint, the respondent may file an answer thereto.

§ 302.703 Parties to the proceeding.

The parties to the proceeding shall be the person filing the petition or complaint, the air carrier or carriers whose service is being challenged, bureau counsel and any other person

whom the Department permits to intervene.

§ 302.704 Action on petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts which warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing. If the air carrier complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, the Department shall investigate the matter complained of.

§ 302.705 Hearing.

In the event a hearing is ordered by the Department, Subpart A of this part shall govern the proceeding.

Subpart H—[Reserved]

Subpart I—Rules Applicable to Route Proceedings under Sections 401 and 402 of the Act

General Provisions

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (Parts 201 and 211 for the form of applications) and orders of DOT.

(Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

Applications for Route Authority

§ 302.909 Renewal of fixed-term route authorizations granted by exemption.

(a) *Form of application.* An application for certificate authority to replace a fixed-term route authorization granted by exemption, filed pursuant to § 399.18 of this chapter, shall in all respects comply with the requirements of this part and of Part 201 of the Economic Regulations, except that the applicant shall additionally submit therewith exhibits which, in its judgment, establish a prima facie case for the relief requested, including a summary of the results of operations under the exemption and a forecast for the year immediately following its expiration.

(b) *Interim extension of exemption pending DOT action upon certificate application; application therefor.* If the applicant desires to avail himself of the provisions of the last sentence of section 9(b) of the Administrative Procedure Act (5 U.S.C. 558(c)) he shall incorporate in the application a request for extension of the exemption authorization pending determination of the certificate application, with a statement that he invokes the automatic extension provision of section 9(b) of the Administrative Procedure Act. Failure on the part of the applicant to incorporate such a request will be construed as a waiver of his rights under the cited provision of the Administrative Procedure Act. (See § 377.10(c) of this chapter.) The caption of the application shall indicate whether or not it asks for both certificate authorization and extension of the exemption authorization.

Initiation of Route Proceedings

§ 302.915 Initiation of route proceedings by DOT order.

(a) *Purpose and policy.* The purpose of this section is to establish a procedure for the initiation of proceedings involving particular routes or geographic areas, in addition to existing procedures under Subpart A, so that the Department may select the one best suited to the efficient and expeditious disposition of route proceedings.

(b) *Order instituting proceedings.* The Department may initiate a route proceeding by issuing an order of investigation or an order to show cause which, respectively, defines the scope of the issues in the proceeding, or consolidates pending applications and proceedings for simultaneous hearing, or institutes investigations under section 401(g) or 402(f) of the Act directed to the amendment of outstanding certificates of public convenience and necessity and foreign air carrier permits, and specifies other matters included in the proceeding.

(c) *Pleadings in response to Department order instituting proceedings.* Any person having a substantial interest may respond to the Department's order instituting a proceeding by filing with the Department a written answer, or a motion pursuant to § 302.12, or both, within the period of time specified in said order. Such answer or motion shall set forth all objections and proposals which such persons may have with respect to the geographic scope of the proceeding or the scope of the issues, as respectively defined in such order. Such answer or motion shall be in lieu of petitions for reconsideration of said order under § 302.37. Any such objection or proposal which is not set forth in such answer or motion shall be deemed to have been waived. Any person who fails to file a timely answer or motion in response to the Department's order shall also be deemed to have waived his right to have his own application consolidated or contemporaneously considered with those falling within the geographic scope of the proceeding or the scope of the issues therein, as respectively defined in said order: *Provided, however,* That where any further order of the Department adds to the geographic scope of a proceeding or the scope of the issues therein beyond that defined in the Department's order instituting such proceeding, failure to file an answer or motion addressed to the Department's first order shall not preclude the filing of a petition under § 302.37, or of a motion under § 302.12, addressed exclusively to the additional scope or issues.

(d) *Answers to motions.* Answers in support of or in opposition to motions as mentioned in paragraph (c) of this section may be filed within seven (7) days after service of such motions or within such other period as may be specified in the Department's order.

Conduct of Route Proceedings

§ 302.930 Evidence in route proceedings.

Route authority not specifically applied for. Applicants for certificate authority under section 401 of the Act may not introduce, in support of awards to them of such authority, evidence that does not support service to the points, routes, or areas specifically described in their applications.

Subpart J—Rules Applicable to Proceedings Involving Charter Air Carriers

§ 302.1001 Applicability.

This subpart sets forth procedural rules specifically applicable to certain proceedings involving charter air carriers. For information as to other applicable rules, reference should be made to Subparts A and B of this part, to the Federal Aviation Act of 1958, as amended, and to the substantive rules and orders of the Department. See especially Part 208 of this chapter (Economic Regulations).

§ 302.1002 Definition.

As used in this part, "charter air carrier" means a person holding operating authority issued pursuant to section 401(d)(3) or 417 of the Federal Aviation Act of 1958, as amended.

Immediate Suspension of Operating Authority

§ 302.1011 Rules governing proceedings.

Proceedings for suspension, modification or revocation of a charter air carrier certificate pursuant to section 401(n)(5) of the Act, or of special operating authorizations issued pursuant to section 417 of the Act, shall be governed by §§ 302.1012 to 302.1017 and, as to matters not provided for in said sections, by Subparts A and B of this part.

Note: Secs. 302.1012 to 302.1017 do not apply to proceedings for modification, suspension or revocation not initiated under, or by reference to, the provisions of section 401(n)(5) of the Act.

§ 302.1012 Order of suspension.

In any case in which the Department determines that the failure of a charter air carrier to comply with the provisions of paragraphs (q) or (r) of section 401(n) of the Act or regulations or orders of the Department thereunder requires, in the interest of the rights, welfare or safety of the public immediate suspension of such carrier's certificate or other operating authority as the case may be, the Department will issue, without notice or hearing, an order of suspension which will set forth:

(a) The duration of the suspension, which initially will be for not more than 30 days;

(b) The specific provision or provisions of section 401 (q) or (r), or of the regulations or orders of the Department thereunder with which the carrier has failed to comply together with the manner of such failure;

(c) A determination that such failure requires the immediate suspension, in whole or in part as the case may be, of the carrier's operating authority in the interest of the rights, welfare, or safety of the public;

(d) A statement that the order shall constitute a complaint instituting a formal economic proceeding on which a hearing shall be held to determine whether the charter air carrier's operating authority should be modified, suspended or revoked;

(e) A statement as to which attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings is to be made a party to the proceeding.

§ 302.1013 Answer of carrier.

(a) *Time for filing, and contents.* Within 7 days of service of the order of suspension, the carrier may file and serve on all parties an answer to the order of suspension. No objections or affirmative defenses not plainly raised in the answer may be raised subsequently in the proceeding, except if based on grounds of newly discovered evidence or supervening events. Late filing of an answer shall be permitted only for good cause shown.

(b) *Failure to file an answer.* In case of the carrier's failure to file and serve an answer to the order within the time and in the manner prescribed, the right to all further procedural steps before final decision, including hearing, briefs, and recommended and tentative decisions, shall be deemed waived, and the Department will proceed immediately to disposition of the case.

§ 302.1014 Motions.

(a) *Motions for termination of suspension and/or proceeding.* (1) The charter air carrier may at any time file and serve on all parties to the proceeding, a motion addressed to the Department asking that the suspension be lifted, on the ground (i) that suspension, pending completion of the proceeding, is not required in the interest of the rights, welfare or safety of the public; or (ii) that the carrier has come into compliance with the provision or provisions with which it had failed to comply. Such motions may be combined with a motion to terminate the proceeding. Such motions shall be made in lieu of petitions for reconsideration of the Department's initial order, or of motions to dismiss.

(2) Motions made pursuant to paragraph (a)(1) of this section will be submitted to the DOT decisionmaker for determination. The DOT decisionmaker may grant motions for termination of suspension in proper cases without waiting for expiration of the time for answers but parties may submit informal written or telegraphic statements of position on such motions which will be considered if received prior to DOT action. Such communications need not be served separately but shall be copied in full in a timely answer filed and served pursuant to the provisions of this part.

(b) *Motions directed to pleadings.* No motion for more definite statement shall be made but the substance thereof may be stated in the answer. The administrative law judge may permit or require a more definite statement or other amendment to any pleading at the hearing upon just and reasonable terms.

(c) *Motions for extension of time.* Substantial extensions of procedural dates shall be granted only when required in the interest of justice, unless the respondent air carrier stipulates that it will refrain from operating the suspended service until the Department's adjudication on the merits of the proceedings becomes final even though the Department has exhausted its emergency suspension power. The filing of motions for extension shall not operate to excuse failure of timely compliance with any procedural requirement.

(d) *Other motions.* The provisions of § 302.18 shall govern the above mentioned motions in respects not provided for in this section, and shall govern any other motions, except that answers to written motions shall be filed and served within 5 days of service of such motions.

§ 302.1015 Additional suspension.

Pending the completion of proceedings hereunder, the Department, upon motion or its own initiative, may further extend the period of suspension of the charter carrier's operating authority for an additional period or periods aggregating not more than 60 days.

§ 302.1016 Accelerated hearing.

The administrative law judge shall set the date of hearing not later than 15 days after the issuance of the DOT decisionmaker's suspension order. He may postpone the date of the hearing, or grant continuations of the hearing, only to the extent necessary in the interest of justice. The administrative law judge shall urgently expedite the proceeding and shall fix all procedural dates on the basis of maximum acceleration consistent with justice. Proposed findings and conclusions and supporting reasons shall be stated orally on the record. The delegation of § 302.27(a) shall not be applicable and the administrative law judge shall, upon termination of the hearing, make his initial decision orally on the record. Requests for a written initial decision may be granted on the same condition as substantial extensions of procedural dates (§ 302.1014(c)).

§ 302.1017 Final decision.

The parties may appeal from the initial decision by filing with the Department and serving upon all other parties a notice of appeal within two days after the rendering of the initial decision if it is made orally, or the service of a written initial decision, as the case may be. No exceptions shall be filed but within 10 days of the notice of appeal each party may file one brief (§ 302.31(c)) with the Department. The DOT decisionmaker will give three days' notice of oral argument, where granted. If no notice of appeal is filed, or if no brief is filed by the party or parties having filed a notice of appeal, within the times herein provided, the initial

decision shall without further proceedings become the final decision of the Department five days after expiration of the time for filing notice of appeal or brief, as the case may be unless the DOT decisionmaker has issued an order to review upon his or her own initiative.

Special Operating Authorizations

§ 302.1020 Application for special operating authorization.

(a) Any charter air carrier whose certificate is currently effective may file with the Department an application for special operating authorization under section 417 of the Act.

(b) The application shall identify the pair of points for which an authorization to provide service is requested and shall contain a detailed statement of the fact, relied upon to establish that the additional service is temporarily required in the public interest and can be provided by the applicant.

(c) The application shall specify:

(1) The type of service for which authority is requested (i.e., transportation of persons, property, and/or mail);

(2) The airports to be used;

(3) The number, type and capacity of aircraft to be used;

(4) The proposed frequency and time of flights;

(5) The inclusive dates of the proposed service, not to exceed a period of 30 days;

(6) The fares or rates to be charged; and

(7) The names of all air carriers (if any) certificated to provide scheduled service at any of the points involved.

(d) The application shall be accompanied by a statement of economic data or other matters that the applicant desires the Department to officially note, and affidavits establishing such other facts as the applicant wishes the Department to rely upon. The application and accompanying statement shall be verified by a person or persons having personal knowledge of the facts stated therein. It shall comply with the formal requirements of §§ 302.3 and 302.4.

§ 302.1021 Filing and service of application.

The application shall be filed not less than 30 days before the requested effective date thereof unless good cause for late filing is shown. Such applications shall be served upon all air carriers certificated to provide service at any of the points involved, and on such other persons as the Department may require, and proof of service shall accompany the application as provided in § 302.8.

§ 302.1022 Answer.

(a) Any air carrier certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 10 days after the filing of the application or within such shorter time as the Board may fix by written or telegraphic notice.

(b) The answer shall contain a detailed statement of the facts relied upon to controvert any pertinent allegations of the application and shall be accompanied by a statement of economic data or other matters that the carrier desires the Department to officially note, and affidavits establishing such other facts as the respondent wishes the Department to rely upon. The answer shall be verified by a person or persons having personal knowledge of the facts stated therein.

(c) If the opposing carrier desires oral argument it shall include a request therefor in its answer.

§ 302.1023 Memoranda of interested persons.

Any interested person, other than an air carrier entitled to answer, may file a memorandum in support of, or in opposition to, an application for special authorization within the time permitted for the filing of answers. Such memoranda shall be verified by persons having personal knowledge of the facts stated therein.

§ 302.1024 Oral argument.

Requests for oral argument shall be filed no later than three days after the date permitted for the filing of answers. Oral argument will be granted only upon a showing that it will be in the interest of justice and will not unduly delay issuance of the special operating authorizations, taking into account the degree of emergency involved.

§ 302.1025 Issuance of special authorization.

If the Department finds that the application is duly filed and the statutory requirements are fulfilled, it may issue a special operating authorization to engage in air transportation between the respective points for a period not to exceed 30 days. The Department will attach such limitations and requirements to the authorization as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist without significant diversion of traffic from the holders of certificates for the route.

§ 302.1026 Issuance of special authorization on the Department's initiative.

The Department may, on its own initiative, issue to any charter air carrier a special operating authorization in accordance with § 302.1025.

§ 302.1027 Extension of authorization.

(a) The Department may extend a special operating authorization for an additional period or periods aggregating not more than 60 days upon its own initiative or upon the request of the charter air carrier.

(b) A request for extension shall be filed not later than 15 days before the expiration of the existing authorization and shall set forth facts to establish the continuing need for the service, updating the information required by § 302.1020, and a description of the services actually performed pursuant to the authorization. It shall be verified by a person having personal knowledge of the facts stated therein and shall be served upon all parties to the original authorization proceeding.

Note: Section 417(b)(3) of the Act provides in effect that the filing of an application for extension does not automatically extend the authorization. If the Department has not acted on the application by the time of expiration of the authorization, operations thereunder must cease.

(c) Any air carrier which is certificated to provide service at any of the points involved may file, and serve on the applicant, an answer in protest within 5 days after the filing of the request. Such answers shall be verified by persons having personal knowledge of the facts therein.

(d) Any interested person, other than an air carrier entitled to answer, may file a memorandum in support of or in opposition to the extension. Such memoranda shall be verified by persons having personal knowledge of the facts therein.

Subpart K–N—[Reserved]

Subpart O—Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation

Authority: Secs. 2, 204, 84 Stat. 772, 72 Stat. 743; 39 U.S.C. 5402, 49 U.S.C. 1324.

§ 302.1501 Applicability.

This subpart sets forth the rules applicable to certain contractual arrangements between the Postal Service and certificated air carriers for the transportation of mail by air entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of mail per flight, and no more than 5

percent, based on weight, of the international mail transported under any such contract may consist of letter mail. Any such contract is required by the statute to be filed with the Department not later than 90 days before its effective date, and unless the Department disapproves the contract not later than 10 days prior to its effective date, the contract automatically becomes effective.

§ 302.1502 Filing.

Any air carrier which is a party to a contract to which this subpart is applicable shall file eight copies of the contract in the Documentary Services Division, Department of Transportation, Washington, D.C. 20590, not later than 90 days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.1504 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the Secretary or other duly authorized officer of the filing carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.1503 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent:

(a) Estimates of the costs of performing the contract, and an explanation of the basis for the estimates which clearly sets forth the methodology involved in the assignment of direct and all allocated costs and the investment related thereto (including, where available and relevant, data as to costs of performing past contracts for the transportation of mail by air);

(b) Estimates of the effect of the contract upon such carrier's revenues, and an explanation of the basis for the estimates (including, where available and relevant, data as to effects upon revenues resulting from past contracts for the transportation of mail by air); and

(c) Estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.1504 Service.

A copy of each contract filed pursuant to § 302.1502, and a copy of all material and data filed pursuant to § 302.1503, shall be served upon each of the following persons:

(a) Each certified route air carrier, other than the contracting carrier, which is authorized to carry mail between any pair of points between which mail is to be transported pursuant to the contract;

(b) Each commuter air carrier (as defined in § 298.2 of Part 298 of this chapter) which serves between any pair of points between which mail is to be transported pursuant to the contract; and

(c) The Assistant General Counsel, Transportation, U.S. Postal Service, Washington, D.C. 20260.

§ 302.1505 Complaints.

Within 15 days of the filing of a contract, any interested person may file with the Department a complaint against the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.1504.

§ 302.1506 Answers to complaints.

Answers to the complaint may be filed within 10 days of the filing of the complaint, with service being made as provided in § 302.1505.

§ 302.1507 Further procedures.

(a) In any case where a complaint is filed, the Department shall issue either an order dismissing the complaint, or an order disapproving the contract, or such other order as may be appropriate. Any such order shall be issued not later than 10 days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the Department may issue an order directing the parties to the contract to show cause why the contract should not be disapproved, or such other order as may be appropriate. Unless otherwise specified by the Department, written answer to the order and supporting document shall be filed within 10 days of the date of service of the order to show cause. A final order containing the Department's determination as to whether the contract should be disapproved, shall be issued not later than 10 days prior to the effective date of the contract.

§ 302.1508 Petitions for reconsideration.

Except in the case of a Board determination to disapprove a contract, no petitions for reconsideration of any DOT determination pursuant to this subpart shall be entertained.

Subpart P—[Reserved]

Subpart Q—Expedited Procedures for Processing Licensing Cases

Authority: Secs. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, 757, 788, 92 Stat. 1973, 49 U.S.C. 1324, 1371, 1372, 1481, Administrative Procedure Act, 5 U.S.C. 551 et seq., unless otherwise noted.

§ 302.1701 Applicability.

This subpart sets forth the rules applicable to proceedings on

(a) Applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act;

(b) Applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and

(c) Applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

§ 302.1702 Subpart A governs.

Except as modified by this Subpart, the provisions of Subpart A of this part continue to apply.

§ 302.1703 Filing of applications.

Any person may file an application of the type described in § 302.1701. Applications for foreign air carrier permits shall be filed as specified in § 211.2 of this chapter. The Department will publish in the Federal Register a weekly list of applications filed under this subpart.

§ 302.1704 Contents of applications.

(a) Applications under this subpart (including applications filed under § 302.1720(c) or conforming applications filed under § 302.1720(e) or § 302.1730(c)) shall indicate on the cover page how the applicant proposes that its application be processed (See § 302.1750). Certificate applications shall contain the information required by Part 201 of this chapter and foreign air carrier permit applications shall contain the information required by Part 211 of this chapter. Applications shall also include:

(1) A statement of economic data and other matters that the applicant desires the Department to notice officially;

(2) Written evidence establishing the facts that the applicant relies on to establish its fitness and to show that the grant of the relief requested is consistent with or required by the public convenience and necessity, or is in the public interest, as applicable; and

(3) The applicant's opening argument.

(b) Each application shall be accompanied by an Environmental Evaluation in conformity with Parts 312 and 313 of this chapter unless a waiver or exemption has been granted under § 312.6.

(c) Later filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) Applications shall include a list of the names and addresses of all persons that have been served.

§ 302.1705 Service of documents.

(a) *General requirements.*

(1) In certificate proceedings involving applications under section 401(g), 401(h), and 401(e)(7)(B) of the Act, all documents filed before the issuance of the order establishing further procedures (§ 302.1750) shall be served on the persons listed in paragraph (b) of this section for each point that is actually affected by the application, and on any other person who has filed a pleading in the docket.

(2) In certificate proceedings under section 401 of the Act involving the provision of cargo-only air service within the States of Alaska or Hawaii or foreign air transportation, all documents filed before the issuance of the order establishing further procedures (§ 302.1750) shall be served on the persons listed in paragraph (b) of this section for each point listed in the carrier's application or certificate, and on any other person who has filed a pleading in the docket.

(3) After the order establishing further procedures under § 302.1750 has been issued, documents need only be served on the persons listed in the service list accompanying the order.

(4) In foreign air carrier permit proceedings described in § 302.1701(c), applicants shall serve on the persons listed in paragraph (b) of this section and the U.S. Department of State a notice that such application has been filed and, upon request, shall promptly provide those persons with copies of the actual documents. All later documents shall be served on any person that has filed a pleading in the docket.

(b) *Persons to be served.* Documents shall be served for each point as described in paragraph (a) of this section, on the following persons:

(1) All air carriers certificated under section 401 of the Act and authorized to engage in the type of air transportation (scheduled or charter) applied for at one or more of the points;

(2) All other air carriers operating at least five flights per week to or from one of the points according to the "Official Airline Guide";

(3) The aviation regulatory agency of the State, territory or possession of the United States in which the point is located or, if there is no aviation regulatory agency, the Governor or other chief executive of the State, territory, or possession;

(4) The mayor or other chief executive of each city involved;

(5) The airport authority of each airport that the applicant proposes to serve; and

(6) In the case of an application sought to be consolidated, all persons served by the original applicant.

(c) *Additional service.* The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible.

(Secs. 204, 402, 1001, of the Federal Aviation Act as amended, 72 Stat. 743, 757, 788, 92 Stat. 1723, (49 U.S.C. 1324, 1372, 1481), Administrative Procedure Act, (5 U.S.C. 551 *et seq.*)

§ 302.1706 Computation of time.

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. In all other respects, § 302.16 applies.

§ 302.1707 Verification.

The facts asserted in any pleading filed under this subpart shall be attested to by persons having knowledge of them and this attestation shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary.

§ 302.1708 Joint pleadings.

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.1709 Definition of parties.

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket before the issuance of the order establishing further procedures.

§ 302.1710 Economic data and other facts.

Whenever economic data and other facts are provided, such information shall include enough detail so that final results can be obtained, without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.1711 Continuances and extensions of time.

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

§ 302.1712 Oral presentation; initial or recommended decision.

(a) *Cases to be decided on written submissions.* Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required.

(b) *Petitions for oral presentation or judge's decision.* Any party may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.1770 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision; and

(3) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be

cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(c) *Time for filing petitions.* Petitions for an oral hearing, oral argument, or a judge's decision shall be filed as soon as practicable, but in no event later than: (1) 52 days after the filing of the original application in proceedings governed by § 302.1720; (2) 35 days after the filing of the original application in proceedings governed by § 302.1730; and (3) 14 days after the due date for answers in proceedings governed by § 302.1740.

(d) *Stipulations.* Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.1713 Preliminary procedures for rejection or deferral of nonconforming applications.

Within 21 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the DOT decisionmaker may, on behalf of the Department, (a) reject any application that does not comply with this subpart, or (b) defer further processing of the application until information necessary to process the application is submitted. Applications will not be processed, and the time periods contained in this subpart shall not begin to run, until the application is complete. In addition, the DOT decisionmaker may, on behalf of the Department, defer action on a foreign air carrier permit application for foreign policy reasons. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

§ 302.1720 Procedures in certificate cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(a).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file an answer indicating briefly that person's position, and serve that answer on all persons served with the application. The notice shall also state the due date for answers.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application filed under § 302.1701(a). Requests to modify the issues to be decided and to consolidate applications filed in other dockets, shall be filed as a "motion to modify scope." Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within 28 days after the original application is filed.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Answers to the original application shall be filed within 28 days after the filing of the original application. Answers to applications filed in accordance with paragraph (c) of this section shall be filed within 42 days after the filing of the original application.

(e) *Answers to motions to modify scope.* Any person may file an answer to a motion to modify scope within 42 days after the filing of the original application. Answers shall set forth the basis for the support of or opposition to the motion, including any economic data or other facts relied on. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and include the information prescribed in § 302.1704. Answers and applications shall not, however, propose the consideration of additional markets.

(f) *Order establishing further procedures.* Within 90 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1730 Procedures in restriction removal cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(b).

(b) *Applications.* Each application to which this section applies shall be limited to a single city-pair market or a single restriction unless a waiver of this requirement has first been obtained under § 302.1790. All restriction removal applications (including conforming applications under paragraph (c) of this section) shall include a notice on the cover page that any person wishing to support or oppose the application must file an answer briefly describing its position, and serve a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) *Conforming applications.* The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under § 302.1713.

(d) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers to the original application shall be filed within 14 days after the filing of that application. Answers to conforming applications shall be filed within 28 days after the filing of the original application.

(e) *Order establishing further procedures.* Within 60 days after the filing of the original application, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1740 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to the foreign air carrier permit cases described in § 302.1701(c).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Time limits shall be calculated from the date of filing with the Documentary Services Division. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subsection.

(c) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position.

(d) *Executive departments.* The views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be filed not later than the due date for answers to applications.

(e) *Order establishing further procedures.* As soon as possible after the date that answers are due, the DOT decisionmaker will issue an order establishing further procedures for processing the case.

§ 302.1750 Disposition of applications—Orders establishing further procedures.

(a) *General requirements.* Within the time limits established in § 302.1720(f), § 302.1730(e), or § 302.1740(e), as applicable, the DOT decisionmaker will issue an order establishing further procedures in each case. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the office of the Assistant General Counsel for Aviation Enforcement end proceedings will participate as a party. With respect to all or any portion of each application, the DOT decisionmaker will take one of the following actions:

(1) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in §§ 302.1751 through 302.1755 will apply unless the DOT decisionmakers decides otherwise. The DOT decisionmaker may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in §§ 302.1751 through 302.1755 will apply to the oral evidentiary hearing phase of the case, and the DOT decisionmaker will indicate what procedures will be employed in deciding the other issues in the case.

(2) Dismiss the application. This action constitutes a final DOT order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under § 302.1730.

(3) Announce that the Department has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker will indicate which, if any, of the procedural steps set forth in §§ 302.1752 through 302.1756 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(4) Announce that the Department will decide the case by show cause procedures or issue an Order to Show Cause why the application should not be granted.

(b) *Additional evidence.* The order establishing further procedures may provide for the filing of additional evidence.

(c) *Petitions for reconsideration of an order establishing further procedures.* Petitions for reconsideration of an order establishing further procedures will not be entertained except to the extent that the order dismissed all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.1757 will be calculated from the date of the order reinstating the application.

§ 302.1751 Oral evidentiary hearing.

If the Department determines under § 302.1750(a) that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures.

§ 302.1752 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) 14 days after the close of the oral evidentiary hearing established under § 302.1750(a)(1), unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) 14 days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the Department determines that some other period should be allowed.

§ 302.1753 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within 150 days after the issuance of the order establishing further procedures unless:

(1) The Department, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than 30 days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.1750(a)(1), the administrative law judge shall issue an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) Unless exceptions are filed under § 302.1754 or the DOT decisionmaker issues an order to review on its own initiative, an initial decision shall become effective as the final order of DOT 30 days after it is served. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.27 shall be applicable.

§ 302.1754 Exceptions to administrative law judge's initial or recommended decision

(a) *Time for filing.* Within 14 days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the Department.

(b) *Form and content of exception.* Exceptions shall comply with § 302.30(b).

(c) *Effect of failure to file timely and adequate exceptions.* The provisions of § 302.30(c) shall apply.

(d) *Review is automatic.* If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

§ 302.1755 Briefs before the Department.

The provisions of § 302.31 shall apply to briefs to the DOT decisionmaker, except that:

(a) In a case in which an initial or recommended decision has been issued and exceptions have been filed, any party may file a brief to the DOT decisionmaker in support of or in opposition to any exceptions. Such briefs shall be filed within 21 days after service of the initial or recommended decision.

(b) In a case in which in initial or recommended decision has been issued and no exceptions have been filed, briefs to the DOT decisionmaker shall not be filed unless the DOT decisionmaker has taken review on his or her own initiative and specifically provided for the filing of briefs to the DOT decisionmaker.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the DOT decisionmaker

may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 21 days after the service date of the order establishing further procedures, unless that order established a different due date.

§ 302.1756 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.32(b) shall also apply.

§ 302.1757 Final decision of the Department.

In addition to the provisions of § 302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.1750(a)(1), DOT will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under § 302.1750(a) (3) or (4), the Department will issue its final order within 180 days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

§ 302.1758 Petitions for reconsideration.

The provisions of § 302.37 shall apply to petitions for reconsideration.

§ 302.1760 Internal procedures.

(a) In deciding which of the procedures set forth in § 302.1750 will be used for each case under this subpart, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations. That recommendation will be coordinated with the General Counsel and the Chief Administrative Law Judge, or their designees. If there is disagreement in that group, separate recommendations will be promptly submitted to the extent necessary to reflect their views.

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Operations, and the Assistant General Counsel for International Law. If there is disagreement among these employees, separate recommendations will be promptly submitted to the extent necessary to reflect those views.

§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.

The Department will assign applications made under §§ 302.1701, 302.1720 (c) and (e), 302.1730(c) and 302.1740 for consideration under the expedited procedures of this subpart and order the record presented directly to the DOT decisionmaker for final decision unless it determines that:

(a) Use of expedited procedures will prejudice a party;

(b) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(c) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

§ 302.1780 Standards for deciding cases in which expedited, simplified procedures are employed.

The standards employed in deciding cases under § 302.1750(a)(3) or (4) shall be the same as the standards applied in cases decided under § 302.1750(a)(1). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon under the Act.

§ 302.1790 Waivers.

Upon the filing of a motion, the DOT decisionmaker or the Assistant General Counsel for International Law, as appropriate, may, on behalf of the Department, grant such waivers from the terms and limitations contained in this subpart as it shall find to be consistent with the public interest and the proper dispatch of DOT's business. Petitions for review of the staff action taken under this section may be filed in accordance with Subpart C of Part 385 of this chapter.

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PART 305—RULES OF PRACTICE IN INFORMAL NONPUBLIC INVESTIGATIONS

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Authority: Secs. 202, 204, 411, 415, 1001, 1002, 1004, 1007, Pub. L. 85–726, as amended; 72 Stat. 742, 743, 770, 771, 788, 792, 796 (49 U.S.C. 1322, 1324, 1381, 1385, 1481, 1482, 1484, 1487; 5 U.S.C. 555, 556).

§ 305.1 Applicability.

The provisions of this part shall govern informal nonpublic investigations, as distinguished from formal investigations and adjudicatory proceedings, undertaken by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings with a view to obtaining information from any person. While the Department seeks and encourages voluntary cooperation and believes that it is in the best interest of all parties concerned, it will utilize the procedures provided by this part to compel the disclosure of information by any person where DOT wishes to determine whether such person, or any other person, has been or is violating any provisions of Title IV or sections 101(3), 1002, 1003, or 1108(b) of the Act, or any rule, regulation, order, certificate, permit, or letter or registration issued pursuant thereto by DOT and when the information appears to be relevant to the matter under investigation. This part shall not apply to employees or records of other agencies of the United States Government, the District of Columbia, or the several States and their political subdivisions.

§ 305.2 Definition.

For the purpose of, and as used in this part, the term "investigation" means a non-adjudicatory, informal nonpublic investigation for the purpose of determining whether formal enforcement action should be instituted with respect to alleged violations of law.

§§ 305.3—305.4 [Reserved]

§ 305.5 Initiation of investigation.

An investigation may be initiated by order of the Department. Attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings shall conduct such investigations pursuant to the provisions of this part and they shall be designated Investigation Attorneys. Investigation Attorneys and administrative law judges and the DOT decisionmaker are hereby authorized to exercise and perform their duties and functions under this part in accordance with the provisions of the Act and the rules and regulations of the Department.

§ 305.6 Appearance of witnesses.

Witnesses may be required to appear before any administrative law judge for the purpose of receiving their testimony or receiving from them documents or other data relating to any subject under investigation. Such testimony shall be mechanically or stenographically recorded, and a transcript thereof shall be made and incorporated in the record of the investigation.

§ 305.7 Issuance of investigation subpenas.

(a) Upon request of the Deputy General Counsel, the DOT decisionmaker, the chief administrative law judge or the administrative law judge designated to preside at the reception of evidence, may issue a subpena directing the person named therein to appear before a designated administrative law judge at a designated time and place to testify or to produce

documentary evidence relating to any matter under investigation, or both. Each such subpena shall briefly advise the person required to testify or submit documentary evidence of the purpose and scope of the investigation, and a copy of the order initiating the investigation shall be attached to the subpena.

(b) Witnesses subpenaed to appear shall be paid the fees and mileage prescribed in § 302.21 of the Rules of Practice (14 CFR 302.21). Service of such subpenas shall be made in accordance with the provisions of § 302.8 of the Rules of Practice (14 CFR 302.8).

§ 305.8 [Reserved]

§ 305.9 Rights of witnesses.

Any person required to testify or to submit documentary evidence shall be entitled to procure, on payment of lawfully prescribed costs, a copy of any document produced by such person and of his own testimony as stenographically reported. Any person compelled to testify or to produce documentary evidence may be accompanied, represented, and advised by counsel.

§ 305.10 Nonpublic character of proceedings.

Investigations shall be attended only by the witnesses and their counsel, the administrative law judge, the Investigation Attorney, other DOT personnel concerned with the conduct of the proceeding and the official stenographer. All orders initiating investigations, motions to quash or modify investigation subpenas, orders disposing of such motions, documents, and transcripts of testimony shall be part of the record in the investigation. Unless DOT determines otherwise, all orders initiating investigations which do not disclose the identity of the particular persons of firms under investigation shall be published in the **Federal Register.** Except as otherwise required by law, the remainder of the record of such proceedings shall constitute internal DOT documents which shall not be available to the general public. The use of such records in DOT proceedings subject to Part 302 of the Rules of Practice shall be governed by §§ 302.19(g) and 302.39 and by the law of evidence applicable to DOT proceedings.

§ 305.11 Procedures after investigation.

Upon completion of the investigation, where the Deputy General Counsel, determines that no corrective action is warranted, the investigation will be closed, and any documentary evidence obtained in the investigation will be returned to the persons who produced it. Where remedial action is indicated by the investigation, the Deputy General Counsel will proceed pursuant to Subpart B of Part 302 of the Rules of Practice or will take such other action as may be appropriate.

§ 305.12 Motions to quash or modify an investigation subpena.

Any person upon whom an investigation subpena is served may, within seven (7) days after such service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify such subpena with the administrative law judge who issued such subpena, or in the event the administrative law judge is not available, with the chief administrative law judge for action by himself or by the DOT decisionmaker. Such motions shall be made in writing in conformity with Rules 3 and 4 of the Rules of Practice (Part 302 of this subchapter); shall state with particularity the grounds therefor and the relief sought; shall be accompanied by the evidence relied upon and all such factual matter shall be verified in accordance with the provisions of Rule 202 of the aforesaid Rules of Practice. Written memoranda or briefs may be filed with the motions, stating the points and authorities relied upon. No oral argument will be heard on such motions unless the chief administrative law judge, the administrative law judge or the DOT decisionmaker directs otherwise. A subpena will be quashed or modified if the evidence whose production is required is nor reasonably relevant to the matter under investigation, or the demand made does not describe with sufficient particularity the information sought, or the subpena is unlawful or unduly burdensome. The filing of a motion to quash or modify an investigation subpena shall stay the return date of such subpena until such motion is granted or denied. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the chief administrative law judge denying a motion to quash a subpena. In such cases, the DOT decisionmaker may order that the return date of a subpena which he or she has elected to review be stayed pending DOT action thereon.

PART 310—INSPECTION AND COPYING OF DOT OPINIONS, ORDERS, AND RECORDS

Sec.

310.1 General.
310.2 Records available.
310.3 Exempted records.
Appendix A—Description and Location of Records Generally Available
Appendix B—Types of Records Generally Excluded From Availability

Authority: Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324; 81 Stat. 54; 5 U.S.C. 552.

§ 310.1 General.

The provisions of Part 7 of the regulations of the Office of the Secretary shall apply to the inspection and copying of DOT opinions, orders, and records under this chapter. (49 CFR Part 7)

§ 310.2 Records available.

For the guidance and convenience of the public, a list is attached to this part designated Appendix A, which describes various records which are available for inspection and copying. Records which do not fall within one of the described categories nevertheless may be open to inspection and copying. Conversely a record listed in Appendix A to this part may be withheld from general inspection and copying because all or part of it may be an exempted record. By way of example, records otherwise normally available may be exempted where they consist of docket materials withheld from public disclosure under § 302.39 of the Procedural Regulations in this chapter, certain carrier reports received on a confidential basis, or records relating to exempted personnel and classified matters. Exempted records are described in § 310.3.

§ 310.3 Exempted records.

(a) As used herein, "exempted records" include those records which, pursuant to 5 U.S.C. 552(b) or other applicable law or regulation, are not required to be made available generally for inspection or copying.

(b) Appendix B to this part lists various kinds of records which are "exempted records" and therefore may be excluded from public availability. Appendix B to this part is for the convenience and guidance of the public and is not an exhaustive listing; other records not listed therein may be subject to withholding as "exempted records." Any "exempted record" will be withheld from public disclosure only where it is determined that the release of the record would be inconsistent with the purpose of the exemption.

APPENDIX A—DESCRIPTION AND LOCATION OF RECORDS GENERALLY AVAILABLE

[NOTE: Any item may be withheld from disclosure if exempted, whether or not the item is listed herein]

Agreements filed under section 412 of Federal Aviation Act: Copies of, and filings and records in connection therewith.	(To be determined).

Air freight forwarder applications and operating authorizations, and filings in connection therewith.
Aircraft lease or purchase transactions under Part 299, Economic Regulations: Filings in connection therewith.
Applications of foreign charter carriers for approval of charter flights, as required by specific Board Order.
Blind sector applications: Part 216—Copies of applications and authorizations in connection therewith.
Civil Aeronautics Board Manual: Instructions to staff and index thereof.
Certification of Secretary of Civil Aeronautics Board.
Charters: Requests for waivers of Board regulations.
Civil penalty compromise records filed under Subpart H of the Board's rules of practice.
Conferences between Civil Aeronautics Board and other persons, transcripts of.
Consumer complaint files, as distinguished from investigation files.
Contracts of the Civil Aeronautics Board: Contracts awarded; invitations to bid.
Correspondence relating to items listed in Appendix A.
Dockets and related material:
- Agents: File showing agents designated for service under section 1005(b) of Federal Aviation Act.
- Applications sent to the President under section 801 of Federal Aviation Act: Card record of.
- Docket binders: Containing material of record in docketed proceedings, and correspondence in connection therewith.
- Docket indexes: Listing by docket number, the filings in each docket and Board issuances in same.
- By name of applicant or petitioner, each application, petition, etc. bearing a new docket number.
- By name of city, applications for service to said city and disposition thereof.
- By name of carrier and by docket number, a description of pending applications.
- Documents served by Docket Section: Daily record of.
- Oral arguments: List of, by date order.
- Parties to individual docketed proceedings:
- Lists of, with addresses.

Flight schedules of air carriers.
Foreign aircraft permits: Copies of applications (Form 272), permits, reports of cargo operations (Form 321), and other filings in connection therewith.
Forms used in dealing with the public:
- Copies of forms.
- List of forms showing number and title.

Inclusive tours: Tour prospectuses and other documents relating to inclusive tour charters under Part 378.
International Air Transport Association (IATA) resolutions, minutes, and other IATA material.
Mail compensation:
- Air carrier claims for mail pay (Forms 398 and 545).
- Carrier payments: memoranda (instructions regarding billing).
- Class rate information on Form 548 (local service carriers).
- Monthly listings of summarized passenger loads by flight stages (Schedule T-5), except subsidy ineligible portion.

Summary of obligations and disbursements to air carriers (Form 470).
Mileage records: Official Board records of mileages.
Minutes of the Civil Aeronautics Board: Approved minutes of the Board on matters that are not pending.
Opinions of the General Counsel
Orders and Opinions of the Civil Aeronautics Board:
- Copies of, including published bound volumes "Civil Aeronautics Board Reports."
- Index of, by subject, summarizing action taken.
- Index-Digest of opinions and precedential orders, and citation file.
- Weekly summaries of orders.....

Overseas military personnel charter applications and authorizations, and filings in connection therewith.
Policy Statements of the Civil Aeronautics Board; and index thereof.
Postal Service: Contracts for the transportation of mail filed pursuant to 39 U.S.C. 5005.
Public index.....
Published Board documents.....
Regulations of the Civil Aeronautics Board; Table of contents of codified regulations.
Reports of air carriers and related material:
- Accounting and reporting directives to supplement the Uniform System of Accounts and Reports.
- ADP instruction directives to supplement Traffic and Capacity Data Collection ADP Manual.
- Affiliates of air carriers, reports of ownership of stock and other interests under Part 246.
- Air carrier Form 41 reports, consisting of various financial and statistical schedules filed at various frequencies by each certificated air carrier under Part 241.
- Air carrier "on-time" reports (Form 438), and quarterly compilations by market and carrier.
- Air carrier passenger origin-destination survey reports (Form 2787), domestic only. (Subject to prior staff use. Cost of separation and deletion of confidential international data for account of requestor.).
- Air freight forwarder reports (Form 244).
- Air taxi operator reports required by various Board orders.
- Air taxi operators: Commuter air carrier reports of scheduled services (Form 298-C), except Schedule T-1.
- Air taxi operators: Registration for exemption under Part 298 (Form 298-A).
- Air taxi operators: Interests in and operations with large aircraft.
- Carrier accounting plans of specified accounting and statistical procedures required to be filed by carriers under Part 241.
- Carrier officers and directors reports of ownership of stock and other interests (Form 2786).
- Charter services performed for Military Airlift Command (Form 243).
- Cooperative shippers association reports (Form 244A).
- Extension of credit to political candidates report (Form 183).
- Extensions of time for report filing.
- Foreign air carriers reports of civil aircraft charters (Form 217).
- Foreign indirect air carrier reports.
- Freight loss and damage claims reports (Form 239).
- Freight traffic and revenues in Puerto Rico market (Form T-94).
- Insurance certificates and notices:
- Air freight forwarders certificates of insurance (Form 350).
- Air taxi operators certificates of insurance (Form 257) and standard endorsements (Form 262).
- Supplemental air carriers: Certificates of insurance and endorsements (Forms 606, 607 and 608).
- Notice of cancellation of insurance by insurer (Form 609A).
- Notice of cancellation of insurance by carrier (Form 609B).
- International Civil Aviation Organization statistical report (ICAO Form C).
- Local service carrier summarized passenger loads by flight schedule (Schedule T-5), except subsidy ineligible portions.
- MAC charter services reports, consisting of financial and statistical schedules (Form 243).
- Magnetic tapes prepared by the Board from reports filed by air carriers.
- Manual of ADP instructions for traffic and capacity data collection and related materials.
- Manuals of air carrier accounts and reporting instructions prescribed by the Board.
- Manual of instructions to air carriers for passenger origin-destination survey statistics and related materials.
- National Air Carrier Association (NACA), commercial charter exchange activity, membership roster and flight data (Form 492).
- Origin-destination survey of airline passenger traffic, domestic data and outputs.
- Observations of the Director to air carriers, requesting or transmitting specific information to supplement or amplify reports.
- Passengers denied confirmed space (Form 251).
- Passenger origin-destination directives, to supplement Passenger O&D Manual.
- Public accountants reports and reconciliation with Form 41 reports.
- Reports of ownership of stock and other interests filed pursuant to Part 245, Subpart B.
- Reports of a miscellaneous nature filed pursuant to Board order.
- Scheduled all-cargo services report (Form 242).
- Supplemental air carrier special reports, as required under § 385.17(j).
- Unaccommodated passenger reports (Form 250).
- Waivers of accounting and reporting requirements and record retention.

Route and service authorizations:	
"Book of Official CAB Airline Route Maps and Airport-to-Airport Mileages" (publication).	
Certificates of public convenience and necessity.	
Foreign air carrier permits.	
Historic and current records and indexes of points served, airports, dates of service inauguration, service deletions, suspensions and restorations, and Board actions affecting carrier service authorizations.	
Settlement documentation filed under Rule 215 of the Board's rules of practice.	
Statements of authorization for off-route charter trips by foreign air carriers (Part 212): Copies of applications for, filings in connection therewith and copies of authorizations.	
Study group charters: Tour prospectuses and other documents relating to study group charters under Part 373.	
Tariff matters:	
Agent matters:	
Alternate agents' affidavits as to disability of principal tariff publishing agent.	
Corporate tariff agents' designation of issuing officer.	
Powers of attorney (issued by carriers to tariff publishing agents).	
Tariff publishing instructions (from carriers to agents).	
Certifications of tariff publications and requests for copies.	
Concurrences (issued by carriers to tariff publishing carriers).	
Correspondence with carriers or agents requesting correction of Part 221 violations in tariffs.	
Free or reduced-rate transportation:	
Access to aircraft or free-transportation requests (SF 160).	
Application for, under § 223.8 of Economic Regulations.	
Carrier manuals containing instructions, rules, regulations and practices governing issuance and interchange of passes.	
Reports by carriers of free transportation of technical representatives of aircraft manufacturers (§ 223.2 (c), (d) of Economic Regulations).	
Postponed Board actions: Notices of, on tariffs filed on 45 days' notice, and not acted upon by Board 15 days prior to effective date, under § 399.36 of Policy Statements.	
Rejection notices.	
Special tariff permissions.	
Tariffs and tariff transmittal letters.	
Tariff embargo notices.	
Trade agreements filed under Part 225 of Economic Regulations.	
Waivers from Part 221 of Economic Regulations.	
Trade association manuals.	
Travel group charters: Filings and other documents relating to travel group charter filings under Part 372a (excluding names, addresses and phone numbers of TGC participants).	
Unpublished statistical compilations:	
Air carrier route miles statistics, quarterly compilations.	
Interim quarterly financial reports of air carriers: Selective summarization of balance sheet factors, first three quarters.	
International Civil Aviation Organization reports: Summarization of selected financial and statistical data.	
Votes of Board members: Final votes of Board members in Board proceedings.	

Appendix B—Types of Records Generally Excluded From Availability

The following list contains by way of example those records which are "exempted records" under this part. The examples of exempted records are listed according to the applicable subsections of 5 U.S.C. 552(b).

(1) *Documents classified pursuant to Executive Order No. 10501.* Classified minutes and classified exhibits in formal proceedings.

(2) *Personnel rules and practices.* Files pertaining to personnel.

Technical manuals and instructions pertaining to the audit of carrier accounts.

(3) *Material exempted by statute.* Matter which heretofore has been exempted from public disclosure under sections 902(f) and 1104 of the Federal Aviation Act, or by specific order will continue to be exempt. Such matters include carrier audit papers and correspondence relating thereto, and matters on which DOT has granted a motion for nondisclosure pursuant to § 302.39 of its rules of practice.

(4) *Trade secrets and commercial or financial information.* Past or future matter submitted in confidence but for which no formal request under § 302.39 of the rules of practice has been made and granted will be held in confidence to the extent deemed allowable. This provision refers solely to unpublished materials the disclosure of which would be inconsistent with the intent of the Freedom of Information Act. No assurance of withholding material is implied by this, however, and affected persons should formally request withholding under § 302.39 where they deem it necessary to protect their interests.

Examples of confidential matters under this subsection include: Carrier accounting manuals; local service carrier passenger loads by flight schedules (Schedule T-5, subsidy ineligible portion); origin-destination survey of airline passenger traffic (international); MAC charter rate information submitted in advance of MAC rate proceedings; on-line original and destination of traffic of commuter air carriers (Schedule T-1, Form 298-C); materials related to informal subsidy conferences; air carrier service segment data submitted under Part 241; air carrier or air carrier organization letters, information or views used in developing U.S. positions in international aviation matters; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

(5) *Inter/intra-agency memoranda.*

Copies of decisions awaiting Presidential action except as provided in § 399.101 of the DOT 's Policy Statements.

Notation, calendar, and for information memoranda.

Budget, management, program evaluation, records disposal, research planning and program files.

Internal memoranda on the Administrative Conference of the United States.

Staff analyses not published by DOT.

Files regarding requisitions, equipment, and space.

Memoranda regarding interagency committees.

Intergovernmental communications on loan guarantee matters.

Research and legislative reference files of the General Counsel.

Memoranda and studies regarding positions in international aviation matters.

Developmental files, research materials, and workpapers.

(6) *Invasion of personal privacy.* Correspondence and inquiries regarding personnel. Individual personnel files and records.

(7) *Law enforcement investigatory files.* Formal and informal internal investigatory files regarding alleged violations of the Federal Aviation Act or requirements thereunder; and names, addresses, and phone numbers of TGC participants listed in Travel Group Charter filings under Part 372a.

PART 310a—ACCESS TO SYSTEMS OF RECORDS—REGULATIONS AND EXEMPTIONS IMPLEMENTING THE PRIVACY ACT OF 1974

§ 310a.1 General.

The provisions of Part 10 of the regulations of the Office of the Secretary shall apply to the maintenance of an access to systems of records pertaining to individuals. (49 CFR Part 10)

PART 311—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

§ 311.1 General.

The provisions of Part 8 of the regulations of the Office of the Secretary shall apply to the classification and declassification of national security information. (49 CFR Part 8)

PART 313—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Sec.

313.1 Purpose, scope, and authority.
313.2 Policy.
313.3 Definitions.
313.4 Major regulatory actions.
313.5 Energy information.
313.6 Energy statements.
313.7 Integration with environmental procedures.

Authority: Secs. 204, Pub. L. 85-726, as amended, 72 Stat. 743, 49 U.S.C. 1324. Pub. L. 84-163, 89 Stat. 940, 42 U.S.C. 6362(b).

§ 313.1 Purpose, scope, and authority.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq., hereinafter "EPCA") authorizes and directs certain actions to conserve energy supplies through energy conservation programs and where necessary, the regulation of certain energy uses, and to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. In furtherance of these purposes, section 382 of EPCA requires several transportation regulatory agencies, including DOT, to submit a number of reports to the Congress with respect to energy conservation and efficiency, and where practicable and consistent with the exercise of DOT's authority under other law, to include in any major regulatory action a statement of its probable impact on energy efficiency and energy conservation. Section 382(b) of EPCA directs DOT to define the term "major regulatory action" by rule.

(b) Section 204(a) of the Federal Aviation Act of 1958, as amended (hereinafter "Act"), authorizes DOT to establish such rules, regulations, and procedures as are necessary to the exercise of its functions and are consistent with the purposes of the Act.

(c) The purpose of these regulations is to establish procedures and guidelines for the implementation of DOT's responsibility under EPCA to include in any major regulatory action taken by DOT a statement of the probable impact on energy efficiency and energy conservation.

(d) These regulations apply to all proceedings before DOT, as provided herein.

§ 313.2 Policy.

(a) *General.* It is the policy of DOT to view the conservation of energy and the energy efficiency improvement goals of EPCA as part of DOT's overall mandate, to be considered along with the several public interest and public convenience and necessity factors enumerated in section 102 of the Federal Aviation Act (49 U.S.C. 1302). To the extent practicable and consistent with DOT's authority under the Act and other law, energy conservation and efficiency are to be weighed in the decisionmaking process just as are DOT's traditional policies and missions.

(b) *Implementation.* Implementation of this policy is through the integration of energy findings and conclusions into decisions, opinions, or orders in proceedings involving a major regulatory action, as defined in this part.

(c) *Proceedings in progress.* The provisions of this part are intended primarily for prospective application. Proceedings in progress on the effective date of this part, in which an application has been docketed but no final decision made public, shall adhere to § 313.6(a) of this part, provided that the fair, efficient, and timely administration of DOT's regulatory activities is not compromised thereby. Nothing herein shall imply a requirement for new or additional hearings, a reopening of the record, or any other procedures which would tend to delay a timely decision in proceedings in progress.

(d) *Hearings.* Public hearings will not normally be held for the purpose of implementing EPCA, particularly in connection with proposed actions which do not require notice and hearing as a prerequisite to decision under the Act. Hearings may be ordered in exceptional circumstances where the proposed action is of great magnitude or widespread public interest and, in addition, presents complex issues peculiarly subject to resolution through evidentiary hearings and the process of cross examination.

§ 313.3 Definitions.

As used in this part: (a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Energy efficiency" means the ratio of the useful output of services in air transportation to the energy consumption of such services.

(c) "Energy statement" is a statement of the probable impact of a major regulatory action on energy efficiency and energy conservation, contained in a decision, opinion, order, or rule.

(d) "EPCA" means the Energy Policy and Conservation Act.

(e) "Major regulatory action" is any decision by the DOT decisionmaker or administrative law judge requiring an energy statement pursuant to § 313.4 of this part.

(f) "NEPA" means the National Environmental Policy Act of 1969.

§ 313.4 Major regulatory actions.

(a) Any initial, recommended, tentative or final decision, opinion, order, or final rule is a major regulatory action requiring an energy statement, if it:

(1) May cause a near-term net annual change in aircraft fuel consumption of 10 million (10,000,000) gallons or more, compared to the probable consumption of fuel were the action not to be taken; or

(2) Is specifically so designated by DOT because of its precedential value, substantial controversy with respect to energy conservation and efficiency, or other unusual circumstances.

(b) Notwithstanding paragraph (a)(1) of this section, the following types of actions shall not be deemed as major regulatory actions requiring an energy statement:

(1) Tariff suspension orders under section 1002(j) of the Act, temporary suspensions under section 401(j) of the Act, emergency exemptions or temporary exemptions not exceeding 24 months under sections 101(3) or 416(b) of the Act and other proceedings in which timely action is of the essence;

(2) Orders instituting or declining to institute investigations or rulemaking, setting or declining to set applications for hearing, on reconsideration, or on requests for stay;

(3) Other procedural or interlocutory orders;

(4) Actions taken under delegated authority; and

(5) Issuance of a certificate where no determination of public convenience and necessity is required.

(c) Notwithstanding paragraph (a)(1) of this section, DOT may provide that an energy statement shall not be prepared in a proceeding which may result in a major regulatory action, if it finds that:

(1) The inclusion of an energy statement is not consistent with the exercise of DOT's authority under the Act or other law;

(2) The inclusion of an energy statement is not practicable because of time constraints, lack of information, or other unusual circumstances; or

(3) The action is taken under laws designed to protect the public health or safety.

§ 313.5 Energy information.

(a) It shall be the responsibility of applicants and other parties or participants to a proceeding which may involve a major regulatory action to submit sufficient information about the energy consumption and energy efficiency consequences of their proposals or positions in the proceeding to enable the administrative law judge or the DOT decisionmaker, as the case may be, to determine whether the proceeding will in fact involve a major regulatory action for purposes of this part, and if so, to consider the relevant energy factors in the decision and prepare the energy statement.

(b) In proceedings involving evidentiary hearings, the energy information shall be submitted at such hearings pursuant to DOT's usual procedural regulations and practices, under control of the administrative law judge or other hearing officer.

(c) In proceedings not involving evidentiary hearings, the energy

information shall be submitted at such time as other materials in justification of an application are submitted. Where an application itself is intended as justification for DOT action, the energy information shall be submitted with the application. In rulemakings not involving hearings, the energy information shall normally be submitted along with comments on the notice of proposed rulemaking, or as directed in any such notice or any advance notice.

§ 313.6 Energy statements.

(a) Each major regulatory action shall include, to the extent practicable, consideration of the probable impact of the action taken or to be taken upon energy efficiency and conservation. The administrative law judge or the DOT decisionmaker, as the case may be, shall normally make findings and conclusions about:

(1) The net change in energy consumption;

(2) The net change in energy efficiency; and

(3) The balance struck between energy factors and other public interest and public convenience and necessity factors in the decision.

(b) Energy findings and conclusions contained in any initial or recommended decision are a part of that decision and thus subject to discretionary review by DOT.

(c) In the case of orders to show cause initiated by DOT, energy findings and conclusions may be omitted if adequate information is not available. In such instances, the energy statement shall be integrated into the final decision.

§ 313.7 Integration with environmental procedures.

(a) In proceedings in which an environmental impact statement or a detailed environmental negative declaration is prepared by a responsible official pursuant to DOT's Procedural Regulations implementing the National Environmental Policy Act of 1969 (NEPA), the energy information called for by this Part may be included in that statement or declaration in order to yield a single, comprehensive document. In such instances, the procedures of DOT's NEPA regulations shall govern the submission of the energy information. However, it shall remain the responsibility of the administrative law judge or the DOT decisionmaker, as the case may be, to make the findings and conclusions required by § 313.6(a) of this part.

(b) A determination that a major regulatory action within the meaning of EPCA and this Part may be involved in a proceeding is independent from any determination that the proceeding is a "major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and vice versa.

PART 314—EMPLOYEE PROTECTION PROGRAM

Subpart A—General

Sec.

314.1 Applicability.
314.2 Definitions.
314.3 Conformity with Subpart A of Part 302.
314.4 Information requirements.
314.5 Major contractions.
314.6 Qualifying dislocation.

Subpart B—Determination of Qualifying Dislocation

314.10 Beginning of proceeding.
314.11 Applications.
314.12 Answers.
314.13 Disposition of applications.
314.14 Show-cause order.
314.15 Oral proceedings.
314.16 Final determination.

Subpart C—Major Contractions

314.20 Regular monthly computation.
314.21 Advance determinations.
314.22 Notice of major contraction.

Authority: Secs. 204, 407, Pub. L. 85–726, as amended, 72 Stat. 743, 766, 49 U.S.C. 1324, 1377; sec. 43, Pub. L. 95–504, 92 Stat. 1750 (49 U.S.C. 1552).

Note.—The reporting requirements contained in Part 314 have been approved by the Office of Management and Budget under control number 3024–0053.

Subpart A—General

§ 314.1 Applicability.

Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95–504, establishes an employee protection program. After a determination by DOT that an air carrier has undergone a qualifying dislocation, the Secretary of Labor gives financial assistance to certain employees of the carrier. This part sets out procedures for the Department to determine whether a qualifying dislocation has occurred.

§ 314.2 Definitions.

As used in this part:

"Bankruptcy" means an adjudication of bankruptcy under Title 11 of the United States Code.

"Carrier" means an air carrier that on October 24, 1978, held a certificate issued under section 401 of the Federal Aviation Act of 1958.

§ 314.3 Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

§ 314.4 Information requirements.

The Department may require any carrier to submit any information that it considers necessary to carry out its functions under this part.

§ 314.5 Major contractions.

A major contraction is a reduction by at least 7½ percent of the total number of full-time employees of an air carrier within a 12-month period, and includes an advance determination of major contraction as set forth in § 314.21. The method by which DOT determines whether a carrier has undergone a major contraction is set forth in Subpart C.

§ 314.6 Qualifying dislocation.

A qualifying dislocation is a bankruptcy or major contraction of a carrier, the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978.

Subpart B—Determination of Qualifying Dislocation

§ 314.10 Beginning of proceeding.

A proceeding to determine whether a bankruptcy or major contraction is a qualifying dislocation begins either with an application filed with the Department or an investigation on DOT's own initiative. Proceedings that begin with an application are governed by §§ 314.11 through 314.16. DOT-initiated proceedings are governed by §§ 314.14 through 314.16.

§ 314.11 Applications.

(a) *Who may file.* An application may be filed by an employee who has been deprived of employment or adversely affected with respect to compensation, or by a representative of one or more such employees.

(b) *Title and contents.* Applications shall be titled "Application for Determination of Qualifying Dislocation," and shall contain, with respect to at least one employee:

(1) Name and address of the employee;

(2) Number of years employed by carrier as of October 24, 1978;

(3) Name and address of the applicant, if different from paragraph (b)(1);

(4) Name of carrier-employer;

(5) Position held by employee immediately before being deprived of employment or adversely affected with respect to compensation;

(6) Date on which employee was deprived of employment or adversely affected with respect to compensation; and

(7) An explanation of the applicant's basis for claiming that a qualifying

dislocation has occurred, including all supporting evidence available to the applicant.

(c) *Service.* The Department will serve a copy of each application on the affected carrier, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

(Approved by the Office of Management and Budget under control number 3024–0053)

§ 314.12 Answers.

Any person may file an answer to an application within 15 days after the application is served.

§ 314.13 Disposition of applications.

(a) After the due date for answers, the Department will dismiss the application or begin an investigation to determine whether a qualifying dislocation has occurred.

(b) The Department will dismiss an application if it does not name an employee who, on October 24, 1978, had been employed by a carrier for at least 4 years.

(c) The Department will dismiss an application if the carrier has neither become bankrupt nor undergone a major contraction.

(d) The Department will dismiss an application even though the carrier has become bankrupt or undergone a major contraction, if it finds that the bankruptcy or major contraction clearly did not have as its major cause the change in regulatory structure provided by the Airline Deregulation Act.

(e) A DOT order dismissing an application will announce the reasons for the dismissal.

§ 314.14 Show-cause order.

When the Department makes a preliminary determination of whether the major cause of the bankruptcy or major contraction was the change in regulatory structure provided by the Airline Deregulation Act of 1978, it will issue an order announcing a tentative decision that a qualifying dislocation has, or has not, occurred. The order will direct all interested persons to show cause why the tentative decision should not be made final, and will allow 30 days for objections to be filed. The Department will publish a summary of the order in the **Federal Register** and serve a copy of the order on each of the following:

(a) The applicant and the applicant's representative, if any;

(b) The affected carrier;

(c) The collective bargaining representatives of the carrier's employees; and

(d) The Secretary of Labor;

(e) State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

§ 314.15 Oral proceedings.

The Department will provide for an oral evidentiary hearing, with notice published in the **Federal Register** and served on the persons listed in § 314.14, if there are material issues of decisional fact that cannot otherwise be adequately resolved. The DOT decisionmaker may in his or her discretion hear oral argument before making a final determination.

§ 314.16 Final determination.

The Department will publish in the **Federal Register** a summary of an order announcing its final determination and, within 3 business days after the determination, serve a copy of the order on the persons listed in § 314.14.

Subpart C—Major Contractions

§ 314.20 Regular monthly computation.

(a) The Department will monitor the number of full-time employees of each carrier, including employees deprived of employment because of a strike, as reported monthly by carriers in accordance with Part 241 of this chapter.

(b) The DOT does not require monthly reporting of the number of positions that are vacant as a result of terminations for cause and, except as set forth in paragraph (c)(3) of this section, will not account for those positions in computing major contractions. In the cases set forth in paragraphs (c)(1) and (c)(2) of this section, the DOT presumes that the number of employment positions vacant as a result of terminations for cause is small enough that accounting for them would not change the result.

(c) Each month, with respect to each carrier:

(1) If the carrier's current reported full-time employment level is 92 percent or less of any of the carrier's preceding 12 monthly levels, DOT will find that the carrier has undergone a major contraction.

(2) If the current reported level is 93 percent or more of each of the carrier's preceding 12 monthly levels, the Department will not find that the carrier has undergone a major contraction.

(3) If neither of the conditions described in paragraphs (c)(1) and (c)(2) of this section is present, the Department will ascertain by special report from the carrier, and add to the reported employment levels, the number of positions that were vacant in each of the relevant months as a result of terminations for cause. If the resulting figure for the current month in 92.5 percent or less of the resulting figure for any of the preceding 12 months, the Department will find that the carrier has undergone a major contraction. Otherwise, the Department will not make such a finding.

§ 314.21 Advance determinations.

(a) If circumstances indicate that a major contraction will occur, the Department may make an advance determination of a major contraction without waiting for the regular monthly computation set forth in § 314.20. The Department will consider whether to make an advance determination either on its own initiative or upon receipt of an application from an employee who has been deprived of employment or adversely affected with respect to compensation, or a representative of one or more such employees.

(b) An application under this section shall be titled "Application for Advance Determination of Major Contraction." It shall contain the information set forth in § 314.11 (b)(1) through (b)(6) and an explanation of the applicant's basis for claiming that a major contraction will occur, including all supporting evidence available to the applicant. A person may consolidate an application under this section with an application under § 314.11 for determination of a qualifying dislocation.

(c) The Department will terminate an advance determination of major contraction whenever it finds that the predicted major contraction has not occurred or will not occur.

§ 314.22 Notice of major contraction.

Upon finding a major contraction under §314.20, or making or terminating an advance determination under § 314.21, the Department will publish the finding in the **Federal Register** and send written notice of it to the persons listed in § 314.14.

PART 316—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

316.1 Purpose.
316.2 Applicability.
316.3 Notice of claim.
316.4 Interest, penalty charges, and collection fees.
316.5 Collection by offset.
316.6 Settlement of claims.
316.7 Referral for litigation.
316.8 Disclosure to consumer reporting agency.
316.9 DOT claims agent.

Authority: Secs. 204, 401, 402, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 754, 757, 758, 771; 49 U.S.C. 1324, 1371, 1372, 1377, 1386. Secs. 3 and 5, Pub. L. 89–308, as amended, 89 Stat. 308, 96 Stat. 1754–1758, 31 U.S.C. 3701–3719.

Note: The information collection requirements contained in this part have been approved by the Office of Management and Budget under number 3024–0070.

§ 316.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act and interpreted by the General Accounting Office and Department of Justice. It provides procedures under which the Department will collect claims owed to the United States arising from activities under its jurisdiction. The part further sets forth the procedures for the Department to determine and collect interest and other charges on those claims under the Debt Collection Act and for referral of unpaid claims for litigation.

§ 316.2 Applicability.

The part applies to all claims due the United States under the Federal Claims Collection Act as amended by the Debt Collection Act, arising from activities under the jurisdiction of the DOT under the responsibilities transferred to it by section 1601(b)(1) of the Federal Aviation Act of 1958, is amended, including amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest, and other sources.

§ 316.3 Notice of claim.

(a) DOT will send a written notice to any person who owes payment to the United States under this part, stating the basis for the claim, the possible interest and penalty charges under this part for non-payment, additional consequences of non-payment, and the date full payment is due. That payment will normally be due 30 days from the date notice under this part is mailed. The notice of claim will be sent return receipt requested.

(b) If the claim is disputed, the debtor shall respond to the notice in writing and state whether and when full payment is to be made, and the reasons for non-payment. If full payment is not made by the date asked in the notice, the debtor shall also state the reasons for the inability to make full payment and how and when payments are to be made.

(c) If no response to the notice is received by the date asked in the notice, the Department may take further action under this part or under 4 CFR Parts 101–105, and the Federal Claims Collection Act, as amended. These actions may include reports to credit bureaus, contracts with collection agencies, revocation of licensing or offset of Federal salary or other administrative offset, as authorized in 31 U.S.C. 3701–3719.

§ 316.4 Interest, penalty fees, and collection charges.

(a) DOT will assess interest on unpaid claims. The interest rate used by the Department is set by the Secretary of the Treasury. DOT will further charge penalty fees of not more than 6 percent per year of the unpaid claim for failure to pay a part of a debt more than 90 days past due. DOT will also impose collection charges to cover the costs of processing and handling overdue claims, based on the costs incurred.

(b) Interest on debts will be charged and will run from the date the notice of claim is mailed if the amount of the debt is not paid within 30 days from that date. The Department may extend the 30-day period when in the public interest. Interest will be calculated only on the principal of the debt. The rate of interest charged is the rate in effect on the date from which interest begins to run. The rate will remain fixed for the duration of the indebtedness.

(c) The Department may waive interest, collection charges or penalty fees if it finds that:

(1) The debtor is unable to pay any significant sum within a reasonable period of time;

(2) Collection of interest or charges jeopardizes collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including, under such circumstances, where an offset or installment payment agreement is in effect.

§ 316.5 Collection by offset.

(a) Whenever feasible, DOT will collect claims under this part by means of administrative offset against obligations of the United States to the debtor. Collection by Federal salary will be under the procedures in 4 CFR Part 102.

(b) The Department will notify the debtor in writing of its intent to use offset procedures to collect the debt unless the debtor agrees to repayment. The Department will ask other Federal agencies to help in the offset whenever possible. The notice to the debtor shall also include the type and amount of the claim and an explanation of the debtor's rights for records and review under 31 U.S.C. 3716(a).

§ 316.6 Settlement of claims.

(a) DOT may not waive the principal of any debt owed the United States.

(b) DOT may settle claims not exceeding $20,000 by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) The Government would be unable to enforce collection in full through litigation or administrative means within a reasonable time;

(3) The cost of collecting the full amount is not justified by the amount of the claim; or

(4) With respect to enforcement debts, DOT's enforcement policy would be served by settlement of the claim for less than the full amount.

§ 316.7 Referral for litigation.

Claims that cannot be settled under § 316.6 or for which collection action cannot be ended or suspended under 4 CFR Parts 103 and 104 will be referred to the General Accounting Office for litigation.

§ 316.8 Disclosure to consumer reporting agency.

DOT may disclose delinquent debts to consumer reporting agencies under the Federal Claims Collection Act, as amended. If, after a report has been made under this section, the status or amount of the claim substantially changes, DOT will notify the reporting agency in writing within 15 days of the change. Any request for verification information will be given to the reporting agency by the Department within 30 days of receipt of the request. Before disclosure to a reporting agency, the Department will obtain in writing a statement by the agency that it will comply with the Fair Credit Reporting Act and other applicable Federal statutes.

§ 316.9 DOT claims agent.

(a) The Assistant Secretary for Administration is the Claims Collection Agent for all claims under this part. The Assistant Secretary for Administration will take action as delegated under Part 385 of this chapter to carry out this part and the requirements of 4 CFR Parts 101–105.

(b) All action for the collection of claims under this part will be the responsibility of the Assistant Secretary for Administration. All DOT offices shall send documents supporting claims under this part to the Assistant Secretary for Administration for action. Delegated waivers or compromise under this part shall be with the concurrence

of the General Counsel. Any action taken by the Assistant Secretary for Administration under this Part involving air carriers receiving subsidy will be in consultation with the appropriate Office director(s).

PART 320—PROCEDURES FOR AWARDING JAPANESE CHARTER AUTHORIZATIONS

Subpart A—General Provisions

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320.2 Applicability.
320.3 Definitions and terminology.
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320.16 Reallocation of authorizations.
320.17 Notice of intent to use charter authorizations.
320.18 Report of charter authorizations used.

Authority: Secs. 204, 401, 407, 1102, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 797 (49 U.S.C. 1324, 1371, 1377, 1502).

Subpart A—General Provisions

§ 320.1 Purpose.

This part sets out procedures governing the transfer or reallocation of authority to perform the charter flights authorized by the September 7, 1982, Memorandum of Understanding concerning bilateral aviation relations between the United States and Japan. That memorandum provides that each country's direct air carriers may perform 300 one-way charter flights between the two countries each year in accordance with country-of-origin rules. Charter authorizations were awarded in 1982 by grandfather allotments and initial lottery.

§ 320.2 Applicability.

This part applies to United States direct air carriers with respect to charter flights between the U.S. and Japan beginning on October 1, 1982.

§ 320.3 Definitions and terminology.

(a) "Authorization" means the authority to perform one of the 300 annual one-way charter flights between the United States and Japan authorized in the Memorandum of Understanding described in § 320.1.

(b) A charter authorization is "used" when the flight is performed.

(c) An "allocation year" runs from October 1 through September 30 and is used as a reference for reporting requirements and reallocation of forfeited authorizations.

§ 320.4 Charter authorizations.

(a) No charter flights between the United States and Japan shall be operated except in accordance with a charter authorization awarded or acquired under this part.

(b) A charter flight award obtained through the grandfather allotment or the initial lottery shall entitle the holder to authorizations for each of the three years beginning October 1, 1982, with the following exceptions:

(1) A charter flight authorization for an allocation year that has not been used by September 30 of that year will result in a penalty of a forfeiture of two charter flight authorizations for the remaining allocation years, as provided in § 320.15;

(2) A charter flight authorization obtained by request under § 320.15 shall be for one allocation year.

§ 320.5 Related carriers counted as one.

Two or more air carriers that are related will be considered as a single air carrier for the purposes of this part. One carrier is related to another carrier if it controls, is controlled by, or is under common control with the other carrier.

Subpart B—Specific Procedures

§ 320.10 Transfer of charter authorizations.

(a) Any air carrier holding a charter authorization awarded or acquired by it under this part may transfer it, for any consideration, to any other air carrier that meets the criteria set forth in § 320.12(a) as of the time of transfer.

(b) There shall be no penalty for the transfer of a charter authorization obtained in an initial lottery.

(c) An air carrier may transfer up to 10 percent of its grandfather authorizations for a given year without penalty. The base number shall not include any grandfather authorizations declined under § 320.11(c). A carrier's charter flight authorization for the remaining allocation years shall be reduced on a one-to-one basis for each flight beyond the 10 percent figure that it transfers.

(d) A transfer of a charter authorization shall not become effective until the transferring air carrier files a notice in duplicate with the DOT decisionmaker. The notice shall be labeled "Notice of Transfer of Japan Charter Authorization," and identify the transferred charter authorization by the flight authorization number(s) assigned under § 320.3(d). It shall be filed within 15 days after the date of the transaction, but in any event before departure of the authorized flight, whether the flight is performed by the transferee or by any subsequent transferee. The notice shall indicate the number of charter authorizations transferred and the date of the transaction, and shall be signed by both the transferor and the transferee.

(e) An air carrier that transfers a charter authorization to another carrier shall retain for at least 1 year after the conclusion of the allotment year for which it was awarded a record of the consideration received for the transfer.

(Approved by the Office of Management and Budget under control number 3024-0055)

§ 320.11 Unused charter authorizations.

(a) Any carrier that fails to use its charter flight authorization by September 30 of an allocation year shall be penalized in the remaining allocation years at the rate of two charter flight authorizations for each unused authorization. If this penalty results in a negative number, the carrier's allotment will be zero. The flight authorizations forfeited under this section shall be reallocated as provided in § 320.16.

(b) Notwithstanding paragraph (a) of this section, any carrier may without penalty return any of its allocated authorizations to the DOT.

For any subsequent year covered by this rule, until October 31, of that year.

(c) Returns shall be made by written notice to the Office of the Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, Washington, D.C. 20590, and shall be considered made as of the date the notice is received by that Office. The notice shall identify the air carrier and the number of authorizations returned, and shall be labeled "Return of Japan Charter Authorizations."

(d) The DOT decisionmaker reserves the right, on his or her own motion, to assess a forfeiture of authorizations on a carrier, and/or bar the carrier's requests for authorizations for a specified period, if he or she finds that the carrier has unreasonably requested and received authorizations without using them, or has transferred authorizations to another carrier that had no intention of operating under them.

§ 320.12 Reallocation of authorizations.

(a) Any authorizations forfeited under § 320.14 or § 320.15, or returned to DOT under § 320.15(b), shall be reallocated according to the procedures of this section.

(b) The Department will maintain an up-to-date list of authorizations, outstanding authorizations returned, and the number currently available on

request. This information is available to the public.

(c) An eligible carrier, as defined in § 320.12(a), may request authorizations from the Office of the Assistant Secretary for Policy and International Affairs. Each authorization shall be for one allocation year. The request shall be in writing, and labeled, "Request for Japan Charter Authorizations."

(d) Except as provided in this paragraph and paragraph (e) of this section, a request for authorizations may be made at any time. A particular carrier may make more than one request during any calendar month, but the total number of authorizations requested during any month shall be not more than 30. Requests made before October 1 for the allocation year beginning on that date, or a year after that date, shall be included in that carrier's "October request(s)," and when the number of flights requested is equal to 30, that carrier may not make another such request until November 1.

(e) A carrier that has been assessed a penalty under § 320.14 or § 320.15 with respect to a given allocation year (beginning on or after October 1, 1983) shall not make a request for authorizations for a subsequent year until April 1 of the subsequent year.

(f) DOT will accept requests for authorizations continuously during business hours, beginning at 9:00 a.m. on the first business day of the Department following the last day of the turn-back period specified in § 320.15 (b)(1) and (b)(2). Requests will be filled from the pool of returned authorizations in the order they are received by the Office of the Assistant Secretary for Policy and International Affairs. If the requests at any time exceed the number of returned authorizations, a stand-by list will be established. However, all requests received on the above opening date will be considered as having been received simultaneously, and if they exceed the number of returned authorizations, their order will be established by random selection under procedures agreed to by the requestors or set forth in an order of the DOT decisionmaker.

(Approved by the Office of Management and Budget under control number 3024–0055)

§ 320.13 Notice of intent to use charter authorization.

An air carrier shall file in duplicate with the Office of the Assistant Secretary for Policy and International Affairs a notice of its intention to use a charter authorization at least 7 days before departure of the flight. The notice shall be labeled "Notice of Intent To Use Japan Charter Authorization," and include the flight authorization number(s).

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§ 320.14 Report of charter authorizations used.

Within 15 days after any month in which an air carrier uses a charter authorization, it shall file in duplicate a report with the Office of the Assistant Secretary for Policy and International Affairs. The report shall be labeled "Report of Japan Charter Authorizations Used." It shall include identification numbers of the authorizations, flight itineraries, flight dates, aircraft type, and the number of passengers or cargo tons transported. Passenger and cargo figures may be aggregated for the month.

PART 323—TERMINATIONS, SUSPENSIONS, AND REDUCTIONS OF SERVICE

Sec.

323.1 Applicability.
323.2 Definitions.
323.3 Who shall file notices.
323.4 Contents of notices.
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323.14 Temporary suspension authority for involuntary interruption of service.
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323.17 Delays in discontinuing service.
323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Authority: Secs. 204, 401, 407, 411, and 419, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 769, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1381, 1389.

§ 323.1 Applicability.

This part applies to certificated air carriers who terminate or suspend service to a point, or in a market, and to all air carriers who terminate, suspend, or reduce service below the level of essential air transportation under section 419 of the Act.

§ 323.2 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958, as amended.

"Certificated carrier" means a direct air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board (CAB) or DOT under section 401 of the Act, authorizing scheduled route service.

"Eligible point" means:

(1) Any point in the United States to which any certificated carrier was authorized under its section 401 certificate to provide service on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that the CAB designated as an eligible point under the Act; or

(3) Any other point in Alaska or Hawaii that the CAB or DOT designated as an eligible point under the Act.

"Essential air transportation" means the level of air transportation determined by the CAB or DOT for any eligible point under section 419(a)(2) or 419(b)(4) of the Act.

"FAA-designated hub" means any airport serving a small, medium, or large air traffic hub listed in the Department of Transportation publication, "Airport Activity Statistics of Certificated Route Carriers."

"United States" includes the several States, the District of Columbia, and the several territories and possessions of the United States. "State" includes any of the individual entities comprising the United States.

§ 323.3 Who shall file notices.

(a) *Terminations, suspensions, or reductions by certificated carriers.* The notice described in § 323.4(a) shall be filed by any certificated carrier that intends to:

(1) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States when that termination or suspension will leave no certificated carriers serving that point. Service shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two points;

(2) Reduce passenger air transportation so that any eligible point receives less than the level of essential air transportation determined by CAB or DOT;

(3) Terminate or suspend all passenger air transportation that it is providing to any eligible point in the United States for which CAB or DOT has not issued an essential air service determination under either § 325.5 or § 325.7 of this chapter, when that termination or suspension will leave only one certificated carrier serving that point. Service shall be considered to be

terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between the two points;

(4) Reduce passenger air transportation to any eligible point in Alaska for which CAB or DOT has not determined the level of essential air transportation so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average weekly number of round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska; or

(5) Terminate, suspend, or reduce passenger air transportation at an eligible point for which CAB or DOT has issued, or is required to issue, an essential air transportation determination under section 419(a)(2) or section 419(b)(4) of the Act so that the total available seats of all the carriers linking that point to FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. Service to a hub shall be considered to be terminated or suspended whenever it is operated less than 5 days per week, with three or more intermediate stops, or in one direction only between two points.

(b) [Reserved]

(c) *Uncertificated carriers.* The notice described in §323.4(a) shall be filed by any uncertificated carrier that intends to terminate, suspend, or reduce:

(1) Air transportation so that any eligible point receives less than the level of essential air transportation determined by the CAB or DOT;

(2) Passenger air transportation to any eligible point for which CAB or DOT has not determined the level of essential air transportation, other than a point in Alaska, so that there is no FAA-designated hub from which the point receives at least two round trip flights per day, 5 days per week; or

(3) Passenger air transportation to any eligible point in Alaska, for which CAB or DOT has not determined the level of essential air transportation, so that the service between that point and every other point served by a certificated carrier is either:

(i) Less than two round trip flights per week, or

(ii) Less than the average number of weekly round trip flights actually provided during calendar year 1976, or

(iii) Less than the number of flights specified under an agreement between CAB or DOT and the State of Alaska.

(d) For the purpose of this section, in ascertaining the level of air transportation being provided to a point or between two points, air transportation that has been the subject of a notice filed under this section shall be considered not in operation for the duration of the notice period.

(e) If a certificated carrier was, before October 24, 1978, granted authority to suspend air transportation, and that authority ends on a stated date, the carrier shall comply with the requirements of this part before continuing the suspension beyond that date.

(f) If a certificated carrier was, before October 24, 1978, granted authority to terminate or suspend air transportation, but has not suspended service, the carrier shall comply with the requirements of this part before terminating or suspending service.

§ 323.4 Contents of notices.

(a) The notice required under § 323.3 (a) and (c) shall contain:

(1) Identification of the carrier, including address and telephone number.

(2) Statement whether the carrier is a certificated carrier or an uncertificated carrier.

(3) Names of all other air carriers serving the point at the time of filing.

(4) Description of the service to be terminated, suspended, or reduced, including:

(i) Arrival and departure times at the affected points of the flights to be discontinued;

(ii) Aircraft type used,

(iii) Routes of the flights to be discontinued, and a statement of which routes, if any, will be left without nonstop or single-plane service from a certificated carrier by the intended change, and

(iv) Date of intended termination, suspension, or reduction of service.

(5) A statement whether CAB or DOT has determined the level of essential air transportation for the point, and

(i) If such a determination has been made, a statement whether the intended termination, suspension, or reduction will reduce air transportation to the point below the essential level; or

(ii) If such a determination has not been made, and the point is an eligible point, a statement whether the intended termination, suspension, or reduction reasonably appears to deprive the point of essential air transportation, and an explanation.

(6) If the point is an eligible point, the calendar date when objections are due under § 323.10.

(7) Proof of service upon all persons specified in § 323.7(a). The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(b) [Reserved]

(c) DOT may require any carrier filing notice to supply additional information.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.5 Time for filing notices.

(a) Except as specified by paragraph (b) of this section, a notice required by § 323.3 shall be filed at least:

(1) 90 days before the intended termination, suspension, or reduction, if it is filed by a certificated carrier or by an uncertificated carrier receiving compensation under section 419 of the Act for service to the point;

(2) 30 days before the intended termination, suspension, or reduction, if it is filed by an uncertificated carrier not receiving compensation under section 419 of the Act for service to the point.

(b) The notice required by §323.3(a)(3) shall be filed at least 30 days, and the notice required by § 323.3(a)(1) shall be filed at least 60 days, before the intended termination or suspension.

§ 323.6 General requirements for notices.

(a) Each notice filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each notice filed under this part shall be titled to indicate the point(s) involved, and to indicate whether it is a 30-, 60-, or 90-day notice and whether it involves a termination, a suspension, or a reduction of air transportation.

§ 323.7 Service of notices.

(a) A copy of each notice required by § 323.3 shall be served upon:

(1) The chief executive of the principal city or other unit of local government at the affected point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are designated as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) [Reserved]

(3) The State agency with jurisdiction over transportation by air in the State containing any community required to be served under paragraph (a)(1) of this section. If there is no such State agency,

the notice shall be sent to the governor of that State.

(4) The manager of, or other individual with direct supervision over and responsibility for, the airport at any community required to be served under paragraph (a)(1) of this section.

(5) The Postmaster General (marked for the attention of the Assistant General Counsel, Transportation), if the carrier filing the notice is authorized to transport United States mail to or from any community required to be served under paragraph (a)(1) of this section.

(6) Each air carrier providing scheduled service to a non–hub or FAA–designated small hub that is directly affected by the notice.

(7) The DOT Regional Office for the region in which the affected point is located.

(8) Any other person designated by DOT.

(b) [Reserved]

(c) Local communities, State agencies, and airport managers shall be served personally or by registered or certificated mail. All other persons may be served by ordinary mail.

§ 323.8 Exemptions.

Carriers are exempted from the following provisions of the Act or this part:

(a) Section 401(j) of the Act to the extent that that provision would otherwise require them to file a notice when terminating, suspending, or reducing service in foreign air transportation;

(b) Paragraphs (a)(1), (a)(3), and (a)(5) of § 323.3 to the extent that those provisions require them to file a notice when terminating or suspending the domestic leg of an international flight (fill-up service); and

(c) Sections 401(j) and 419 of the Act and all the provisions of this part to the extent that those provisions would otherwise require them to file a notice when terminating or suspending service at an eligible point at which they have been replaced under Part 326 of this chapter. This exemption shall apply only if the carrier terminates or suspends service on, or within 90 days after, the date that the new carrier begins service.

§ 323.9 Objections to notices.

(a) Any person may file an objection requesting DOT to prohibit any termination, suspension, or reduction of air transportation to an eligible point that is the subject of a notice filed under this part.

(b) Objections shall contain:

(1) Identification of the objector, including address and telephone number.

(2) A statement of DOT action requested.

(3) The schedules, routes, carriers, and aircraft types for all air transportation to the affected point other than that proposed to be terminated, suspended, or reduced.

(4) A suggested reasonable level of essential air transportation to the affected point.

(5) [Reserved]

(6) A justification of the suggested level of essential air transportation.

(7) Proof of service on the carrier filing the notice objected to, on all airport managers and State and local governments on whom the notice was filed, and any other person designated by DOT. The proof of service shall include the names of all carriers served and the names and addresses of all other persons served.

(c) Objectors are strongly urged to include in their objections facts to support the suggested level of essential air transportation (e.g., traffic and enplanement data, other market studies, facts descriptive of the point's isolation or dependence on air transportation).

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.10 Time for filing objections.

(a) Objections shall be filed not later than:

(1) 12 days from the date of filing of a 30-day notice;

(2) 15 days from the date of filing of a 60-day notice; or

(3) 20 days from the date of filing of a 90-day notice.

(b) The Department may accept late-filed objections, upon motion, for good cause shown.

(c) Whenever a notice has been filed earlier than required under § 323.5, the Department may extend the time for filing an objection to that notice.

§ 323.11 Answers to objections.

(a) Any person may file an answer to an objection filed under this part.

(b) An answer must be filed not later than 7 business days after the filing of the objection to which it responds. Late-filed answers may be allowed, and extensions of filing time granted, by the Department for the same reasons as for objections.

(c) An answer may contain the same type of facts and discussion permitted for objections under this part, and must contain:

(1) Proof of service on the objector, on all persons on whom the objection was required to be served, and on any other person designated by the Department. The proof of service shall include the names and addresses of all persons served.

(2) Identification of the answering party, including address and telephone number.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.12 General requirements for objections and answers.

(a) Each objection and answer filed under this part shall, unless otherwise specified, conform to the procedural rules of general applicability in Subpart A of Part 302 of this chapter.

(b) Each objection shall be titled "Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the notice to which it responds. Each answer shall be titled "Answer to Objection to Termination, Suspension, or Reduction of Air Service," and shall identify the objection to which it responds.

§ 323.13 DOT actions.

(a) If an objection has been filed under this part, DOT will dispose of the objection by order.

(b) If no objection has been filed within the time allowed by § 323.10(a), DOT may:

(1) By order prohibit a termination, suspension, or reduction that reasonably appears to deprive any eligible point of essential air transportation;

(2) Issue a notice or a final order that it will take no action on a notice filed under § 323.3; or

(3) Take no action.

§ 323.14 Temporary suspension authority for involuntary interruption of service.

(a) Any air carrier may temporarily suspend service without filing a notice under § 323.3 for any interruption of service that the carrier cannot reasonably be expected to foresee or control, such as rules, standards, or other action, or inaction, of the Administrator of the Federal Aviation Administration or of a foreign government, emergency measures, strikes, weather conditions, construction work on airports, or disasters. However, the provisions of this paragraph shall apply to interruptions due to airport inadequacies only if the carrier is unable to serve the point through any airport convenient to the point with the type of equipment last regularly used to serve the point.

(b) In the case of an interruption of service caused by a strike, the carrier shall give immediate notice of the interruption to DOT. Suspension authority under this section due to a

strike shall expire 90 days after employees return to work.

(c) If service to a point is interrupted for more than 3 consecutive days for reasons beyond the carrier's control other than a strike, the holder shall give notice to DOT within 3 days following the date of first interruption, setting forth the date of first interruption and a full statement of the reasons for the interruption.

(d) The notice required by paragraph (b) or (c) of this section shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.15 Report to be filed after strikes.

(a) Within 15 days following resumption of service after a strike, an air carrier shall file a report with DOT containing a list of all flights that were canceled, the date they were canceled, and the date service was resumed.

(b) The report shall be marked for the attention of the Director, Office of Essential Air Service.

(Approved by the Office of Management and Budget under control number 3024–0030)

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under paragraphs (a)(2), (a)(4), (a)(5), or (c) of § 323.3 shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until DOT permits the flights to be discontinued. The listings may include a notice stating that the flights are "to be discontinued as of (date) subject to government approval."

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if DOT requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after DOT permits it to do so.

§ 323.18 Carriers' obligations when terminating, suspending, or reducing air service.

Any air carrier that terminates, suspends, or reduces air service, whether or not subject to the notice requirements of this part, shall make reasonable efforts to contact all passengers holding reservations on the affected flights to inform them of the flights' cancellation.

PART 324—PROCEDURES FOR COMPENSATING AIR CARRIERS FOR LOSSES

Sec.

324.1 Applicability.
324.2 Application for compensation for losses.
324.3 Procedures after receipt of application.
324.4 Informal conference procedures.
324.5 Participants in the conference.
324.6 Statement of confidentiality.
324.7 Post-conference procedure.
324.8 Effect of conference agreements.
324.9 Procedure for making advance payments.
324.10 Liability of carrier for excess payments.
324.11 Conformity with Subpart A of Part 302.

Authority: Secs. 204, 407, and 419 of Pub. L. 85–726, as amended, 72 Stat. 743, 766, 92 Stat. 1732, 49 U.S.C. 1324, 1377, 1389.

§ 324.1 Applicability.

This part applies to proceedings, under sections 419(a)(7)(B) and 419(a)(7)(C) of the Act, for compensating an air carrier for losses incurred in complying with a DOT or CAB order to continue service.

§ 324.2 Application for compensation for losses.

(a) To receive compensation for its losses incurred in complying with a DOT or CAB order to continue to provide essential air service, an air carrier shall file in the Documentary Services Division an application titled "Application for Compensation for Losses."

(b) The application may be filed after the first 30-day compulsory service period, but shall not be filed later than 90 days after the carrier is allowed to suspend, terminate, or reduce service. It shall include:

(1) The dates of the compulsory service period covered by the application.

(2) The amount of compensation that is sought.

(3) Detailed information as to traffic, revenues, and expenses during the compulsory service period, and any investments that were required to perform the operations during that period.

(4) Full support for all information.

(5) The assurances required by § 379.4 of this chapter.

(6) A certification by a responsible officer of the air carrier that the information submitted is true and accurate to the best of his or her knowledge.

(7) A statement acknowledging that any compensation paid in advance under § 324.9 or periodically under § 324.3 is subject to adjustment by DOT.

(c) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(d) DOT may dismiss an application if it does not contain the information required by this section and may close the case if a complete application is not filed within 90 days after the prior application was dismissed.

(Approved by the Office of Management and Budget under control number 3024–0034)

§ 324.3 Procedures after receipt of application.

(a) When the application is received *before* the air carrier has been permitted to institute its intended suspension, termination, or reduction in service, the procedure is as follows:

(1) DOT will issue an order setting an interim rate of compensation to be paid periodically to the carrier. This amount will be subject to DOT's final adjustment after the carrier is allowed to suspend, terminate, or reduce service as it requested.

(2) If the carrier seeks an increase in the amount of the periodic payments, it must submit another application. DOT may revise the amount of the periodic payments on its own initiative in order to avoid paying excessive interim compensation.

(3) Within 90 days after the carrier is allowed to institute its suspension, termination, or reduction in service, it shall submit another application under § 324.2 so that DOT can make a final adjustment of that carrier's claim.

(b) When the application is received *after* the air carrier has been permitted to suspend, terminate, or reduce service, the procedure is as follows:

(1) If DOT finds the application adequate to support the compensation requested, it will issue a show-cause order proposing an amount of payment to the carrier.

(2) If DOT finds the application insufficient to support the compensation requested, it may seek more information. If DOT does not agree to the compensation requested, it will send the applicant a statement describing the areas in which it disagrees or finds the information presented insufficient, and will refer the matter to an informal conference under § 324.4.

(3) The applicant may file an answer to the statement of disagreement not later than 15 days after it is received.

(c) Any payment will be considered to be made on the first day that losses compensated by that payment were incurred.

§ 324.4 Informal conference procedures.

(a) When there is disagreement on the amount of compensation that should be paid, DOT will arrange a conference with representatives of the air carrier applicant for the purpose of understanding and resolving the issues and facts in proceedings under this part.

(b) The conference shall be limited to the discussion of, and possible agreement on, the fair and reasonable amount of compensation for losses that should be paid to the air carrier required to continue service under DOT order.

(c) When DOT takes public action on the matter, a written summary of the conference discussion will be filed in the Documentary Services Division and sent to the carrier involved.

§ 324.5 Participants in the conference.

Other than DOT's staff and representatives of the carrier whose losses are in issue, no person may attend unless DOT's staff considers their presence necessary to resolve one or more of the issues under discussion. In such case, their participation shall be limited to such specific issues. No person, however, is required to attend.

§ 324.6 Statement of confidentiality.

All persons in an informal conference, during the period of the conference and until DOT takes public action on the matter, shall strictly protect information obtained in the conference from disclosure except to DOT's and the applicant's concerned employees and counsel. All persons participating in the conference other than DOT staff shall sign a statement in which they agree to so protect the information.

§ 324.7 Post-conference procedure.

(a) If any pertinent issues are not resolved at the conference, the air carrier may request a hearing or the opportunity to submit a written or oral statement to the Department. DOT will grant the request if such action is needed for further clarification and understanding of the issues. Granting of the request will not, however, limit the rights that the carrier might otherwise have under the Act and the rules of practice.

(b) If the carrier has not previously received compensation under this part for providing essential service to the point involved in its application, DOT shall issue a show-cause order proposing an amount of payment to the carrier.

(c) If the carrier has been receiving advance payments under § 324.9 or periodic payments under § 324.3(a)(2), DOT shall issue a show-cause order proposing the final adjustment of the carrier's claim, setting forth DOT's tentative findings of the amount it owes the carrier or the amount the carrier owes DOT.

§ 324.8 Effect of conference agreements.

(a) No agreement or understanding on a rate of compensation that is reached in the conference shall be binding on DOT or any participant.

(b) The carrier will have the right to take other procedural steps, including requesting a hearing, as if no conference had been held.

§ 324.9 Procedure for making advance payments.

(a) At any time after a carrier is ordered to continue service, DOT may, upon its own initiative or on petition by the carrier, order advance payments for a carrier's future losses subject to adjustment upon determination of the final rate.

(b) A carrier's petition shall be titled "Petition for Advance Compensation for Losses."

(c) The carrier shall include with its petition, or will be required by DOT to submit, estimates of the information required under § 324.2(b) and a full explanation of why it needs compensation in advance. The explanation shall include evidence of the carrier's financial condition and cash-flow prospects which taken together establish the need for an immediate cash infusion in order for service to be continued.

(d) Carriers receiving payments under this section may, absent a filing under § 324.2 of this part, continue to receive the amount of compensation ordered by the CAB or DOT under paragraph (a) of this section. DOT may revise the amount of these payments in order to avoid paying the carrier excessive compensation.

(Approved by the Office of Management and Budget under control number 3024–0034)

§ 324.10 Liability of carrier for excess payments.

(a) If the payments to a carrier exceed the amount authorized by CAB or DOT in its final adjustment, the affected air carrier shall be liable for repayment of the amount of such excess.

(b) If the carrier fails to make the repayment under paragraph (a) of this section, any future payment due that carrier under this chapter shall be applied to such indebtedness or DOT shall use any other means authorized by law to ensure repayment.

(c) Compliance with the provisions of this section shall not deprive a carrier of any right it would otherwise have to contest DOT's final adjustment.

§ 324.11 Conformity with Subpart A of Part 302.

The provisions of Subpart A of Part 302 of this chapter, except for § 302.8 of this chapter and any other provisions that are inconsistent with this part, shall apply to proceedings under this part.

PART 325—ESSENTIAL AIR SERVICE PROCEDURES

Sec.

325.1 Purpose.
325.2 Applicability.
325.3 Definitions.
325.4 State and local participation.
325.5 Determinations and designations.
325.6 Periodic reviews.
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Authority: Secs. 204, 419, Pub. L. 85–726, as amended, 72 Stat. 743, 92 Stat. 1732; 49 U.S.C. 1324, 1389.

§ 325.1 Purpose.

The purpose of this part is to establish procedures to be followed in designating eligible points and in determining essential air transportation levels for eligible points, and in the appeals and periodic reviews of these determinations, under section 419 of the Act.

§ 325.2 Applicability.

This part applies to essential air service determinations for communities designated as eligible under section 419(a) of the Act and to eligible point designations and essential air service determinations for communities that qualify under section 419(b) of the Act. It applies to the gathering of data by the Department, and to the participation of State, local, and other officials and other interested persons in the designation and determination processes.

Note.—Criteria for designating eligible points under section 419(b) are contained in Part 270 of this chapter. Guidelines for deciding essential air service levels are contained in Part 398 of this chapter.

§ 325.3 Definitions.

As used in this part, "eligible point" means:

(a) Any point in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate

issued by CAB under section 401 of the Act, to provide air service on October 24, 1978, whether or not such service was actually provided;

(b) Any point in the United States and the several territories and possessions of the United States that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, inclusive, and that has been designated as an eligible point under the Act; or

(c) Any other point in Alaska or Hawaii that has been designated as an eligible point under the Act.

§ 325.4 State and local participation.

(a) DOT, on a periodic basis, will send a questionnaire to each eligible point that is served by not more than one certificated air carrier, or is designated as an eligible point under section 419(b) of the Act, or for which DOT is reviewing its essential air service needs. The questionnaire will be addressed to:

(1) The chief executive of the principal city, or other unit of local government at the affected point, that is named or has been previously named in a qualifying section 401 certificate. For points in Alaska or Hawaii that are named DOT as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point;

(2) The individual or entity with direct supervision over and responsibility for the airport at the eligible point; and

(3) The State agency with jurisdiction over air transportation in the State containing the eligible point. If there is no such State agency, the questionnaire will be sent to the governor of that State.

(b) Within 60 days after receipt of the questionnaire, five copies of the response shall be filed in the Documentary Services Division, unless the Department specifies another date. If no response is received within the period, essential air service for that eligible point may temporarily be set at the minimum level prescribed in section 419(f) of the Act.

(c) Any other interested person may, during the 60-day response period, submit information relevant to the essential air service level of that eligible point by filing in the Documentary Services Division, five copies of a document titled with the name of the point involved.

(d) As necessary, the DOT may request additional information to supplement the questionnaire.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.5 Determinations and designations.

(a) Not later than October 24, 1979, after reviewing all information submitted, CAB issued determinations of the essential level of air service for eligible points that, on October 24, 1978, were served by not more than one direct air carrier holding a certificate under section 401 of the Act for scheduled service to the point.

(b) DOT will issue a determination of the essential level of air service for a point within 6 months after each of the following events:

(1) A notice is received that service to an eligible point will be reduced to only one carrier that holds a section 401 certificate;

(2) A point is designated as an eligible point under section 419(b) of the Act and either paragraph (c) of this section, paragraph (d) of this section, or § 325.7(e); or

(3) A review was conducted of essential air service of that point under § 325.6.

(c) Not later than January 1, 1982, CAB designated the communities described in § 270.2(a) and (b) as eligible points or as ineligible.

(d) After January 1, 1982, DOT may designate communities in Alaska or Hawaii as eligible points if they apply for such designation.

§ 325.6 Periodic reviews.

(a) The Department will start a periodic review of essential air service within 1 year of the date of the previous determination of essential air service for eligible points receiving subsidized service, within 2 years of the date of the previous determination for eligible points in Alaska, and within 3 years of the date of the previous determination for eligible points without subsidized air service.

(b) The review shall be conducted in accordance with the procedures in §§ 325.4, 325.5 and 325.7.

(c) The Department may review the designation under section 419(b) of a community as an eligible point to determine whether that point continues to meet the criteria in part 270 of this chapter.

§ 325.7 Appeal of the determination or designation.

(a) Any person objecting to an essential air service determination may within 60 days after its issuance file in the Documentary Services Division a document titled "Appeal of Essential Service Determination." The appeal shall:

(1) Contain specific objections to the essential air service determination, including support for all such objections;

(2) State how the essential air service determination departs from the guidelines in Part 398 of this chapter or what extraordinary factors justify deviating from those guidelines; and

(3) Describe the level of air service that the appellant believes is essential for that community.

(b) Any person objecting to the designation of a point as ineligible under section 419(b) of the Act may within 60 days after the designation is issued file in the Documentary Services Division a document titled "Appeal of Eligible Point Designation."

(c) The Department shall appoint an appeal panel consisting of three senior employees, to be drawn from the Office of Essential Air Service, the Office of the General Counsel, and the Asistant Secretary for Governmental Affairs. No office shall be represented on an appeal panel by more then one employee. The three-member panel will process the appeal and make a recommendation to the Assistant Secretary for Policy and International Affairs.

(d) An informal conference may be held, or more information may be requested, before the three-member panel makes its recommendation.

(e) The DOT decisionmaker shall decide the appeal after receiving a recommendation from the three-member panel.

(f) If no appeal is filed within the 60-day period, a determination or designation will become final, unless stayed by the Department.

(g) Pending the outcome of an "Appeal of Essential Service Determination," the essential air service for the eligible point involved shall be the level set by the determination issued under § 325.5.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.8 Informal conferences.

(a) If an appeal raises an issue that cannot be satisfactorily resolved on the basis of written submissions, the Department may order that an informal conference be held.

(b) The informal conference will be conducted by a senior DOT employee designated by the Assistant Secretary for Policy and International Affairs.

(c) Any interested person may attend the informal conference.

§ 325.9 Oral arguments.

If some appeals raise issues common to several communities so that expression of diverse viewpoints on these issues would help the Department dispose of them, the parties may be invited to participate in an oral argument at its offices in Washington, D.C.

§ 325.10 Modification of the designated level of essential air service.

(a) Any person may file with DOT a petition titled "Petition for Modification of Essential Air Service Level," asking to modify the essential air service level at a point.

(b) The petition shall identify the point affected, and specifically state the reasons why the petitioner believes the designated essential level is inadequate. It should contain any facts and arguments that support its requests, and describe the level of essential air service that should be substituted.

(c) Any person may, within 30 days after the filing of a petition for modification, file an answer to that petition titled "Answer to Petition for Modification."

(d) After review, the Department may seek more information and the procedures of §§ 325.5 and 325.7 will be followed.

(Approved by the Office of Management and Budget under control number 3024–0037)

§ 325.11 Form of documents.

All documents filed under this part shall be filed in the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and on their front page state:

(a) The title of the document;

(b) The name of the affected community;

(c) The name, address, and telephone number of a person who can be contacted for further information concerning the subject of the document; and

(d) In the case of a responsive document, the docket number of the document to which it responds.

§ 325.12 Service of documents.

Any person, except one filing individually as a consumer, who files a document under this part, including responses to the questionnaire, shall serve that document upon those listed in § 325.4(a) of this part and upon the following:

(a) The governor of the State in which the eligible point is located;

(b) Each air carrier providing scheduled service to the affected eligible point;

(c) In the case of a responsive document, the one who filed the document to which it responds; and

(d) The U.S. Postal Service, Assistant General Counsel, Transportation Division, Law Department, Washington, D.C. 20260.

§ 325.13 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this chapter, a person filing a petition or appeal under this part is not required to file an environmental evaluation or energy information with the application.

§ 325.14 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

PART 326—PROCEDURES FOR BUMPING SUBSIDIZED AIR CARRIERS FROM ELIGIBLE POINTS

Sec.

326.1 Purpose.
326.2 Definitions.
326.3 Application to bump an incumbent carrier.
326.4 Answers and replies to bumping applications.
326.5 Service of applications and answers.
326.6 DOT action.
326.7 Standards for decision.
326.8 Transition from the incumbent carrier to the applicant.
326.9 Conformity with Subpart A of Part 302.

Authority: Secs. 204, 401, 407, 419, and 1001, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 763, 766, 788, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1376, 1377, 1389, 1481.

§ 376.1 Purpose.

The purpose of this part is to establish procedures for an air carrier applying under section 419(a)(11) or (b)(8) of the Act to provide essential air transportation to an eligible point, where it would be displacing another carrier that is providing essential air transportation under a subsidy rate previously established under section 419 of the Act. This part applies even if the applicant is not applying for a subsidy for itself but is merely seeking to terminate the incumbent carrier's subsidy.

§ 326.2 Definitions.

As used in this part:

(a) "Applicant" means an air carrier that files a bumping application.

(b) "Bumping application" means an application by an air carrier proposing to provide essential air transportation at an eligible point and requesting the Department to terminate the subsidy paid to an incumbent carrier for providing essential air transportation at that eligible point. The application may also request a subsidy to provide essential air transportation to that point.

(c) "Eligible point" means:

(1) Any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate of public convenience and necessity issued by the Board under section 401 of the Act, to provide passenger air transportation on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States and its several territories and possessions that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, that has been designated as eligible under the criteria in Part 270 of this chapter; or

(3) Any other point in Alaska or Hawaii that has been designated as an eligible point under Part 270 of this chapter.

(d) "Essential air transportation" means the level of air service that is guaranteed an eligible point under section 419 of the Act and the guidelines in Part 398 of this chapter.

(e) "Hub" means a point annually enplaning more than 0.05 percent of the total annual enplanements in the United States or listed as such by the Department of Transportation publication "Airport Activity Statistics of Certificated Route Carriers."

(f) "Incumbent carrier" means the air carrier serving an eligible point with subsidy at the time a bumping application is filed.

(g) "Subsidy under section 406" means payments made under section 406 of the Federal Aviation Act, Pub. L. 97–276, or any other appropriation act or continuing resolution that authorizes payments to air carriers based upon rate orders issued under section 406 of the Act.

§ 326.3 Application to bump an incumbent carrier.

(a) To replace an incumbent carrier at an eligible point, an air carrier shall file a bumping application in the Documentary Services Division.

(b) If the incumbent carrier is receiving its subsidy under section 406 of the Act, the application may be filed at any time after January 1, 1983.

(c) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the application may not be filed until the incumbent carrier has been serving the eligible point for at least 2 years.

(d) The application shall include:

(1) The name and address of the carrier filing the application;

(2) The name of the incumbent carrier;

(3) The name of the eligible point involved;

(4) Fitness information, as follows:

(i) If the applicant has already been found by the Department or CAB to be fit, willing, and able to provide scheduled service, it shall cite the most recent order establishing the finding.

(ii) If the applicant has not yet been found by the Department or CAB to be fit, willing, and able to provide a scheduled service, it shall include the fitness information required by Part 204 of this chapter to support such a finding. In making this showing, the applicant may incorporate by reference material submitted in a prior proceeding before the CAB or DOT.

(5) The information required by § 204.6(c) (2) and (3) of this chapter, even if the applicant is not seeking subsidy for itself;

(6) The service pattern proposed, including the hub and hubs to be served from the eligible point, the number of flights to be provided, whether the flights will be nonstop, and the type of aircraft to be employed. If the applicant is basing its application on improved service at the eligible point, it shall state how its proposed service represents an improvement over the incumbent carrier's service;

(7) If the applicant is seeking a subsidy, the assurances required by §§ 379.4 and 382.21 of this chapter;

(8) The earliest date or season that the applicant is prepared to begin service; and

(9) The availability of slots at the hub airport it proposes to serve.

(e) All information supplied by an air carrier in its application is subject to verification by DOT and DOT authorized auditors.

(Approved by the Office of Management and Budget under control number 3024–0063)

§ 326.4 Answers and replies to bumping applications.

(a) Any person may file an answer to an application filed under this part.

(b) To be considered by DOT, an answer should be filed not later than 30 days after the filing of the application to which it responds.

(c) An answer by the incumbent carrier may refute the fitness and reliability of the applicant to provide the essential air transportation, refute its ability to provide the service at the amount of compensation requested, deny that the applicant's proposed service represents a substantial improvement, and/or offer a counterproposal to that offered by the applicant. If the incumbent desires a hearing, it should request it at this time.

(d) An answer by representatives of the eligible point should state whether they consider the service pattern proposed by the applicant to be a substantial improvement in service and the reasons for their views.

(e) Any other carrier may submit a bumping application during the answer period. Such an application should include the information required by § 326.3(d).

(f) Any person may submit a reply to a counterproposal filed under paragraph (c) of this section or to another application filed under paragraph (e) of this section within 15 days of the end of the answer period.

(Approved by the Office of Management and Budget under control number 3024–0063)

§ 326.5 Service of applications and answers.

(a) The application shall be served upon:

(1) The chief executive of the principal city or other unit of local government of the eligible point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are named as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) The agency of the State, territory, or possession with jurisdiction over transportation by air in the area containing the eligible point. If there is no such agency, the application shall be served on the Governor of the State, territory, or possession.

(3) The manager of, or other individual with direct supervision over and responsibility for, the airport at the eligible point.

(4) Each air carrier providing scheduled passenger service at the eligible point.

(5) The DOT Regional Office for the region in which the eligible point is located.

(6) Any other person designated by the Department.

(b) Answers to applications and replies to answers shall be served on the persons listed in paragraph (a) of this section, on the applicant, and on the person that filed the answer to which the reply is directed.

§ 326.6 Department action.

(a) After an application is filed under this part and the answer and reply period has elapsed, a rate conference will be held with the applicant or applicants and with the incumbent carrier, if it has filed a counter proposal, to determine the reasonableness of the compensation requested. One or more of the following actions may also be taken:

(1) A conference may be held with the eligible point concerned to determine its view on the relative merits of the present and proposed service pattern.

(2) Additional information may be requested.

(3) The application may be consolidated with the incumbent carrier's rate renegotiation proceeding if the incumbent's rate term is close to expiration.

(4) Additional service and subsidy proposals may be solicited.

(b) After the Department completes its reviews and conferences, and obtains any necessary information, it will take one or more of the following actions:

(1) Issue an order to show cause proposing to grant the application;

(2) Deny the application if the applicant fails to meet the criteria set forth in § 326.7;

(3) Set the application for an oral evidentiary hearing under the following circumstances:

(i) There are material facts in dispute;

(ii) These facts are of decisional significance; and

(iii) The Department finds that the disputed facts can best be resolved in an oral evidentiary hearing.

(4) Set the application for oral arguments before the Department.

§ 326.7 Standards for decision.

(a) DOT will not grant an application under this part unless;

(1) It finds, or previously found, that the applicant is fit, willing, and able to provide scheduled air transportation;

(2) It finds that the applicant will provide the essential air transportation at the eligible point in a reliable manner; and

(3) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the applicant shows by a preponderance of the evidence that its proposal will result in either of the following:

(i) A substantial improvement in the air service being provided the eligible point with no increase in subsidy; or

(ii) A substantial decrease in the amount of subsidy that will be required to provide essential air transportation at the eligible point.

(b) To be considered substantial, the proposed decrease in the amount of subsidy should be at least $50,000 per year or 10 percent of the incumbent carrier's subsidy rate, whichever is greater.

(c) In deciding whether a proposed service pattern represents a substantial

improvement in air service, DOT will consider the following factors:

(1) Which hub or hubs the applicant proposes to serve from the eligible point;

(2) The number of stops that the applicant will make between the designated hub and the eligible point;

(3) The size and type of aircraft, including whether they are pressurized, that the applicant intends to use at the eligible point;

(4) An increase in the number of flights or seats that the applicant proposes to provide at the eligible point, if:

(i) The increased frequencies are combined with a change in aircraft so as not to result in the Department paying a subsidy for more than essential air transportation; or

(ii) A petition has been filed under § 325.10 of this chapter to raise the eligible point's essential air transportation level.

(5) Service-related advantages held by the applicant such as computerized reservation systems or joint fares.

(d) In addition to the factors described above, the Department, in evaluating an application, will consider the following:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the eligible point involved;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the eligible point involved;

(3) The relative efficiency of the aircraft that the competing carriers use or propose to use;

(4) The relative financial strength of the competing carriers;

(5) The time necessary for the applicant to begin providing the service it proposes;

(6) The performance of the incumbent carrier in serving the eligible point involved;

(7) The amount of time that the incumbent carrier was on the subsidy rate to question;

(8) The effect of granting the bumping application on other points in the incumbent carrier's system;

(9) The availability of slots for the applicant at the hub or hubs that it proposes to serve; and

(10) In Alaska, the experience of the applicant in providing scheduled air service, or significant patterns of nonscheduled air service under Part 298 of this chapter, in that State.

(e) In evaluating the standards described above, the Department will give great weight to the views of representatives of the eligible point involved.

§ 326.8 Transition from the incumbent carrier to the applicant.

(a) If an applicant is successful in its bid to replace an incumbent carrier and receive a subsidy for serving the eligible point, it shall notify DOT and the incumbent carrier of the date that it is prepared to begin service at the eligible point. It shall allow the incumbent 45 days to close down its operation at the eligible point, unless another date is agreed on.

(b) The incumbent carrier shall continue service at the eligible point until the successful applicant begins service there.

(c) The Department will continue to pay the subsidy to the incumbent carrier for at least 45 days after it grants the bumping application, unless the two carriers agree to a different date for the transfer of service. DOT will continue to pay the subsidy to the incumbent carrier thereafter until the successful applicant begins service at the eligible point.

§ 326.9 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

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Part III

Environmental Protection Agency

40 CFR Part 723

Premanufacture Notification Exemptions; Exemptions for Polymers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 723

[OPTS-50033A; TSH-FRL 2439-1]

Premanufacture Notification Exemptions; Exemptions for Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance for commercial purposes to submit a notice to EPA before manufacture or import begins. Section 5(h)(4) of TSCA authorizes the Administrator, upon application and by rule, to exempt any person from the provisions of section 5 if the Administrator determines that the chemical substance will not present an unreasonable risk of injury to health or the environment when manufactured, processed, distributed, used, or disposed of under the exemption. This rule grants a section 5(h)(4) exemption for persons who manufacture or import certain polymers. To ensure that these polymers will not present an unreasonable risk, EPA has included procedural safeguards and other conditions in the exemption.

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of TSCA at 1 p.m. eastern daylight time on December 5, 1984. This rule is effective January 4, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-511, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This rule exempts, under section 5(h)(4) of TSCA, manufacturers and importers of certain polymers from certain premanufacture notice (PMN) requirements. EPA has determined that these chemical substances will not present an unreasonable risk of injury to health or the environment under conditions of the exemption.

I. Background

Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes must notify EPA at least 90 days before manufacture or import begins. A new chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under section 8(b) of TSCA.

The requirement to submit premanufacture notices (PMNs) for new chemical substances became effective on July 1, 1979, 30 days after the publication of the Initial Inventory. EPA issued the final Premanufacture Notice Requirements and Review Procedures in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of September 13, 1983 (48 FR 41132), the Agency clarified certain provisions of the rule, made a non-substantive amendment to the timing of the submission of the notice of commencement of manufacture, and stayed certain other provisions of the rule. Several of the stayed or amended provisions of the PMN Rule have been referenced in this exemption rule, and therefore are stayed or amended to the same extent. The rule became effective October 26, 1983. Since the beginning of the program in 1979, EPA has reviewed more than 4,000 notices.

Section 5(h)(4) of TSCA provides that the Administrator may, upon application and by rule, exempt a new chemical substance or category of new substances from any requirement of section 5 if he or she determines that the manufacture, processing, distribution, use, or disposal of the chemical substance(s) will not present an unreasonable risk of injury to human health or the environment.

This exemption was developed in response to petitions from the Chemical Manufacturers Association (CMA) and other industry trade groups. Notice of receipt of the petitions from CMA and others was published in the **Federal Register** of November 3, 1981 (46 FR 54688); the proposed exemption rule was published in the **Federal Register** of August 4, 1982 (47 FR 33924). The 60-day comment period on this proposal ended on October 4, 1982. EPA received 51 comments from trade associations, chemical manufacturers, environmental organizations, and other interested persons.

At the request of the Natural Resources Defense Council and other groups, a public hearing was held on November 1, 1982, in Washington, D.C. Seven organizations and individuals made oral comments on the proposal at the hearing. EPA reopened the public comment period at that time, extending it for 30 days, to give participants at the hearing an opportunity to answer questions from EPA on their comments on the proposal. Eleven organizations provided comments during the extended comment period.

EPA has summarized its response to the major public comments received during the rulemaking. This summary, together with copies of the public comments and a transcript of the hearing, is included in the public record.

A. Exemption Requests

On May 21, 1981, the Agency received a petition from CMA requesting exemptions for: (1) Site-limited intermediates; (2) chemical substances produced in quantities of 25,000 pounds or less per year; and (3) polymers whose precursor monomers are on the TSCA Chemical Substance Inventory. In addition, CMA requested an exemption that would authorize EPA to allow manufacture of new chemical substances if review was completed before the end of the 90-day PMN review period. CMA also requested that EPA promulgate a rule to establish procedures for processing individual section 5(h)(4) exemption applications. The Synthetic Organic Chemical Manufacturers Association (SOCMA) submitted a petition to exempt the same categories of substances on June 28, 1981. Six other trade associations submitted endorsements of the CMA petition.

Ashland Chemical Company submitted a petition on July 28, 1981 to exempt unsaturated polyester resins made from the list of acids, polyols, polyepoxides, and modifiers identified in their petition. On October 8, 1981, Cargill, Incorporated petitioned EPA to exempt (1) new polymers made by the substitution of a natural oil or mixture of oils, derived from natural sources, in polymers listed on the Inventory, and (2) alkyd and polyester resins whose monomers used a greater than two weight percent are on a list of Inventory-listed substances compiled by Cargill. Mobil Research and Development Corporation submitted a petition to exempt alkyd and polyester resins on April 7, 1982. Mobil included a list of starting materials for these resins, many of which appear on the Ashland and Cargill lists.

On June 22, 1982 the Kelco Division of Merck and Company submitted an exemption request for a class of substances that Kelco defined as "biosynthetic polysaccharide gums." The rule published with this notice addresses only polymers and responds to the CMA, Ashland, Mobil, and Cargill petitions. The Kelco petition has been considered separately.

B. Alternatives Proposed

In response to the petitions from CMA, EPA began separate rulemakings

for polymers and for site-limited intermediates and low volume chemicals. The rule issued today addresses polymers. A rule to exempt site-limited intermediates and low volume chemicals is still under consideration. At this time, EPA has decided not to begin rulemaking to allow manufacture of new chemical substances when review is completed before the 90-day period has expired because (1) it believes that the exemptions for site-limited intermediates, low volume chemicals, and polymers will substantially reduce or eliminate the need for such an exemption; and (2) there is a legal uncertainty as to whether the Act permits early manufacture as a general approach to PMN review either by rule or policy statement. In addition, because of limited resources, EPA has deferred consideration of section 5(h)(4) procedural rules.

In developing the exemption proposals for polymers, EPA considered five alternative approaches. These alternatives were discussed in the preamble to the proposed rule. EPA also considered several other alternatives identified in the comments on the proposal. These alternatives are summarized below.

Under Alternative 1, EPA would have denied CMA's exemption petition to exempt polymers and instead would have addressed individual petitions for exemption categories defined more narrowly in terms of exposure or chemical class. For example, EPA could have responded only to exemption petitions for polymers with certain toxicological characteristics. The Agency did not adopt this approach in the final rules because of the difficulty of identifying narrow classes of new chemical substances that, based solely on potential exposure or inherent toxicity, would not present an unreasonable risk and that, at the same time, would provide an economically useful exemption category. Other alternatives offer broader, more immediate relief and apply to a large number of categories and combinations of categories, while not presenting unreasonable risks.

Alternative 2 would have exempted all polymers made from monomers on the TSCA Chemical Substance Inventory without restrictions. EPA rejected this approach because it could not make the "no unreasonable risk" finding for all polymers manufactured from monomers on the Inventory. The hazard assessment performed in support of this rule illustrates that under some circumstances polymers manufactured under such an exemption may present significant risks to human health and the environment.

Under Alternative 3, EPA would have exempted all polymers which met certain criteria based on physical or chemical properties. For exemple, the Agency could establish a minimum number-average molecular weight or a criterion for maximum levels of residual monomers and other reactants for all exempt polymers. EPA did not adopt this approach because the criteria that would be necessary to support a "no unreasonable risk" finding vary with the specific reactants used as well as with the class of polymer being considered. To establish criteria that would be sufficient for an exemption for many classes of polymers would unnecessarily limit the applicability of the exemption. However, as described in Alternative 5, EPA did adopt a variation of this approach.

Alternative 4 would have exempted certain classes of polymers, such as polyolefins with or without chemical property criteria, and without EPA review of individual substances. This approach would have allowed EPA to focus its assessment of potentially exempt polymers on the specific characteristics of the polymers. However, the Agency has found that the existing data are generally too limited to identify economically useful categories of polymers that present low risks and to identify criteria appropriate to exempt these classes, particularly without EPA review. Again, EPA included a modification of this alternative in its final approach.

Alternative 5 is the approach the Agency adopted in the August 4, 1982 proposed exemption. Under this alternative, EPA would exclude from the exemption (1) certain categories of polymers for which the Agency had inadequate experience or data to judge their potential risks, and (2) certain categories of polymers for which there was concern for hazard sufficient to warrant EPA review under the full statutory provisions. EPA also proposed to exempt certain high molecular weight polymers and polyesters made from a list of reactants from all premanufacture notification requirements. Other polymers that were not excluded from exemption eligibility and had a number-average molecular weight of at least 1,000 would undergo a limited premanufacture review.

Based on comments received on the proposed polymer exemption rule, the Agency considered two more major alternatives for exemption polymers. First, some commenters suggested that a "qualified expert" provision, similar to that for the site-limited intermediate and low volume chemicals exemption, be incorporated into the polymer exemption rule. The "qualified expert" would evaluate each potentially eligible substance for toxicological properties. Such a provision might have provided a further level of protection and might have allowed EPA to eliminate some of the exclusion criteria or further shorten the length of the review period specified in the proposal. However, unlike the site-limited intermediate and low volume exemption, the polymer exemption is based in part on the inherent physical properties of polymers as a class. EPA believes that this characteristic limits the risks associated with substances under the exemption such that the broad overview of the risks of the substances that a qualified expert would provide is not necessary. The Agency believes its limited review of specific risk concerns is more effective and less burdensome than this proposed approach.

Second, many commenters stated that EPA should exempt without review the category of polymers approved for food use by the Food and Drug Administration (FDA) on the basis that their safety in food use renders them low risk chemicals in all circumstances. Many commenters also said that the exclusion criteria in the proposed exemption excludes from exemption eligibility many substances which are approved for food use and thus should be eligible for exemption. The Agency believes it cannot make the no unreasonable risk finding for food use polymers approved by FDA because the standards for review under the Food, Drug, and Cosmetic Act are different from those under TSCA and because substances manufactured outside the FDA restrictions may present significant risks. First, substances approved for food use are subject to specific use restrictions to ensure low risk which would be difficult to impose in a broad exemption under 5(h)(4). Typically, food-use approval includes restrictions on extractability and residual content which, if included in the section 5(h)(4) exemption, would limit its applicability. Second, polymers may be subject to a broad range of processing and use application that may present potential exposure and risk concerns not considered by FDA. Therefore, EPA has chosen not to exempt, as a class, polymers solely because they are approved for food use by FDA. However, many such polymers will be eligible for exemption under EPA's selected approach.

Many commenters also suggested specific classes of polymers that could be exempt. In addition, commenters identified many reactants that could be added to the polyester reactant list. EPA has not included these additional classes or reactants in the final exemption. Adequate review of their potential risk would have unduly delayed the promulgation of the final rule. In addition, inclusion of these classes and reactants in the final rule would not have allowed for adequate public comment. EPA will consider inclusion of these polymers or reactants in an amendment to this final rule or in separate rulemakings if exemption petitions that fully assess the potential risks associated with those substances are submitted.

This rule adopts the general approach described in Alternative 5: polymers which have a number-average molecular weight greater than 1,000 are exempt. Because this characteristic does not in itself eliminate or reduce to a reasonable level all concerns for risk that have been identified for polymers, the Agency has excluded from the exemption (1) certain polymers for which the Agency has inadequate experience or data to judge their potential risks, and (2) certain polymers for which there was a concern for hazard that could lead to potential risks and that EPA believes should be reviewed under the statutory 90-day review period. Second, the rule requires that all exempt polymers undergo a limited 21-day review prior to manufacture. Finally, the Agency has also allowed one exception to the molecular weight requirement. Polyesters made from a list of reactants for which the Agency has low concern are exempt even if their number-averaged molecular weight is less than 1,000.

The final rule and the Agency's reasons for adopting this approach are described in Units II through IV.

II. Final Exemption

A. Summary of the Rule

1. *Definition of exemption category.* To be considered for exemption, substances must meet the definition of polymer in the final rule. This definition ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding.

2. *Classes of polymers ineligible for exemption.* Certain classes of polymers are ineligible for the exemption. These classes are (1) cationic polymers; (2) polymers that contain less than 32 percent carbon; (3) polymers that contain certain other elements; (4) polymers made from reactants that contain halogen atoms or cyano groups; (5) polymers that contain certain reactive functional groups that are intended or reasonably anticipated to undergo further reaction; (6) polymers that substantially degrade, decompose, or depolymerize; and (7) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers.

3. *Polymers eligible for the exemption.* Polymers meeting the criteria listed above receive expedited premanufacture review by the Agency if they are: (1) Polyesters that are made from a specified list of reactants, or (2) polymers with a number-average molecular weight of greater than 1,000.

4. *General provisions.* To qualify for the exemption, manufacturers of exempt polymers must submit a limited premanufacture notice (PMN) 21 days before the date that manufacture begins. The limited PMN must contain manufacturer's identity, type of exemption, site of manufacture, chemical identity, number-average molecular weight, levels of residual monomers and other reactants and low molecular weight species contained in the polymer, identity of impurities, production volume, use information, generic chemical identity and use if these items are claimed confidential, any test data or other data concerning the polymer's health or environmental effects that are in the possession or control of the submitter, and a certification.

EPA may also extend the review period to a full 90 days if unresolved issues concerning toxicity or exposure remain at the end of the expedited review period. The manufacturer must then submit the additional information required under full premanufacture review. EPA may further extend the review period up to an additional 90 days under section 5(c) of TSCA. The Agency retains the authority to act under section 5(e) or 5(f) of TSCA during the review period.

Substances which have undergone expedited review will be added to the Inventory after receipt of a notice of commencement of manufacture or import. Substances added to the Inventory will be subject to the exclusion criteria, the applicable exemption conditions, and the weight percent of the residual monomers, reactants, and low molecular weight species reported in the notice.

The rule also establishes recordkeeping requirements for all exempt polymers. Additionally, the rule identifies procedures for determining that a substance is ineligible for exemption if the substance as manufactured does not meet the polymer definition or exemption conditions, or is excluded by the exclusion criteria.

In this preamble and under the rule, references to "manufacture" and "manufacturer" include "import" and "importer," respectively, as defined in the Premanufacture Notification Rule and as referenced in this rule.

B. Discussion of the Final Rule

The final rule adopts many of the provisions of the proposed rule published in the **Federal Register** of August 4, 1982 (47 FR 33924). The following sections discuss the differences between the final rule and the proposal, and clarify the provisions of the final rule.

1. *Definition of polymer, subunits, and reactant.* To identify the category of substances addressed in the exemption, the proposed rule defined the term "polymer." The proposal defined "polymer" as a chemical substance predominantly composed of molecules that contain at least two structural units derived from functioning monomers. The final rule modifies the definition of polymer in response to public comment; however, the meaning and purpose originally intended has been retained.

EPA received many comments suggesting modifications of the definition of "polymer." Several commenters stated that EPA should broaden the definition of polymer because it excludes substances commonly thought of as polymers. However, the Agency's review of the information submitted in PMNs to date (the PMN data base) indicates that few substances identified as polymers by PMN submitters do not meet the definition in the proposed rule. Some commenters also suggested that the other provisions of the rule (e.g., the 1,000 number-average molecular weight criterion) already limit the exemption to polymers, thus eliminating the need for the definition. However, if the definition were not retained, some substances (e.g., certain dyes), which are not considered polymers, would qualify for the exemption under the greater than 1,000 number-average molecular weight criteria. The Agency, therefore, has not broadened the definition of polymer, but has revised it to remove ambiguities in the proposed approach.

Some of the misunderstanding associated with EPA's approach to defining "polymer" resulted from the proposed rule's use of terms which have

multiple meanings when used by polymer chemists. As a result, the Agency has developed a definition which does not rely on these terms.

First, EPA has replaced the term "functioning monomer" with the term "internal subunit," to eliminate the confusion surrounding the use of the term "functioning monomer." The term "subunit," which refers to the basic building blocks of a polymer, means an atom or group of associated atoms chemically derived from "reactant" substances. The term "internal subunit" means a "subunit" that is covalently linked to at least two other "subunits." Thus, an internal subunit cannot be a pendant group.

Second, the Agency has redefined the term "polymer" used in defining the category of substances which are potentially eligible for exemption. "Polymer" means a chemical substance that consists of at least a simple weight majority of "polymer molecules." A "polymer molecule" is a molecule of at least four covalently linked "subunits," which contains at least two "internal subunits." To form a polymer, polymer molecules must be distributed over a range of molecular weights. Differences in molecular weight among polymer molecules must be primarily attributable to differences in the number of "internal subunits," and not solely to changes in the number of pendant groups or similar subunits. Finally, a "polymer" cannot consist of less than a simple weight majority of "polymer molecules" with the same molecular weight. The definition for polyester has been revised to be consistent with this terminology.

Finally, in response to several comments, EPA also has included in the final rule a definition of reactant. This definition in consistent with the term as it has been used in reporting for the Inventory and premanufacture notification program. "Reactant" is defined as a chemical substance which is used intentionally in the manufacture of a polymer and which becomes part of the polymer composition. Reactants include monomers, chain transfer and crosslinking agents, monofunctional groups that act as modifiers, and other end groups that are not also monomers if they are incoporated into the polymer molecule.

In order to illustrate this terminology, EPA has developed the following example:

A "polymer" is manufactured from the starting materials phthalic anhydride, ethylene glycol, and 1-hexanol. The reaction product consists of various molecules distributed over a broad molecular weight range. Most of the reaction product molecules are "polymer molecules."

One of these "molecules" consists of seven "subunits" which are linearly connected. The seven "subunits" are chemically derived from three phthalic anhydride molecules, two ethylene glycol molecules, and two 1-hexanol molecules. The phthalate "subunits" are linked to the glycol "subunits" in an alternating order with each end terminated by a 1-hexanoxy "subunits." Thus, in this case the starting materials are "reactants" because they become part of the polymer composition.

In this molecule, the phthalate and glycol "subunits" are considered "internal subunits" because each of them is covalently bonded to two other "subunits." The "subunits" derived from 1-hexanol are not considered "internal subunits" because they are covalently linked to only one other "subunit." In other reaction product molecules, pendant "subunits" can be derived from 1-hexanol, ethylene glycol, or phthalic anhydride. However, "internal subunits" can only be derived from ethylene glycol and phthalic anhydride, because a subunit derived from 1-hexanol can covalently link to only one other molecule. Because this molecule contains five "internal subunits" and seven "subunits," it qualifies as a "polymer molecule," which must have at least two "internal subunits" out of a minimum of four subunits.

The reaction product molecules in this polymer differ primarily by the number and identity of "internal subunits." Some of the reaction product molecules are not "polymer molecules." For example, the linear combination of one molecule of 1-hexanol, linked to one molecule of phthalic anhydride, which is in turn linked to one molecule of ethylene glycol, is not a polymer molecule because it contains only one "internal subunit" and only three "subunits."

The minimum content for "polymer molecules" in a "polymer" is 50 weight percent; the remainder may consist of reaction products that have too few "subunits" or "internal subunits." Also, the polymer must consist of less than 50 weight percent of any molecules with the same molecular weight. In this example, the difference in the number of "internal subunits" derived from ethylene glycol and phthalic anhydride are primarily responsible for the differences in molecular weight among the "polymer molecules." The range of the total number of "internal subunits" is sufficiently broad that there is not 50 weight percent or more of any molecules with the same molecular weight.

2. *Substances ineligible for exemption.* The proposed rule excluded seven categories of polymers, regardless of whether they met the other conditions of the exemption. These polymers were excluded because of data indicating potential for adverse health and/or environmental effects because EPA lacked experience in reviewing them.

Several commenters supported EPA's approach of excluding categories of polymers from the exemption. However, many commenters stated that the exclusion criteria were too broad and had specific recommendations for changing each criterion. Some commenters suggested that these exclusions should apply only to those substances exempt from all premanufacture review requirements and not to those which are subject to expedited review.

The final rule retains the proposed approach of excluding certain polymers from the exemption. Such exclusions are an important component of EPA's finding that polymers manufactured under the terms of the exemption will not present an unreasonable risk. The Agency, however, has modified some of the exclusions based on public comments and additional analysis during the comment period, as described in unit II.B.2.a. through g.

EPA has not determined that the manufacture, processing, use, distribution in commerce or disposal of excluded polymers will present an unreasonable risk. The Agency has simply found that it cannot at this time make the no unreasonable risk finding for the categories of substances excluded from this exemption.

a. *Cationic polymer exclusion.* The proposed rule would have excluded from exemption polymers that are designed, intended, or reasonably anticipated to be soluble in water. This exclusion was developed because the Agency was concerned that water-soluble polymers could be widely distributed in the environment, resulting in a wide range of exposures that the Agency could not assess. In addition, EPA had toxicity concerns for some classes of polymers that are also water soluble.

Several commenters supported this exclusion and stated that the Agency should also exclude polymers that are water-extractable. Other commenters, however, stated that the exclusion was too broad and that water-soluble polymers are not necessarily toxic. Still other commenters stated that the one percent water solubility level proposed by the Agency would not be appropriate across a range of polymers because

polymers vary in toxicity. They also stated that for some polymers such a level is difficult to measure.

After further review of the literature, EPA has concluded that the exclusion of all water-soluble polymers is unnecessarily broad. The Agency also agrees that, in many cases, there is no direct correlation between high water solubility or high extractability in water and high exposure. EPA has revised its approach to exclude only cationic polymers for which it has identified is an aquatic toxicity concern.

The final rule excludes from exemption eligibility polymers that are cationic or that are reasonably anticipated to become cationic in the aquatic environment. Such polymers are typically used in drinking water treatment, municipal and industrial wastewater treatment, and petroleum recovery. As such, they have a high potential for release to the environment. The available literature demonstrates that some cationic polymers are highly toxic to fish and to other aquatic organisms. Although controlled use in water and wastewater treatment systems can limit exposure to these polymers, there is potential for such polymers to be used outside of these controlled conditions. EPA believes that a careful review of exposure conditions is necessary for cationic polymers, a review that often could not be completed within the expedited exemption review period. As a result, the Agency has excluded cationic polymers from exemption eligibility.

The rule defines "cationic polymer" as a polymer whose molecules contain one or more covalently bound "subunits" that bear net positive charge. Non-polymeric counterions alone, such as ammonium ions, are not covalently linked subunits of polymer molecules and therefore do not make an otherwise non-cationic polymer cationic. Examples of cationic polymers include quaternary ammonium polyelectrolytes and alkyl sulfonium or alkyl phosphonium polymers. The exclusion applies not only to cationics soluble in water, but also to cationics that are insoluble, such as water-dispersible polymers that are components of electrostatically-applied coatings. In addition, the rule excludes polymers that are not cationic as manufactured, but which are reasonably anticipated to become cationic in an aquatic environment. Examples of such polymers are those that contain aliphatic amine moieties. By "aquatic environment" EPA means water in a natural environment, usually having a pH between 5 and 8, as opposed to deionized water often used in the laboratory. The Agency believes that manufacturers can easily determine from the structure of the new substance, without costly testing, whether or not it may become cationic in an aquatic environment.

b. *Exclusion of polymers containing less than 32.0 percent carbon.* The proposed and the final rule exclude from exemption eligibility polymers with less than 32.0 weight percent of the atomic element carbon. The Agency proposed this exclusion because of lack of information and review experience concerning polymers that contain less than 32.0 percent carbon. By excluding such polymers, the Agency intends to limit availability of the exemption to the types of polymers that have been frequently reviewed in the PMN program.

Several commenters felt that the exclusion was arbitrary. Many commenters suggested that the carbon content level should be lowered from the proposed level to recognize the current commercial production of certain teflons and silicones. Other commenters stated that polymers of known low toxicity would be excluded.

EPA's review of the PMN data base found that only a very low percentage of polymers would be excluded. Consequently, this exclusion will provide an added safeguard and at the same time is not expected to have a significant impact on the availability of the exemption. EPA believes that polymers containing at least 32.0 percent carbon are typical of the vast majority of polymers in commerce. While polymers have been developed and are in use that contain less than 32.0 percent carbon, EPA does not have toxicity or exposure information to characterize the risks associated with low carbon content polymers. Therefore, without risk data or agency review experience, the Agency cannot make the no unreasonable risk finding for such polymers. EPA believes that the full 90-day review period will often be necessary to adequately assess the risks of polymers containing less than 32.0 weight percent carbon.

c. *Exclusion of polymers that contain certain elements.* The proposed rule excluded exemption eligibility polymers containing as an integral part of the polymer more than 0.10 weight percent of any atomic element other than hydrogen, carbon, nitrogen, oxygen, sodium, magnesium, aluminum, silicon, phosphorus, sulfur, potassium, calcium, titanium, iron, or tin. A polymer containing more than a total of 0.20 weight percent of any elements not listed above would also have been excluded. The proposed exclusion applied only to those elements intended or reasonably anticipated to be incorporated into the polymer composition. The Agency proposed this approach because there is a wide variety of polymers that could be made containing the excluded elements. Since the Agency has insufficient review experience or data on such polymers, EPA believes that full 90-day review will often be required. While several commenters stated that polymers of known low toxicity would be excluded by this approach, EPA's review of the PMN data base found that only a low percentage of polymers would be excluded by this provision.

Several commenters felt that these exclusions were arbitrary and suggested that certain elements should be added to the list of unrestricted elements. The Agency generally did not revise the exclusion based on these comments because EPA does not have sufficient review experience or data to exempt substances containing these elements on a categorical basis.

Another commenter suggested that the exclusion should limit even further the level of elements such as lead, beryllium, and cadmium that are known to be toxic to humans and the environment even at levels lower than the proposed permissible levels. The elemental exclusion was designed to restrict exemption eligibility to polymers which are similar in composition to those which have been reviewed in the PMN program. EPA's PMN review experience has indicated that polymers that are eligible for this exemption can be adequately reviewed within an expedited review period. In addition, EPA typically does not receive PMN's on polymers containing such elements. In addition, if an exempt polymer contains an eligible element at levels that present any unresolved issues about toxicity or exposure, the expedited review period will be extended and these risks will be addressed.

The final rule retains the basic approach of limiting the elemental content of polymers eligible for exemption with minor modifications that clarify the provision and better reflect Agency review experience. EPA's analysis of the PMN data base has shown that these modifications have negligible effect on the number of substances that would be eligible for exemption. The Agency believes it can adequately review the resulting eligible polymers in 21 days because of previous PMN review experience.

First, polymers that do not contain at least two of the following elements—hydrogen, carbon, nitrogen, silicon, sulfur and oxygen—are excluded from the exemption. According to the PMN data base, typical organic polymers have these elements as their primary constituents. In addition, many conventional polymers that have been reviewed in the PMN program also contain the atomic ions of sodium, magnesium, aluminum, potassium, and calcium as the monatomic counterions: Na^{+}, Mg^{+2}, Al^{+3}, K^{+} and Ca^{+2}. The final rule provides that polymers that contain these counterions as an integral part of the polymer composition may also be eligible for exemption.

Second, the Agency has reviewed polymers in PMN program that retain minor components chemically incorporated lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium due to the use of catalysts, solvents, initiators, and other substances used in the manufacture of polymers. Since EPA has experience with polymers containing such minor components, the exclusion was modified so polymers that contain an individual or combined concentration of less than 0.20 weight percent of these minor elements would be eligible. Polymers that contain any other elements, except as impurities are ineligible for exemption.

As noted in the proposal, the elemental exclusion is intended to address only those elements intended or reasonably anticipated to be incorporated into the polymer composition, either because they were constituent elements in the monomers or reactants, or because the polymer was deliberately reacted to incorporate them (for example, if a solvent or catalyst was partially reacted with a polymer). EPA's analysis of PMN data demonstrated that the level of elements allowed in the final rule typically will not exclude polymers as a result of the use of such elements in catalysts, chain transfer agents, adjuvants, and similar reactive agents. Elements not on the list that are present in the final polymer in the form of impurities from catalysts, additives, adjuvants, and so forth are not considered "part of the polymer composition" and thus would not result in the exclusion of such polymers. However, such impurities must be reported in the PMN and will be considered by EPA when reviewing exempt polymers. If the presence of any such impurities present an unresolved issue concerning toxicity or exposure at the conclusion of the expedited review period, or if EPA believes that such impurities may cause significant risks, the review period will be extended so that the Agency thoroughly considers the need for regulatory action.

d. *Exclusion of polymers made from reactants containing halogen atoms or cyano groups.* Under the proposed rule, polymers that contain covalently bonded fluorine, chlorine, bromine, or iodine atoms or cyano groups would be excluded from the exemption. The intent of this exclusion was to exclude polymers that contain residual substances composed of halogen atoms or cyano groups. Significant toxicity concerns have been identified for certain halogen- and cyano-containing chemical substances. The final rule retains this approach with a minor modification to reflect EPA's risk concerns.

Several commenters supported EPA's exclusion of halogen- and cyano-containing polymers because of the documented risk concerns associated with some halogen- and cyano-containing reactants. However, many commenters stated that EPA should not extrapolate concern for several existing monomers to an entire class of polymers. One commenter said that halogen- and cyano-containing polymers are unreactive, unabsorbable, and insoluble that thus generally do not present risk. Several commenters suggested that the Agency establish a residual monomer limit instead of unconditionally excluding these polymers. Other commenters suggested that fluorine should not be on the list of excluded halogens, because the fluorine-carbon bond is more stable than the carbon bond with other halogens.

EPA's primary concern is not with the larger polymer molecules containing halogen atoms and cyano groups, but the low molecular weight species and residual material containing such atoms or groups that may be present in the polymer as manufactured. Information from the PMN data base and other sources demonstrates that polymers that contain halogen atoms and cyano groups may be produced in substantial volumes and used in many industrial and consumer applications with potential for significant exposure and release. Levels of residuals in these polymers can also vary widely. The Agency believes that it cannot make the no unreasonable risk finding for this class of polymers given the documented toxicity of unbound low molecular weight species containing vinyl chloride, vinyl bromide, and acrylonitrile contained in the polymer. Additionally, the documented concern for monomers such as vinylidene fluoride, vinyl fluoride, tetrafluoroethylene, and those containing perfluorinated alkyl groups supports the presence of fluorine on the exclusion list, even though the fluorinated polymer molecule itself may be unreactive. Finally, EPA does not have information to indicate that a given residual reactant level that is economically reasonable, such as the 0.1 percent level suggested by some commenters, would adequately limit the risks associated with halogen- and cyano-containing species of low molecular weight.

Upon further analysis, EPA has found that reactants that contain halogen atoms or cyano groups, but that do not result in the incorporation of such atoms or groups in the polymer, may be found in significant levels in the final polymer. The Agency believes that such residuals may cause adverse health and environmental effects. Therefore, the final rule broadens the proposed exclusion to exclude polymers made from reactants containing halogen atoms or cyano groups whether or not the halogen atom or cyano groups are incorporated into the polymer. In addition, since cyano groups may form during reactions even when they are not present in the reactants, the final rule excludes any polymer which contains cyano groups other than as impurities. This provision does not exclude polymers if non-reactants that contain halogen atoms or cyano groups (e.g., certain catalysts) are used in the manufacture of the ploymer and retained only as impurities. Potential risks associated with non-reactant impurities will be considered during the expedited review period. The final rule requires that the level of all reactant and non-reactant impurities, such as catalysts be reported in the limited PMN. If the presence of any such impurities presents an unresolved issue concerning toxicity or exposure at the conclusion of the expected review period, EPA would extend the review period to thoroughly consider the need for regulatory action.

Finally, some reactants that do not contain halogen atoms or cyano groups as their primary constitutents may contain very low levels of halogen atoms or cyano groups as trace impurities. This exclusion is not intended to exclude polymers made from reactants containing such trace impurities since EPA believes it can review the risks associated with trace impurities within the limited review period. If the levels of halogen atoms or cyano groups as impurities in the polymer are high enough to be known to or reasonably ascertainable by the

submitter, they must be identified in the limited PMN for EPA's review.

e. *Reactive functional group exclusion.* The proposed rule would have excluded polymers containing at a greater than one in 10,000 concentration certain reactive functional groups that are intended to further react to produce other polymers. This exclusion reflects the Agency's concern that such substances may react with the tissues or chemical constituents of living organisms and may increase the potential for absorption due to irritation as a result of their reactivitiy.

Many commenters agreed that it is reasonable to exclude polymers containing reactive functional groups. However, some stated that the proposed exclusion was too broad and that the list of permissible reactive functional groups should be expanded. The Agency has not obtained additional data adequate to mitigate its concerns and consequently the final rule returns this exclusion. The final rule slightly expands the scope of the exclusion to more fully address potential risks.

The final rule excludes not only polymers containing reactive functional groups that are intended to react to produce other polymers, but also those that are reasonably anticipated to react. Examples of excluded polymers are those that contain groups such as isocyanates, pendant acrylates and methacrylates, epoxides, acid anhydrides, acid halides, aldehydes, amines, phenols, thiophenols, sulfur acids and their reactive derivatives, aziridines, blocked isocyanates, imines, isothiocyanates, vinyl sulfones, halosilanes, alkoxysilanes, and 3- and 4-membered ring lactones and other reactive groups. EPA has added the "reasonably anticipated" language to address those situations where such groups are present to impart particular properties and can be expected to react but may not necessarily be intended to further react to form other polymers. Such groups would include groups capable of chelating metals, phenolic groups in phenol/formaldehyde type resins, or esters manufactured from an aromatic alcohol.

Consistent with the proposal, the final rule specifically states that polymers containing as reactive groups carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups, butenedioic groups, and those containing conjugated olefinic groups in naturally-occurring fats, oils, and carboxylic acids are not excluded from the exemption. These polymers generally lack reactivity in biological settings and therefore are eligible for exemption. EPA did not expand the list of non-excluded functional groups because it did not have sufficient information to support the addition of other groups. Polymers containing these groups and other reactive functional groups are excluded.

EPA has retained and clarified the equivalent weight criteria which allow low concentrations of reactive functional groups in the polymer molecule. Under the final rule, polymers may contain reactive functional groups if the weight of the polymer that is equivalent to one gram-formula weight of reactive functional groups is 10,000 grams or greater. As stated in the proposal, the Agency believes that this level ensures that each reactive functional group is substantially diluted by polymeric material, reducing the likelihood of exposure. EPA did not receive sufficient information to alter this level.

Several commenters stated that EPA should lower the maximum permissible equivalent weight of functional groups from 1 in 10,000 to 2 in 100 to be consistent with the rule for reporting polymers on the TSCA Chemical Substance Inventory. Polymers listed on the Inventory may be manufactured from additional reactants not included in the polymer identity if the composition of such reactants does not exceed 2.0 weight percent of the polymer (40 CFR Part 710). This "2 percent" rule was established to limit the reporting of minor modifications of polymers, but does not affect PMN information requirements. If a manufacturer submits a notice on a new polymer, the manufacturer must report the identity and composition of all monomers and other reactants regardless of their weight percent in the final polymer. The Agency assesses the risks associated with all monomers and reactants in the notice, even though some may be present at two weight percent or less.

The Agency believes that it is appropriate to apply a more stringent requirement for limiting reactive functional group content in polymers eligible for exemption. The 1 in 10,000 standard was applied in part to allow EPA to review eligible polymers in 21 days. Higher concentrations of reactive functional groups could raise a higher level of concern to the Agency. EPA believes that such concerns should be addressed in a full PMN review where potential toxicity and exposure can be addressed at the level of detail warranted for such polymers.

f. *Exclusion of polymers that degrade.* The proposed rule would have excluded from eligibility polymers that are designed to substantially degrade, decompose, or depolymerize. Examples of polymers that are intended to substantially degrade, decompose, or depolymerize include temporary protective layer coatings that are subject to rapid removal, certain kinds of time release media, propellants, and polymers whose degradation is intentionally accelerated in the environment. The final rule retains this exclusion with minor modification.

Several commenters supported this exclusion as reasonable and suggested that polymers that are reasonably anticipated to degrade, decompose, or depolymerize should also be excluded. Other commenters suggested either that such polymers not be excluded or, alternatively, that those made exclusively from carbon, hydrogen, oxygen, and nitrogen should not be excluded.

In over 1,200 PMN submissions on polymers, EPA has received and reviewed an extremely limited number of polymers that substantially degrade, decompose, or depolymerize. The Agency thus has little experience reviewing the mechanism by which breakdown may occur, the decomposition products that may result, and the potential uses of such polymers. Some of these polymers, however, are likely to degrade to low molecular weight species and/or residual reactants which present some of the major risks associated with such polymers. Even polymers made exclusively of carbon, hydrogen, nitrogen, and oxygen may decompose into products which are toxic, such as formaldehyde, phthalic acid, acrylonitrile, hydrogen cyanide, acetaldehyde, and p-dioxane. Because of the complexity of review necessary for many of these polymers and the lack of EPA review experience, the Agency did not believe that an expedited review period was sufficient to adequately characterize risk.

The final rule was revised to exclude also polymers that are "reasonably anticipated" to substantially degrade, decompose, or depolymerize. Thus, polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so, are excluded. Such polymers include certain pH-labile polyesters and structural analogues to polymers that are known to substantially degrade, decompose, or depolymerize.

Only those polymers designed or anticipated to substantially degrade, decompose, or depolymerize are excluded by this provision. The Agency acknowledged that essentially all polymers degrade or decomposed to a

limited degree over times as typified by the normal fate of polymers in landfills or ordinary weathering of conventional paint layers. The exclusion is not intended to address such degradation. EPA believes the other provisions of the exemption adequately address concerns associated with low molecular weight species and residual monomers and reactants.

g. *Exclusion of biopolymers.* The proposed rule excluded from exemption eligibility biopolymers, synthetic equivalents of biopolymers, and derivatives and modifications of biopolymers if the biopolymer remains substantially intact. The biopolymer exclusion was developed because of the Agency's limited experience with biopolymers, the variety of substances within the class, and the potential wide range of novel uses for such polymers. Consequently, EPA cannot make a no unreasonable risk finding for biopolymers, their synthetic equivalents, and derivatives and modifications of them as a broad class.

Several commenters stated that the exclusion as proposed was too broad because there are many biopolymers which are not toxic, such as cellulose. Some commenters proposed categories of biopolymers that should be eligible for exemption. Other commenters suggested limiting the exclusion to those biopolymers which are biologically active. Another commenter supported the exclusion of biopolymers, stating that production of such polymers is a new area of polymer chemistry about which little is known. While EPA acknowledges that there are some biopolymers in commerce that may not present significant risks, the Agency cannot narrow the exclusion because of the general lack of EPA review experience.

This exclusion applies only to polymers that are directly produced by living or from once-living cells or cellular components. Therefore, petroleum does not meet the definition of a biopolymer because petroleum is not directly produced by living or from once-living cells. Consequently, polymers manufactured from petroleum are also not excluded from the exemption, because these polymers are not derivatives or modifications of a biopolymer. Natural oils are also not polymers, and therefore substances derived from them are not derivatives or modifications of a biopolymer.

EPA has included in the rule further clarifications of the terms "modification of a biopolymer" and "derivative of a biopolymer." Both modified biopolymers and derivatives of biopolymers contain recognizable remnants of a biopolymer in their structure so that the original biopolymer is substantially intact. A biopolymer is substantially intact if it contains at least two original adjacent repeating internal subunits that are not pendant units. A "modification of a biopolymer" is a polymer created by a non-additive chemical change or transformation such as oxidation, hydrolysis, thermal degradation, regeneration, or deacylation (e.g., acid-hydrolyzed amylopectin, thermal hydrolyzed starch, and regenerated callulose). A "derivative of a biopolymer" is a polymer created by an additive chemical change or transformation such as either formation, esterification, oxidation, boration, nitration or graft polymerization (e.g., methyl cellulose, borated caseins, palmitoyl derivatives of collagen, and cellulose nitrate).

3. *Exemption criteria.* The exemption criteria identify categories of polymers that the Agency believes present low risk. The criteria were developed based on the Agency's judgment concerning potential risks, its review experience, and the economic impact of the criteria. To provide additional safeguards, certain classes of polymers have been excluded when EPA had specific concerns for hazards, or when EPA had insufficient experience to allow the Agency to conduct an adequate review within an expedited review period.

Under the proposed approach, polyesters made from certain reactants, polymers of 20,000 number-average molecular weight or greater, and polymers with certain polydispersity criteria could be manufactured without any premanufacture review by EPA. Polymers over 1,000 number-average molecular weight would have been exempt after a 14-day expedited premanufacture review. In the final rule, EPA has modified certain criteria to reduce potential risks from polymers manufactured under the exemption. Following is an explanation of the modifications adopted in the final rule and the reasons for such modifications.

a. *Polyesters.* The proposed rule would have exempted from all premanufacture notice and review requirements polyesters made from a specified list of reactants. Residual content of certain of the reactants would have been limited to 1.0 percent to address EPA's concern about their toxicity.

Many commenters supported this approach. Commenters also generally agreed that residual content of high concern reactants should be limited. However, several commenters viewed the 1.0 percent level as too restrictive. Other commenters stated that the level was inadequate for more toxic precursors and identified reactants of high concern that they thought should be removed from the list.

Based on these comments and further analysis, EPA has adopted a revised approach to exempt certain polyesters in the final rule. First, EPA has removed from the list of eligible polyester reactants those reactants that were limited to 1.0 percent residual content in the proposed rule based on human or aquatic toxicity concerns. Second, the final rule requires expedited PMN review of those polyesters that are made from the revised list of reactants for which the Agency has low concern. Unlike other polymers that undergo expedited PMN review under the final rule, polyesters made from the specified list of reactants are not required to meet the minimum number average molecular weight criterion of 1,000 although they must meet the polymer definition and exclusion criteria.

EPA believes that the approach adopted in the final rule is necessary because it does not have enough information to make the no unreasonable risk finding for polyesters without review before manufacture. While EPA believes that the list of reactants contained in the final rule present low hazard potential, the Agency considers an expedited PMN review period to be necessary to assess risks associated with low molecular weight reaction products that may be present in an exempt polyester. In addition, because polyesters manufactured from the list of specified reactants are not required to meet a minimum number average molecular weight criteria, EPA believes it is appropriate to review actual reactant residual levels and potential exposure on a case-by-case basis. Given the generally low hazard for these reactants, EPA believes that an adequate review can be conducted on an expedited basis.

Finally, the Agency believes that it cannot review polyesters made from medium or high toxicity reactants within the limited expedited review period adopted in the final rule there may be a need to conduct a detailed exposure review to assess potential risks. The Agency agrees with commenters that a 1.0 percent residual reactant limit may be too restrictive in some cases and too lenient in others and therefore does not provide adequate risk protection. The document "Response to Comments" in the public record identified the reactants removed from the proposed list and EPA's reasons for removing them.

EPA has included three reactants on the list which were identified by petitioners as potential starting materials, but which are not on the TSCA Inventory. These new reactants are asterisked on the list of polyester reactants in the rule. The Agency included these reactants in its assessment and found that they are of low hazard concern. However, neither these reactants, nor a polyester made from these reactants, may be manufactured or imported until manufacturers submit a full PMN for the reactant and it is added to the Inventory after submission of a commencement of manufacture notice.

b. *Polymers with number-average molecular weight greater than 1,000.* The proposal and final rule exempt polymers with number-average molecular weight greater than 1,000 from certain premanufacture notice and review requirements. Substances with a molecular weight of 1,000 or less (other than polyesters made from the list of acceptable reactants) would not be eligible. Limiting the exemption to polymers with a number-average molecular weight of at least 1,000 is necessary because the Agency believes that as absolute molecular weight decreases, the likelihood that molecules will cross cell membranes significantly increases. Most commenters supported the proposed expedited review for such polymers.

The information available to the Agency indicates that as the number-average molecular weight of polymers decreases, the concentration of low molecular weight species in such polymers significantly increases. Such low molecular weight species may be more readily absorbed by biological organisms. The Agency believes that the 1,000 number-average molecular weight level reduces the amounts of readily absorbable low molecular weight species that may be present in such polymers. At the same time, the Agency also acknowledges that exempt polymers with number-average molecular weights in the low range may contain significant amounts of potentially absorbable low molecular weight species and unreacted residuals. However, the risk from polymers of greater than 1,000 number-average molecular weight is related not only to the amount of potentially absorbable low molecular weight species and residual reactants, but also to their toxicity. To limit potential toxicity concerns, the rule excludes certain specific polymers for which the Agency has such concerns or little review experience. Thus, EPA believes the combined effects of the 1,000 number average molecular weight criterion and the polymer exclusion categories sufficiently narrows risk concerns to allow adequate review within an expedited review period.

Finally, some commenters suggested that the molecular weight level should be raised to 5,000 molecular weight to limit the potential for gastrointestinal absorption. EPA believes that, while a higher molecular weight level such as 5,000 would provide further reduction of the amount of low molecular weight species, it would unnecessarily render a number of polymers ineligible. EPA has retained the 1,000 number-average molecular weight level not as a level that guarantees low absorption and potential risk, but as a level that narrows the Ageny's risk concerns to the degree that, along with the exclusion criteria, allows the Agency to review new polymers during the expedited review period.

c. *Polymers over 20,000 number-average molecular weight.* The proposed rule would have exempted polymers with number average molecular weights of 20,000 or greater without any EPA review. EPA considered several factors that led to the preliminary conclusion that polymers over 20,000 molecular weight present risks that are sufficiently low to preclude the need for case-by-case review. Polymers of this number-average molecular weight typically contain a majority of polymer molecules of a molecular weight above the range where they are likely to be absorbed. The lower absorption potential in these polymers limited the possibility that they may cause toxic effects upon exposure to them. Additionally, because of their structure, these substances are generally resistant to degradation, further reducing the potential for exposure to residual monomers and low weight species.

Many commenters supported this exemption criterion. Other commenters stated that the 20,000 number-average molecular weight level should be lowered to 5,000 arguing that this level would still ensure inertness, nonreactivity and low toxicity. However, other commenters noted that absorption may occur even at the 5,000 molecular weight level and therefore the molecular weight cutoff should not be lowered.

EPA has not included the 20,000 number-average molecular weight criterion in the final rule. The Agency continues to believe that, in general, polymers with number-average molecular weight greater than 20,000 are not absorbed and that low molecular weight species content is low. However, further analysis of the PMN data base has indicated that some polymers with molecular weights greater than 20,000 also contain high levels of unreacted low molecular weight species. EPA no longer believes that the available data adequately support the contention that polymers in the 20,000 number-average molecular weight range can be expected to have insignificant levels of unreacted species such as monomers and other reactants. For this reason the Agency has concluded that a finding of no unreasonable risk cannot be made without an expedited EPA review prior to manufacture.

Polymers that would have been eligible for the 20,000 number-average molecular weight criterion under the proposed rule are now eligible for exemption under the expedited review procedures in the final rule. EPA believes that the expedited review period will allow EPA to adequately review each polymer (including those with number average molecular weights greater than 20,000) and its low molecular weight species content on a case-by-case basis.

d. *Polymers with certain polydispersity.* EPA proposed a class of ploymers with certain polydispersity and molecular weight criteria to be exempt without review before manufacture. The polydispersity criterion would theoretically limit the amount of low molecular weight species that would be present in the polymer. Some commenters stated that the approach was too complex and costly and thus would provide little relief. Other commenters stated that polydispersity is an inadequate mechanism for limiting low molecular weight content. As a result of these comments, EPA has not included a polydispersity provision in the final rule. Substances that would have been eligible under the proposal for this exemption without review because they met the polydispersity criteria will still be eligible for expedited review.

4. *Data requirements and determination of eligibility.* Many commenters expressed concern about the amount of data that manufacturers would have to develop to determine that a substance was eligible for the exemption and to support information submitted in a limited PMN. Following is the clarification of a manufacturer's responsibilities in these areas.

EPA will review limited PMN's under the standard of section 5(d)(1)(A) of TSCA. This section states that information related to the submission must be provided to the extent that it is

"known to or reasonably ascertainable by the submitter." The Premanufacture Notification Rule (40 CFR 720.2(p)) defines known to or reasonably ascertainable information as "all information in a person's possession or control plus all information that a reasonable person similarly situated might be expected to possess, control, or know." This standard is flexible so that varying circumstances among submitters (such as low versus high volume manufacturers, manufacturers of specialty chemicals versus manufacturers of bulk feed stock chemicals) are taken into consideration. (The effective date of the definition of "possession or control" has been stayed by the PMN clarification 48 FR 41132).

EPA does not require that submitters perform analytical measurements of the physical and chemical properties of polymers solely for the purpose of providing information in limited PMN. Manufacturers may be able to determine compliance with the polymer definition, exclusion criteria, the exemption conditions, or to provide information required in the limited PMN, for example, low molecular weight species information, on some other basis. Such a basis may be using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge or process and purification steps.

If the information in question is related solely to that required in the limited PMN but not to eligibility, such as low molecular weight species information or use information, the submitter may indicate in the limited PMN that the information is not known or reasonably ascertainable if he or she cannot provide meaningful estimates for this information. In such cases, the submitter should be prepared to provide a rationale for why the information cannot be provided. Where EPA does not have sufficient information in the limited PMN to complete its risk assessment, it will make reasonable worst-case assumptions as needed.

Where the information in question is related to a submitter's determination the polymer meets the terms of the exemption (for example that the polymer has an average molecular weight of greater than 1,000), the Agency believes that the manufacturer's knowledge of the structure of the substance and nature of reactant and reaction process will generally be adequate to make the determination. However, there may be circumstances where the polymer is significantly different from previously manufactured polymers or where the value of a specific parameter approaches the level established in the exemption. In these cases, the Agency expects the manufacturer to take the steps necessary to ensure that the chemical is eligible. For example, a manufacturer may want to produce a low molecular weight polymer for which, either because of the variability in the nature of the production process, or because of the potential margin for error in the technique used to estimate molecular weight, the manufacturer is uncertain that the polymer will meet the 1,000 number-average molecular weight criterion to be eligible for the exemption. In such cases, it may be necessary to use an analytical method rather than past experience or an analytical method of greater certainty to determine molecular weight or to take process steps to ensure compliance with the exemption. A similar situation may occur when determining whether a polymer is excluded by its elemental content or content of reactive function groups. The Agency believes that, when the polymer is manufactured with properties near the parameters in the exemption, it is reasonable for the manufacturer to take a greater burden to demonstrate eligibility.

EPA believes that where intent or design determines eligibility (for example, certain substances "intended to further react" or "designed to degrade" or ineligible), this intention or design will be clear from the structure and intended use of the substance. In several provisions of the exemption, EPA also uses the standard of "reasonably anticipated" to describe eligibility requirements for the exemption. The Agency uses this phrase in cases where a determination must be made of the composition or a particular characteristic of the polymer. In using this phrase, EPA recognizes that there are circumstances in which a property may be imparted to a substance without specific intention or design. The final rule defines the phrase "reasonably anticipated" to mean that a knowledgeable person familiar with the nature of the precursors to the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions would expect such a composition or characteristic to occur. By using the term "reasonably anticipated," EPA is not requiring that costly analysis be undertaken. Rather, as with the term "reasonably ascertainable," all the information developed in bringing the substance to commercial production, and any other information a reasonable person similarly situated would know, must be considered in determining the substance's eligibility.

The Agency will apply these standards flexibly. For example, if because of an ambiguous feature in a substance's structure, EPA believes that the substance is likely to be cationic in a natural environment, the Agency will attempt to clarify the feature in the structure before using ineligibility procedures. Section 723.250(q) of the final rule requires manufacturers to maintain records documenting information provided in the limited PMN and information demonstrating that the new polymer is not excluded from the exemption. EPA expects that such records would provide an adequate explanation of the basis and rationale for the manufacture's determination of eligibility.

5. *Information requirements.* The final rule has adopted, with minor modifications, the information requirements outlined in the proposed rule for limited PMN's. Under the proposal limited PMN's would contain submitter identity, site of manufacture, chemical identity, type of exemption, number-average molecular weight, low molecular weight species and residual monomer and reactant content, production volume, descriptions of uses, generic information if chemical identity or uses are claimed as confidential, a certification, available test data and technical contact. The final rule has added synonyms, trade names, and impurities information; "other data" on health and environmental effects; and data on related chemicals.

Many commenters stated that the proposed notification requirements are not justified for substances which the Agency agrees are inherently non-toxic. Thus, notification under the exemption should only be to ensure that a substance meets the criteria for exemption. The Agency agrees that many polymers appear to be of low risk concern and that the polymer definition, exclusion criteria, and exemption categories will eliminate many high concern polymers from eligibility. However, as the risk assessment demonstrates, there are instances in which some members of the polymer class are capable of presenting significant risks. The information requirements of the limited PMN are critical to EPA's review of specific polymers during the abbreviated review period.

Other commenters stated that the proposed information requirements were insufficient for assessment of the risks associated with polymers. The Agency believes that the information in the limited PMN is sufficient for an adequate assessment of the new polymer, given the exclusions, exemption criteria, and generally low level of concern for polymer molecules. Additionally, polymers eligible for exemption are representative of polymers for which EPA has had PMN review experience. If EPA believes additional review is necessary after its initial 21-day assessment, the Agency will extend the review period and obtain the additional information required under full PMN review from the submitter. If the Agency still has insufficient information on the substance to evaluate health and environmental effects and the substance may present significant risks or exposures, the Agency will consider action under section 5(e). If EPA determines that there is a reasonable basis to conclude that the substance will present an unreasonable risk, it will consider action under section 5(f).

One commenter stated that molecular weight information is not needed because of the certification that the substance qualifies for the exemption. EPA believes this information is essential to its review of the risks associated with polymers. Some commenters also stated that it is unnecessarily burdensome to require information on low molecular weight species content. However, low molecular weight species content is one of the major risk concerns associated with polymers. Therefore, EPA believes such information is essential to assessment of risks during the expedited review. Additionally, EPA has found in full premanufacture review that submitters are typically able to provide this information without undue burden or cost.

Another commenter stated that a structural diagram is often impossible to provide for polymers and is unnecessary for EPA's risk assessment. Structure is a necessary component of the Agency's toxicity review. EPA requires only a representative structural diagram because in some cases it is not possible to wholly characterize a polymer's structure. Another commenter stated that a structural diagram is unnecessary to determine compliance. However, the Agency has found that this information is often essential to ascertain the identity of the new chemical substance.

In the proposed rule, manufacturers were not required to provide EPA with any information on impurities in the limited PMN. This information, however, is required in full premanufacture notices as part of the description of chemical identity. On several occasions impurities information has proved critical in the Agency's assessment of risks posed by a new chemical substance. Therefore, EPA believes that it is necessary to require information on impurities in the final exemption rule. Section 723.10(f)(2)(vii) of the final rule requires the manufacturer to identify impurities anticipated to be present in the exempt substance and their weight percent. EPA has also added the requirement that manufacturers submit trade names and synonyms related to the new polymer, consistent with the full premanufacture notification requirements. This information will allow the Agency to perform a more complete literature search on the new polymer within the 21-day review period. The final rule also has modified production volume information requirements to be consistent with full PMN review.

Many commenters stated that the information requirements for reactants are inconsistent with Inventory Reporting Rules because the Inventory Rules do not require monomers and other reactants used in the manufacture of a polymer at 2 weight percent or less to be reported as part of chemical identity information. However, § 720.45(a)(3) of the Premanufacture Notification Rules and the PMN form require the reporting of monomers or other reactants used at any weight percent. The submitter may then choose which, if any, of those monomers and reactants used at 2 weight percent or less are to be included as part of the identity of the polymer to be entered on the Inventory. The reporting of reactants at 2 weight percent or less, even though they might not be included in the description of the polymer, allows EPA to review the potential toxicity of minor components reported in the notice.

EPA has referenced the test data and other data requirements in the final Premanufacture Notification Rule (the PMN rule) (§ 720.50) to guide submitters on what test data and other data should be submitted with a limited PMN. Although the proposed rule did not include the requirement that manufacturers submit other data related to the health and environmental effects of the new substance and data on chemicals related to the new chemical substance, including impurities and byproducts, EPA believes that it is essential that manufacturers provide these data with the limited PMN given the limited time that EPA has to obtain and review information on the new polymer. Additionally, as previously stated, the risks associated with related chemicals are a major concern associated with new polymers (the requirements concerning § 720.50(c), data on related chemicals, have been stayed by the PMN clarification (48 FR 41132)).

One commenter stated that test data should be redefined to exclude data that have not been developed for the specific purpose of evaluating the health or evironmental effects of a new polymer. However, EPA believes that all test data and other data that may be relevant to its assessment of health and environmental effects, not simply test data specifically developed to evaluate those effects, are essential for an adequate assessment of the risks associated with the substance. Another commenter stated that manufacturers should be required to report the leaching rates of residual monomers. The Agency believes, however, that such information is necessary only after its initial assessment of the toxicity of the new polymer. EPA can obtain this information during the extended review period if necessary.

The final rule requires that submitters use the appropriate sections of the Premanufacture Notification form (EPA Form 7710-25, 48 FR 21755). This requirement will not place any additional burden on submitters since the information requirements in the exemption rule are identical to the corresponding requirements in the PMN rule. EPA believes that the standard format presented by the form is essential to completing its expedited review and to ensuring that proper confidentiality is maintained. Submitters must clearly indicate on the first page of the form that the notice is a limited PMN and whether the submission applies to the polyester or to the greater than 1,000 molecular weight exemption. Submitters of limited PMN must complete the following sections of Part I of the form: Certification; Section A—Submitter Identification; Section B.2—Chemical Identity Information—Polymers; Section B.3-6—Impurities, Synonyms, Trade Identification, Generic Chemical Name; Section C.1—Production Volume; Section C.2a(1) Description of Category of Use; Section C.2a(4)—Type of Use; Section C.2b—Generic Use Description. Submitters should also complete Part III—List of Attachments. Submitters should add to the certification a statement that the substance satisfies the polymer definition, the exclusion criteria, and the exemption criteria and

will be manufactured under the terms of the exemption. The "Instructions Manual for Premanufacture Notification," available from the TSCA Assistance Office, gives information on completing these sections of the form.

6. *Length of review period.* The proposed rule would have required that manufacturers notify EPA 14 calendar days before manufacturing a new chemical substance under the exemption. In the final rule, however, manufacturers are required to notify EPA 21 calendar days before manufacture begins. After carefully reviewing public comments and evaluating its experience in the premanufacture notice review process, the agency has concluded that 14 calendar days is not sufficient to ensure a substance is eligible for an expedited review; to assess potential toxicity of low molecular weight species and residual monomers and reactants, and to make a general assessment of exposure. Instead, 21 days is the minimum reasonable period in which EPA can adequately review the substance and, if necessary, inform the manufacturer that EPA has extended the review period.

EPA recognizes that one of the major benefits of this exemption is that it allows companies to respond more rapidly to market demand and to introduce new chemical substances more quickly into commerce. Although extending the review period from 14 to 21 calendar days may reduce this benefit to a cerain extent, EPA does not believe this impact will be substantial.

7. *Extension of the review period.* The proposed rule would have given EPA the authority to extend the 14-day review of a limited PMN for any period up to an additional 76 days for an aggregate period of 90 days. EPA would have retained the authority of section 5(c) of TSCA to further extend the review period by an additional 90 days.

Under the final rule, EPA will not extend the 21-day expedited review for any incremental periods less than a total of 90 days. Rather, the period will automatically be extended to 90 days if the Administrator determines that the polymer should be considered for regulatory action under sections 5(e) or 5(f) of the Act or that unresolved issues concerning toxicity or exposure require further review. Like the authority to extend the PMN review period under section 5(c), the authority to extend the exemption review will be delegated to the Director of the Office of Toxic Substances. Under the final rule EPA also retains the authority to use section 5(c) of TSCA to extend the review period an additional 90 days for good cause.

The authority to extend the review period is essential in cases for which the Agency has significant questions about the toxicity of the polymer based on the information available during expedited review. The extended review period allows the Agency to obtain additional information and perform additional review on the new polymer. Under the final rule, if EPA extends the review period, the manufacturer must either withdraw the PMN or must suspend the review period and submit additional information so that all the information required in a full PMN is provided. EPA will suspend the review period for any period up to 60 days. If EPA receives the additional information, the Agency will review the notice under the procedures in 40 CFR Part 720 as if it is a complete PMN. However, the initial 90-day review period will include the number of days that have elapsed in the limited review period. If the manufacturer withdraws the limited PMN, fails to suspend the review period, fails to submit the additional information within 60 days or submits incomplete information, within that period, he or she may not begin manufacture before submitting a full PMN and before the statutory review period is complete.

The automatic extension provided for in the final rule will eliminate the uncertainty and potential arbitrariness that could be associated with the proposed approach. This approach also eliminates a potential inequity. A substance may be reviewed for an extended period under the exemption and be placed on the Inventory with restrictions, while a similar substance that completed a full 90-day review would be placed on the Inventory without restriction. In this case, both substances would have essentially the same review time but would be treated differently with respect to Inventory listing. Finally, it is clear that the Agency only has sufficient time within the 21-day expedited review period to review the specific polymer as defined by the exemption category, exclusions, and residuals content. Under the final approach, when the review period is extended to the full 90 days the Agency will have sufficient time to review the specific use conditions for the polymer as it would be defined by placement on the Inventory without restrictions.

Additionally, EPA believes that such an approach will rarely result in a longer period of review. In most cases, the Agency would have required close to the additional 69 days to obtain additional data from the submitter and to analyze that data.

EPA will not extend the review period simply for speculative reasons. EPA may extend, for example, if an impurity in the polymer is an analog of a suspected carcinogen, but the significance of the analogy or the strength of the case against the analog might be open to question. In another instance, the review period may be extended because of serious unresolved issues concerning exposure (particularly exposure outside the control of the manufacturer) to a substance known or likely to be a serious hazard.

8. *Review of notices.* Many commenters requested clarification of EPA's exemption review procedures. EPA will generally follow the review procedures established in the final PMN Rule, with modifications appropriate for the shortened review period. The sections of the PMN rule relating to the review of limited PMN's have been referenced in the rule.

All notices will be received by the Office of Toxic Substances Document Control Officer and will be assigned to a Notice Manager. The Notice Manager will be the official Agency contact with the submitter and will also coordinate the expedited review. Each notice will be reviewed for completeness. The Agency has retained authority to act on errors in the notice and incomplete notices similar to that under full premanufacture review. EPA will publish a notice of receipt of the limited PMN in the **Federal Register**. The TSCA Inventory will be searched for the identity of each substance.

If the substance is on the Inventory, EPA will notify a submitter that neither a premanufacture notice nor a limited PMN must be submitted. Therefore, the substance may be manufactured without restriction, subject to other rules promulgated under TSCA.

After it has been reviewed for completeness, a chemist will review the notice to determine whether the polymer meets the criteria for exemption. If EPA determines that the substance is ineligible for the exemption, it will follow the procedures outlined in paragraph (q) of the Rule.

As stated in the proposal, EPA's review of the limited PMN will focus on the toxicity of the new polymer as manufactured for commercial purposes, and particularly on the residual reactants and low molecular weight species associated with the polymer. EPA will also make a general evaluation of exposure, given the information provided in the notice. The Notice Manager will contact the submitter if

there are errors in the notice, if EPA determines that the notice is incomplete, and if other questions arise during the review. Submitters may submit any information in addition to that required in the notice at any time during the Agency's review. Submitters may withdraw a limited PMN following paragraph (m) of the rule. Submitters may also suspend the review period, with EPA's consent, for limited periods of time but only during the extended review period.

If serious concerns regarding the potential health and environmental effects of the manufacture, processing, use, distribution, or disposal of the new polymer cannot be resolved before the end of the 21-day review period, EPA will extend the review period. The manufacturer must submit the additional information on the substance that is necessary to constitute a full PMN or withdraw the limited PMN. EPA will make reasonable worst case assumptions when information on exposure and toxicity is limited. The Agency will extend the 90-day review period under section 5(c) if it is considering action under section 5(e) or 5(f).

If the initial review period or any subsequent review period expires without notice of further extension from EPA, manufacture or import of the new substance may begin. However, the manufacturer must submit a notice of commencement of manufacture or import when manufacture or import begins under § 720.102 of the PMN rule as amended by the PMN clarification (48 FR 41132).

9. *Inventory.* Under the proposal, EPA would have added substances that had completed a limited PMN review to the TSCA Inventory without restrictions. Polymers exempt without EPA review would not have been added to the Imventory. The proposal also did not contain an approach for informing the public of the identity of substances manufactured under the exemption. The final rule not only specifies a 21-day limited PMN review period for all eligible polymers but also requires that all exempt polymers be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low molecular weight species content limitations.

Many commenters stated that once EPA has completed its review of an exempted substance it should be placed on the Inventory without restriction. To do otherwise would require frequent and unnecessary reporting of minor changes in composition.

EPA believes that it cannot make its no unreasonable risk finding unless it ensures that the exempt substance is manufactured under the terms of the exemption. EPA has based this finding in part on its ability to review risks of these chemical substances during the 21-day review period. An Agency determination made during the expedited review period that a polymer should be exempt and that no regulatory action is warranted is largely based on the fact that the polymer meets the exemption conditions. If such a polymer were added to the Inventory without restriction, it could be manufactured in a form or manner other than those which EPA reviewed and thus could potentially present an increased risk. To preserve the integrity of the no unreasonable risk finding for exempt polymers that complete expedited review without the review period being extended, EPA will list their identities on the Inventory with restrictions. The substance will be added to the Inventory when EPA receives a notice of commencement of manufacture. The Agency will list these substances on the Inventory qualified by the exclusion criteria. In addition, exempt polymers will be listed by monomer and reactant identity (in accordance with the inventory two percent rule), the maximum content of each residual monomer, the maximum content of molecular weight species below 500 and below 1,000 absolute molecular weight, and the minimum allowable number-average molecular, weight criteria, if applicable. Subsequent manufacturers of the polymer must comply with these criteria, or a new limited PMN or full PMN must be submitted. Substances for which the expedited review period is extended will be added to the Inventory without restriction when review is complete and a notice of commencement of manufacture is submitted, unless the Agency has taken action under sections 5(e) or 5(f). The extended review period will provide EPA with the opportuntiy to conduct a more detailed toxicity, use, and exposure assessment.

While manufacturers must report in the limited PMN all monomers and other reactants used to manufacture the polymer, manufacturers may choose which monomers or other reactants used at two weight percent or less should be included in the identity added to the Inventory. Following the Inventory Rules, other manufacturers may manufacture an exempt polymer made from the reactants listed on the Inventory for that polymer in any proportion provided that the polymer complies with the polymer definition, the exemption category, exclusion criteria, residual monomer restrictions, and low molecular weight species restrictions. A polymer may also be made from the same reactants and other reactants used at two percent or less. However, regardless of the proportion of the reactants in the polymer and the reactants used at less than two percent, the polymer must meet the exclusion criteria, the category criteria, and appropriate residual reactant and low molecular weight species restrictions identified on the Inventory. Otherwise, the manufacturer must submit a limited PMN or full PMN, as appropriate, before manufacture may begin. If a limited PMN is submitted for a polymer listed under an exemption category on the Inventory which broadens the definition of that polymer, and if EPA allows manufacture or import to begin, EPA will revise the restrictions, as appropriate. If a manufacturer submits a full PMN on a polymer listed as an exempt substance on the Inventory and EPA completes review of the PMN without taking action under sections 5(e) or 5(f), the Agency will, after receiving a notice of commencement or manufacture, replace the restricted description of the exempt substance with the unrestricted description in the full PMN.

10. *Notification of ineligibility.* Under the proposal, EPA would have the authority to determine that a substance is ineligible for exemption if it failed to meet the criteria for exemption (i.e., the polymer definition, the exclusion criteria, and the exemption conditions). The proposed rule established different procedures by which EPA would declare substances ineligible that had not yet been manufactured under the exemption and those that had been manufactured. The final rule has retained this basic division, but the procedures have been changed for the period after manufacture because of other changes in the rule.

Several commenters stated that EPA should not have the authority to determine that a substance is ineligible after the limited review period ends and before manufacture begins. The Agency believes that, where serious questions exist about whether a substance meets the terms of the exemption, the questions should be resolved before manufacture begins without elaborate procedures for obtaining manufacturers' objections. If EPA makes a determination that the substance is ineligible before manufacture of the substance begins, EPA will notifiy the manufacturer by telephone, and subsequently, by certified letter, that the substance is ineligible. The manufacturer has the option of (1) submitting another limited PMN if he or

she makes the modifications necessary to resolve eligibility issues and identifies those modifications in the notice, or (2) complying with section 5(a)(1) of the Act and the Premanufacture Notification Rule by submitting a full PMN at least 90 days before manufacturing the substance.

After the manufacturer submits a notice of commencement of manufacture for an exempt polymer, EPA will enter the substance on the Inventory by the criteria and exclusions of the rule and the molecular weight and low weight species information supplied by the manufacturer. Although EPA believes that in most cases questions about the eligibility of a polymer will be raised in the limited review period EPA may, after manufacture begins, obtain additional information that calls into question the substance's eligibility. This could occur, for example, as a result of the Agency's TSCA inspections program. If EPA determines that the substance actually being manufactured does not comply with the description on the Inventory, and that the substance is not otherwise listed on the Inventory, the manufacturer would be in violation of section 5(a)(1) of TSCA. In effect, the company would be manufacturing the substance without having submitted a notice on that substance. As with any section 5 violation, EPA could bring an enforcement action against the manufacturer for the violation.

As in the proposal, EPA recognizes that it is possible for a manufacturer to diligently and in good faith attempt to comply with this exemption and still be in violation. For example, a manufacturer can determine that a substance meets the exemption criteria by relying on past experience with similar substances and making reasonable estimates. Subsequent testing of the substance might indicate that it does not meet one or more of the criteria which appear in the Inventory description. In the situation where the manufacturer has made a diligent, good faith effort to comply with the rule and EPA's guidance, EPA has concluded that the manufacturer should be allowed a short period of time to submit a full PMN under the PMN rule and to continue manufacture, processing, distribution in commerce, and use during the review of that PMN.

EPA has retained the basic approach of the proposal for treating manufacturers whose violations happened in spite of due diligence and good faith efforts to comply. Similar to the proposed rule, EPA will notify the manufacturer by telephone, followed by certified letter, that the Agency believes the substance does not comply with the Inventory description. The manufacturer will have the opportunity to submit objections to the determination or an explanation of its diligence and good faith in attempting to comply with the rule and the Inventory description, or both. The manufacturer must submit the objections or explanation within 15 days of receiving the written notification. EPA will review the submission and, within 15 days, notify the manufacturer of its final determination by telephone followed by certified letter.

Under the final rule, the manufacturer may continue commercial activity with the new polymer while EPA makes its final determination if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the telephone notification and if the manufacturer submits written objections or an explanation. If the Agency brings an enforcement action in such instances, it will not levy a penalty for continuing commercial activities the days between the date of the first telephone notification and the date of its final determination. As with a substance that undergoes full premanufacture review, EPA could take action under section 7 of TSCA if it determined that continued commercial activity presented an imminent hazard to health or the environment.

Manufacturers not engaged in manufacture, processing, distribution in commerce, or use of the substance at the time of telephone notification may not begin manufacture until EPA makes its final determination. Many commenters stated that this approach discriminates against batch manufacturers as opposed to continuous manufacturers. However, the Agency believes it is inappropriate to allow companies to resume commercial activity with a chemical substance under the exemption after EPA has initially determined that the substance is in violation of the rule and the Inventory description.

EPA may bring an enforcement action if (a) no objections or explanations are filed, or (b) EPA concludes that the substance is in violation and the manufacturer did not act diligently and in good faith to comply with the rule and the Inventory description.

If EPA concludes that the manufacturer has acted with due diligence and in good faith, the manufacturer may continue manufacturing, processing, distributing in commerce, or using the substance if it submits a full PMN under the Premanufacture Notification Rule within 15 days of the final notification by the Agency. EPA believes that 15 days is adequate to submit a full PMN since the manufacturer will know of this possibility when EPA notifies it that the Agency believes the substance is ineligible. If such a manufacturer were to continue to manufacture, process, distribute in commerce, or use the substance without submitting a full PMN, EPA would bring an enforcement action. The manufacturer would also be in violation from the date of the Agency's final determination.

In determining whether a manufacturer exercised due diligence and good faith in attempting to comply with the rule and the Inventory description, the Agency would consider many factors, and decisions would be made on a case-by-case basis as an exercise of the Agency's discretion. For example, a manufacturer would not be considered to have exercised due diligence and to have acted in good faith if it: (1) Failed to consider information it knew concerning process chemistry or physical/chemical properties in determining eligibility, (2) deliberately falsified information in the limited PMN, or (3) knowingly altered production parameters after submitting the limited PMN so that the actual substance manufactured would not meet the Inventory description.

Several commenters stated that a 15-day period is not adequate to allow objections to be filed. However, the Agency intends to have prepared specific questions about the substance's eligibility so that a manufacturer familiar with the exemption criteria will be able to respond based on the analysis he or she has already performed. EPA believes that 15 days is adequate time for the manufacturer to submit objections and/or an explanation of its due diligence and good faith efforts to comply with the rule and the Inventory description.

11. *Recordkeeping.* In the final rule, the Agency modified the recordkeeping requirements for limited PMN's to include documentation of information in the notice; production volume during the first three years of manufacture; and the date of commencement of manufacture. The Agency agrees with commenters who stated that requirements should be no more burdensome than under the Premanufacture Notification Rule (40 CFR Part 720) and has modified the final exemption requirements to be consistent with them.

One commenter stated that recordkeeping requirements are unnecessary because the manufacturer certifies compliance, the information required is included in the exemption

notice, and the manufacturer could submit information to the Agency upon request. However, EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program; documentation of information in the notice would be used by enforcement inspectors to determine compliance. (Such documentation would include data or supporting rationale concerning molecular weight, low molecular weight species, and impurities determinations, the bases for the production volume estimate and potential uses, etc.)

Several commenters stated that recordkeeping to demonstrate continuing compliance was unnecessary and so burdensome as to preclude use of the exemption. The Agency agrees that specific recordkeeping provisions that require documentation of continuing compliance may be overly burdensome and are not necessary. However, it is the responsibility of the manufacturer to ensure that the exempt polymer being manufactured complies with the Inventory listing, just as it would be when manufacturing any non-exempt chemical listed on the Inventory. The Agency believes that information manufacturers normally maintain and develop for purposes such as quality control, product specification data, and product evaluation will in many cases be useful in determining compliance. EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. If EPA discovers at a later date that the chemical being manufactured is not covered by the notice, or otherwise not on the Inventory, the submitter will be in violation of section 5.

12. *Confidentiality.* The final rule has retained essentially the same provisions for confidentiality as the proposed rule and the final premanufacture notice rule (§§ 720.80, 720.85, 720.87, and 720.90).

The confidentiality provisions in the final rule take into account various requirements under the Act, including the need to provide nonconfidential information to the public, to give EPA information it needs to respond to FOIA requests, and to allow persons to assert claims of confidentiality with minimum burden. In determining final confidentiality provisions, EPA also considered its experience with notices submitted under section 5(a)(1) of TSCA.

A person may assert a claim of confidentiality for any information submitted to EPA under this rule. To do so, submitters must clearly indicate on the limited PMN or attached document (e.g., by circling, underlining, or bracketing) the information that they wish to claim as confidential. Only the information claimed as confidential should be identified as confidential. A submitter should not simply stamp "confidential" on the page which contains a piece of confidential information.

The final rule requires that submitters provide a sanitized copy of the limited PMN in which all confidential information has been deleted. This requirement is especially essential for this exemption rule given the limited period of EPA reveiw. The final rule requires companies to develop generic descriptions if they claim chemical identity and use information confidential. The generic name and use information will be published in the **Federal Register** notice of receipt of the limited PMN. (See II.B.6. of this preamble.) The generic chemical identity will be published in an appendix to the TSCA Inventory. In some cases, companies may develop a generic name that EPA believes is more generic than necessary to protect confidential chemical identity. In this case, EPA will propose to the submitter a more specific name. If that name is unacceptable, the submitter must explain why EPA's name is not sufficiently generic to protect confidential chemical identity and propose an alternative. EPA will publish the submitter's alternative name if it is acceptable. Otherwise, EPA will put the generic name it devises on the Inventory Appendix, 30 days after giving notice to the submitter.

13. *Enforcement.* Several commenters stated that EPA should establish an exemption audit program. The exemption for polymers does not require a report such as the qualified expert's report required by the site-limited intermediate and low volume exemption. Review of the performance of the qualified expert was the main reason for establishing an audit program for the site-limited intermediate and low volume exemption. Therefore, EPA believes that an adequate enforcement program will preclude the need for a special audit program for this exemption. EPA intends to periodically inspect all companies which have made TSCA section 5 submissions, including exemptions. Those submitters with violations may be inspected more frequently.

To determine compliance with the exemption, the EPA inspector will focus on the information in the exemption notice and limited PMN and whether the substance actually produced is consistent with the Inventory description. For example, he or she may examine the techniques used to determine or estimate molecular weight or may review reaction materials used to ensure compliance with the exemption exclusion categories. If the initial inspection reveals a violation or significant questions about compliance, a follow-up investigation may be conducted. This may involve compliance monitoring for all exempt chemicals manufactured at the manufacturer's sites and interviews with employees.

III. Regulatory Analysis

To support the August 4, 1982 proposal, EPA prepared a risk assessment of polymers and an economic analysis of the various alternatives considered. These alternatives are summarized in unit I.C. of this preamble. After reviewing public comments on the risk assessment and the economic analysis, EPA revised these documents, modifying them where necessary to reflect changes in the final rule. The final documents are available in the public record of this rulemaking. The documents are summarized briefly below. This section also explains the basis for the Agency's finding that the manufacture, processing, use, distribution, and disposal of the polymers manufactured under the exemption will not present an unreasonable risk.

A. Summary of Risk Assessment

1. *Introduction.* The Agency originally considered an exemption rule for polymers because it is generally agreed within the Agency and the scientific community that many of these substances are of low concern due to their lack of reactivity and their molecular size. The hazard analysis for this rule provides the evaluation of information relevant to the Agency's conclusions that: (1) Polymers eligible for this exemption are generally of low concern, (2) sufficient uncertainty exists about this conclusion to warrant a limited Agency review of all exempt polymers, (3) sufficient information exists on the potential toxicity of several classes of polymers to warrant their exclusion from the exemption, and (4) certain additional polyesters of number-average molecular weight below 1000 can be exempt.

2. *Approach to risk analysis.* The first step the Agency took to confirm the assumption of the low risk of polymers was to identify and characterize the hazards associated with them. A relatively extensive literature search for information on the toxicity of major types of existing polymers revealed that such data is very limited. Review of the

available data did not allow clear identification or characterization of hazards (or lack thereof) for existing polymers.

Because EPA could not make a finding of low concern for polymers based on knowledge of their hazard potential, the Agency attempted to confirm that certain polymers would be of low concern for risk because of their molecular weight. The selection of molecular weight as a risk-limiting criteria rests on two well-known and accepted principles of toxicology. The first principle states that in general, in order to cause an adverse health or ecological effect, other than direct contact effects, a chemical must first be absorbed by an organism. The second states that absorption of a chemical generally decreases with increasing molecular weight (size). Based on these two principles, the Agency reasoned that potential risks should generally be expected to decrease with increasing molecular weight.

3. *Molecular weight as a determinant of risk.* In its anaslysis of the use of molecular weight as a determinant of the risks associated with polymers, the Agency evaluated the relationship between toxicity and absorption and between absorption and molecular weight. It also considered the factors measured by the average molecular weight of polymers and the molecular weight limit above which absorption generally is not expected to occur.

a. *Toxicity/absorption.* For a chemical to elicit a toxic response within an organism, it must come into direct contact with the biological cells from which it elicits the response. Because all organisms are encased in protective membranes, a chemical must usually penetrate these membranes and be translocated to various parts of the organism to gain access to its target sites. Therefore, it can be reasoned that if a chemical cannot penetrate the protective membranes to gain access to a target site, it usually cannot elicit a response in the organism no matter what inherent potential it may have to do so. It can be further reasoned that if a chemical cannot elicit a response, it will generally not present a risk.

b. *Absorption/molecular weight.* The key factors which appear to determine absorbability of a chemical by an organism are its molecular weight and its lipophilicity. These are considered key factors because current evidence indicates that any chemical that penetrates a membrane does so by one or more of three possible mechanisms: (1) Passive diffusion through the spaces and pores of the membrane (dependent on molecular weight/size) or by dissolving in the lipoid material of the membrane (dependent on lipophilicity); (2) filtration through the spaces and pores in the membrane (dependent on molecular weight/size); and (3) specialized transport through systems which carry water-soluble substances across membranes by a lipid-soluble "carrier" molecule. As can be observed, the ability of a chemical to penetrate a membrane is dependent on its molecular weight/size. From this, the Agency reasoned that by increasing the molecular weight/size of a chemical, its absorption by an organism will generally be expected to decrease.

c. *The use of average molecular weight.* Analysis of absorption potential is usually made in terms of a single molecule of a given weight. However, polymers do not generally consist exclusively of molecules of one specific molecular weight. They are usually composed of homologous molecules spanning a range of molecular weights. As a result, the molecular weight of polymers can be best characterized by: (1) An average of the weight of the molecules making up the polymer, and (2) a measure of the distribution of weights, which is called polydispersity.

As polydispersity decreases in a polymer of a given average molecular weight, the distribution of molecular weights narrows, so that the amount of low molecular weight species in the polymer decreases. EPA has observed in the PMN data base that as molecular weight increases, polydispersity decreases. This indicates that as molecular weight increases, the importance of polydispersity as a parameter in characterizing polymer absorbability decreases. Although the amount of low molecular weight species may in some circumstances be significant, EPA believes that the average molecular weight of a polymer is a reasonable parameter to use when assessing the potential for absorbability. The Agency has chosen to use the number-average molecular weight of polymers for its assessment because the number-average is more sensitive than other measures of average weight to the amount of low molecular weight species in the polymer.

d. *The choice of a molecular weight criterion.* Because of limited data, known exceptions to the principle that as molecular weight increases absorption decreases, and the polydispersity of polymeric substances, it is not possible to identify any single molecular weight limit above which no absorption will take place. However, available data on the relationship between absorbability and molecular weight does suggest that substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin and that substances with molecular weights greater than 1,000 are generally not readily absorbed through the intact gastrointestinal (GI) tract. The relationship between absorption through the GI tract and molecular weight of somewhat more tenuous than it is for dermal absorption because other factors, such as active transport and metabolism, may play a key role in affecting absorption from the GI tract. Based on the above data, the Agency believes that except for polymers that contain significant quantities of low molecular weight substances, polymers will generally not be absorbed through the skin or GI tract to a significant extent.

4. *Limitations to approach.* The Agency recognizes that there are limitations to the general rule that high molecular weight substances will not be readily absorbed and therefore, will be of low concern. First, there are exceptions to the rule, and second, there may be potential toxicity due to toxic residual feedstocks or to formation of particulates.

a. *Exceptions.* There are known exceptions to the general principle that increasing molecular weight decreases absorbability. For example, high molecular polyester diamines are able to penetrate skin. Bovine serum albumin and bovine milk xanthine oxidase can be taken up by the GI tract. Possible explanations for these exceptions are that: (1) A polymer may cause irritation sufficient to disrupt the integrity of the membrane; (2) it may have unique physicochemical properties which enable it to be absorbed; or (3) it may have an appropriate steric configuration which enables it to be transported on one of the specialized transport systems.

b. *Residual feedstocks.* In some cases there may be a substantial amount of residual starting material in the final polymeric substance. These reactants are typically low molecular weight (i.e., absorbable), reactive substances. To the extent that reactivity combined with absorbability suggests potential hazards, the presence of residual reactants may present risk not addressed by risk analysis based on molecular weight. The Agency prepared a quantitative risk estimate for several residual monomers in different exposure scenarios. The risk estimates indicate that under certain conditions there may be potential for significant risk due to residual monomers.

c. *Particulates.* Another potential source of toxicity not covered by the

molecular weight approach is toxicity due to particulates. Some polymers may be in particulate form and as a result may upon inhalation present potential health risks due to development fibrosis of the lung or other pulmonary effects. Although the Agency's PMN review experience has demonstrated that exposure to polymer particulates is generally limited and therefore expected to be of low concern, there is still the potential for this hazard to occur.

d. *Oil-soluble polymers.* The molecular weight approach does not address some factors which may alter a polymer's typical potential to be absorbed. In particular, it does not address the fact that polymers could come in contact with oils which could extract both polymer molecules and residual materials which, if lipophilic, could be absorbed and bioaccumulate. Although few significant risk concerns in PMN review have resulted from the oil solubility of polymers, the potential for absorption and biomagnification does exist.

e. *Pyrolysis products of polymers.* Finally, the molecular weight approach does not address the potential toxicity of pyrolysis and combustion products of polymers. Polymers, like other substances, decompose in the presence of heat, releasing byproducts that, with significant exposure, may produce significant risk. Such decomposition is generally associated with accidental occurrences (e.g., fires) or process errors. (e.g, thermal degradation of a polymer due to excessive molding temperatures). Because pyrolysis and combustion products from polymers have not been well characterized and may vary with temperature and conditions, the Agency believes that these risks cannot generally be addressed within the scope of a broad exemption rule.

f. *Conclusion.* Based on the above analysis, the Agency believes that although exempt polymers are generally of low concern, there may be specific instances of concern, and therefore it is appropriate that all exempt polymers undergo a limited Agency review. Such a review is necessary for EPA to make the no unreasonable risk finding. This review allows the Agency to determine if any of the above concerns might apply to a given polymer. If these concerns do apply, the polymer should not be exempt from a more detailed EPA review.

5. *Exclusions.* Several classes of polymers have been excluded on the basis of information that suggests potential risk. The classes are cationic polymers, polymers manufactured from reactants containing halogen or cyano groups, and polymers containing certain reactive functional groups.

a. *Cationic polymers.* Review of data on polymers submitted under the PMN program revealed that certain cationic polymers, such as polyamines, are likely to be toxic to aquatic organisms even when their molecular weight is greater than 10,000.

b. *Polymers containing halogen or cyano groups.* There is sufficient concern regarding the toxicities of certain low molecular weight halogenated and cyanated monomers (e.g., vinyl bromide, vinyl chloride, and acrylonitrile) for the Agency to be unable to make a general finding of low risk for polymers made from such reactants.

c. *Polymers containing reactive functional groups.* Certain polymers containing reactive functional groups are intended to undergo further reaction to produce high molecular weight polymers. Because many of these groups are capable of reacting with tissues or other chemical constituents of living organisms, polymers containing such groups may be biologically active. Absorption of polymers with reactive groups is also plausible since reactive groups often cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration. Because of the possibility of both absorption and reactivity with biological cells, polymers with reactive functional groups may be toxic.

For these reasons, the Agency believes that there is sufficient concern about the hazard potential of these three classes of polymers to exclude them from the exemption.

6. *Polyesters.* The polyester exemption, unlike the rest of the general polymer exemption, does not impose a minimum number-average molecular weight as a criterion for eligibility. The potential toxicity of residual reactants was addressed by limiting the reactants from which polyesters can be made under the exemption. A list of reactants that are commonly used in the manufacture of polyesters was evaluated for their potential toxicity. The evaluation was conducted by a panel of senior Agency scientists, who relied upon available scientific literature, information from other Federal agencies, knowledge of structure-activity principles, and general experience in identification and evaluation of hazardous substances. (This is the major hazard identification step in the normal PMN review process.) Under the exemption, polyesters may be made only from those reactants identified as presenting low concern in this review. These reactants are identified in § 723.250(e)(2) of the rule.

7. *Risk under exemption conditions.* There are several factors about polymers and the proposed exemption that reduce risks to human health and the environment presented by exempt polymers.

Many polymers are relatively unreactive and stable when compared to most other chemical substances. As a polymer's molecular weight increases, its potential to cause adverse health or ecological effects is generally reduced. This occurs because an increase in molecular weight generally reduces the rate of polymer absorption by biological systems. The Agency believes that these inherent properties of polymers, when combined with the provisions of this exemption, will significantly reduce the potential risks to human health and the environment that exempt polymers may present.

Under the exemption there are three main elements that will reduce risks: (1) The exemption criteria, (2) the expedited PMN and review provisions, and (3) the exclusion categories.

First, the exemption criteria will limit risk. Only polyesters manufactured from a list of low concern monomers are eligible for exemption without meeting the minimum number-average molecular weight criterion. Other polymers with a number-average molecular weight over 1,000 (if not otherwise excluded) would be exempt. EPA believes that this minimum number-average molecular weight, when combined with the exclusion categories and expedited review, sufficiently narrows potential risk concerns.

Second, certain polymers which may present significant risks or for which little is known about risk would be excluded from eligibility. For instance, polymers made from reactants that contain halogens or cyano groups would be excluded as a result of concerns for unreacted residuals. Polymers designed or reasonably anticipated to degrade or depolymerize would be excluded because EPA has limited review experience with such polymers. Cationic polymers, some of which are believed to present significant aquatic risks, are excluded. Other exclusions would similarly eliminate categories of polymers for which the Agency cannot make the finding of no unreasonable risk. Polymers that are not excluded must then meet the exemption criteria to be exempt.

Third, no polymers can be manufactured under this exemption without submission of a limited PMN to EPA at least 21 days prior to

manufacture. The Agency believes that, with the above exemption exclusions and criteria, EPA will be able within the 21-day period to identify problematic substances requiring more extended review. If significant risk issues are raised, the Agency may extend the review period and may exercise its authority under sections 5(e) and 5(f).

EPA believes that the exemption exclusions, conditions, and notice and review procedures will reduce potential risks by excluding certain polymers for which the Agency has limited review experience and some polymers which may often have hazard concerns, and by providing the Agency an opportunity to review all polymers prior to manufacture. In addition, the Agency believes that there will be no increase in potential risks beyond what would have occurred if a full PMN review was conducted. Polymers that are eligible for this exemption are usually identified as having low risk potential early in PMN review and consequently are dropped from consideration before the 21st day of the review period.

B. Summary of Economic Analysis

1. *Introduction.* To perform the economic analysis of the polymer exemption, the Agency created a data base from a sample of about 500 polymer PMN's submitted in 1980 and 1981. This data base provides an overview of the Agency's recent experience with the PMN program. The Agency analyzed the PMN's in this data base to determine the types of polymers being submitted for review, their projected production volumes, their intended uses, and in some cases their potential toxicity. This information was used to estimate the number of new chemicals that would likely be eligible for an exemption.

The Agency also reviewed the current cost of PMN requirements for manufacturers of new polymers; it estimated the direct relief to industry, reflected in decreased reporting costs and decreased time in bringing a new chemical to the market, that would result from different exemption alternatives; and it estimated direct savings to EPA resulting from decreased PMN review costs. These figures were used to derive quantitative estimates of benefits.

In assessing benefits, EPA also considered nonquantifiable benefits, such as the potential for increase in chemical innovation due to the promulgation of a polymer exemption. Although the Agency could not attach specific figures to these benefits, they may be substantial. EPA's analysis of the impact on industry of its proposed PMN rules suggests that the nonquantifiable costs of the program may be greater than quantifiable costs. By extension, it appears reasonable to assume that the nonquantifiable benefits of an exemption may be greater than those that can be quantified.

The complete economic analyses can be found in the economic support document in the public file for this rulemaking.

2. *Current impact on PMN program.* As a baseline for its economic analysis, EPA estimated the annual direct costs of submitting PMN's on polymers. A review of the sample of 500 polymer PMN's indicates that about 49 percent of all PMN's submitted are for polymers. Using the current direct PMN reporting costs of $1,300 to $7,500 per PMN, EPA estimated the annual direct reporting costs for polymers to be between $.64 and $3.7 million. Besides these direct filing costs, industry is also faced with additional costs from the TSCA-imposed 90-day PMN review period (delay costs), from having to establish confidential business information claims, and from uncertainty as to whether EPA will take regulatory action. Considering all current PMN reporting costs, the annual reporting costs to submitters of polymer PMN's are estimated to be between $1.8 and $4.9 million.

3. *Benefits of the exemption.* The Agency estimated the number of new chemical substances that would be eligible for the exemption. From this base, EPA then calculated the annual net benefits of the exemption. These benefits include the indirect savings from the reduction of the 90-day delay. The costs of having to submit limited PMN's and the cost of the delay associated with expedited review are subtracted from the gross savings to obtain the net savings to industry. The polymer exemption would make about 216 substances eligible for limited reviews per year. However, we expect that some firms would continue to submit PMN's for all new polymers while others would take advantage of the exemption for only a portion of the new polymers they develop. The polymer exemption would thus result in the filing of about 85 to 216 limited PMN's per year; net benefits to industry would therefore be between $0.165 and $1.65 million per year. However, the Agency will expend approximately the same resources reviewing limited polymer PMN's as it now expands reviewing polymer PMN's; any savings in EPA resources due to the exemption are expected to be negligible.

In addition to the benefits which EPA has quantified, there are certain benefits which the Agency has examined qualitatively. Chief among these are the benefits of reduced uncertainty and of increased innovation for manufacturers of new chemical substances. The reduction in the length of the review period (from 90 to 21 days) would reduce the period of uncertainty about the outcome of EPA's review of the notice (whether the chemical would be manufactured, when, and under what restrictions, if any, etc.). Also, by reducing direct PMN filing costs and delay costs, the exemption will encourage chemical innovation. These reductions will mean that chemicals which formerly were not profitable to introduce would now be acceptable investments. The net value of this additional innovation would constitute additional benefits, both to the chemical industry and to society.

C. Finding of No Unreasonable Risk

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to health or the environment. Section 26(c) TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances.

The term "unreasonable risk" is not defined in TSCA. The legislative history indicates that determination of whether a risk is unreasonable requires a balancing of the probability and severity of harm from the substance or category of substances against the costs of the regulatory action to society. Because EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, use patterns, and market potential which are frequently difficult to define and quantify precisely, EPA must rely not only on the available data but also its professional judgment. Congress recognized that the implementation of the unreasonable risk standard "will vary depending on the specific regulatory authority which the Administrator seeks to exercise." [Legis. Hist. at 422]

2. *EPA's approach to making the no unreasonable risk finding.* To determine whether the category of substances manufactured under the exemption presents an unreasonable risk, the Agency should consider not only the inherent risks presented by the overall category of polymers, but also the extent to which specific exclusions or

adjustments of the overall category definition have mitigated such potential risks. EPA must then analyze the effect on risk of any further conditions imposed on the exemption. For example, manufacturers who intend to use the exemption must submit a PMN containing only limited information, which may affect the Agency's ability to identify risk. Because the effect of the exemption is to modify general PMN requirements, EPA should also compare the absolute risk posed by the exemption with the risks which would have resulted from the same substances if the substances had been subject to full notice submission requirements and minimum 90-day EPA review period.

Congress did not intend the section 5 review process to eliminate entirely all risk resulting from manufacture, processing distribution in commerce, use, and disposal or new chemical substances, nor is it possible to do so. While section 5 gives EPA the opportunity to review all new chemical substances, the Agency is authorized to ban such substances or otherwise control against risks only when it can show the substances will present an unreasonable risk of injury to health or the environment (section 5(f) of TSCA) or when there is insufficient information to evaluate the risks and EPA finds either that the manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk or that the substance will be produced in substantial quantities and will be released in substantial amounts or will result in significant or substantial human exposure (section 5(e) of TSCA). To the extent that certain risks presented by members of a category of substances would not have been regulated by EPA during a full PMN review, based on EPA's maximum exercise of its section 5 authorities, such risks could not be considered to be risks posed by an exemption rule.

There are two methods of calculating the benefits of the exemption which should be weighed in determining whether exempt substances will present an "unreasonable" risk. First, CPA can consider the benefits in a manner analogous to the way it would consider them if the Agency were evaluating a particular member of the category during the full PMN period. Under this approach the evaluation would focus on the benefits of the chemicals to society, and the extent to which any regulation of the substances necessary to address remaining risk concerns would reduce or eliminate such benefits. The basis for considering this type of benefits information is that Congress arguably did not intend to exempt from PMN requirements any substances which were likely to have been subject to control under section 5(e) or 5(f). EPA thus would not consider the reduced burden of the PMN or other benefits of reducing PMN requirements, because these costs would not be considered in making a regulatory decision on a PMN substance. One problem with focusing on the benefits of the substances in the category is that, while section 5(h)(4) clearly contemplates granting exemptions by category, it is difficult or impossible to predict accurately the nature of those benefits.

Under the second approach, EPA could consider benefits beyond those considered in an actual PMN review. As discussed in the proposed rule, a broader consideration of benefits would analyze, in addition to the benefits of the substances themselves, the reduction in the costs to society imposed by the full PMN requirements. There are strong arguments for taking such an approach in making a no unreasonable risk finding in the context of a 5(h)(4) exemption. The legislative history indicates that EPA's unreasonable risk consideration should include effects on society beyond the benefits of a substance. In addition, unlike the review of an individual PMN, the costs of PMN's for substances which would be addressed by this exemption have not already been paid. Such direct costs would include the cost of preparing and submitting the PMN, and the cost of the delay in the introduction of the benefits of a new chemical. In addition, economic analyses have indicated that reporting and delay costs may discourage the introduction of new chemicals. While elimination of these costs would not be a benefit that EPA would take into account in making an individual control decision on a new substance, they are real effects on society which result from EPA's exercise of its exemption authority and are thus appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances.

3. *Application of no unreasonable risk factors.* Following is an explanation of EPA's consideration of the factors relevant to the finding of no unreasonable risk.

a. *Risks associated with exempt polymers.* As discussed in Unit III. A of the preamble, there are several characteristics about polymers as a category of substances and several elements of the proposed exemption that would significantly limit the risks to human health and the environment that exempt polymers may present. First, polymers are relatively unreactive and stable compared to other chemical substances and typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. Supporting these conclusions are the available, although limited, data and EPA's professional judgment and its experience in reviewing over 1,200 polymer PMN's. Second the exemption excludes polymers that are believed to present potential risk concerns as well as certain polymers about which little is known. Third, the exemption provisions include eligibility criteria that further limit potential risks. Finally, the exemption includes notice and review procedures that would allow EPA to exclude individual polymers from the exemption if unresolved issues concerning toxicity or exposure remain at the end of the 21-day review period or if EPA believes that it should consider regulatory action under section 5(e) or 5(f). The Agency believes that these factors provide reasonable assurances that exempt polymers will not present unreasonable risks to human health or the environment.

b. *Relative risks of expedited review and full PMN review.* In deciding whether to grant this exemption, EPA has carefully considered the potential decrease in the Agency's ability to identify risks in the exemption review process, compared with its ability to do so in full PMN review. Such additional risks could result from: (1) The inclusion of less information in the limited PMN, or (2) failure to recognize a problem in the 21-day review period that EPA would have recognized during the 90-day review period. EPA has several reasons for concluding that, in fact, the exemption review process would not result in any such increase in risk. First, as discussed above, EPA believes that the potential for significant risks among the class is reduced. Second, based on EPA's review experience, the information required to be submitted for limited PMN review, and the 21-day review period, will be sufficient to identify any problems that were likely to have been identified in a full PMN review. Under the present process for PMN's, EPA performs an initial review of all PMN substances to identify possible health or environmental effects. Within a few weeks after receipt of the notice, if EPA has any significant suspicions about a PMN substance, or if there are unresolved questions about toxicity, the chemical substance is referred for a more thorough review. For the vast majority of substances, for which no such issues are raised, little or

no assessment occurs after this initial review. The experience of the PMN program to date is that very few polymeric substances are identified for more detailed assessment.

The review process for exempt polymers will be very similar to that now followed for PMN's. The limited PMN will contain information sufficient for EPA to evaluate those aspects of polymeric substances which could potentially cause effects of concern, primarily focusing on the presence of low molecular weight species, the toxicity of such species and general exposure conditions. If EPA did identify toxicity concerns during this 21-day review, the exemption rule would allow EPA to extend the review period, and conduct a full PMN review. EPA is confident that any such problems can be identified during the 21-day period. If no such problems are identified, there is virtually no chance that they would have been identified by EPA during a more extensive review.

There is one aspect of EPA's expedited review that in the abstract would not be equivalent to a full 90-day PMN review. Under section 5(a), when EPA receives a PMN, it publishes a notice in the **Federal Register**, seeking information on risks which may be presented by the substance. The 21-day review period under the exemption rule, would not be adequate to allow the submission by the public of information on the substance which was not available to EPA. EPA, however, does not believe that this problem is significant because the Agency very rarely receives comments in response to such notices. In addition, no information has ever been received from the public during the 90-day PMN review period which caused the Agency to reverse its initial evaluation of a polymer.

c. *Benefits.* It is impossible to quantify the total benefits which may accrue to society from the individual substances subject to this exemption. Uncertainty about benefits is inherent in any action under TSCA which deals with a category of substances whose structure and uses are unknown. However, it is clear that the field of polymer chemistry has been the source of many recent technological advances. In addition, it is obvious that a new polymer must present benefits to society by performing a new function, or performing an old function more efficiently or less expensively, or with less risk, or it would not have been developed or used. Therefore, EPA has concluded that the new polymers eligible for exemption, as a category and as individual substances, will present some significant benefits to society.

EPA has been able to quantify some of the benefits to society which will result from this exemption that do not depend on specific knowledge about the benefits of the individual substances. First, as is indicated above, manufacturers submitting notices under this exemption will incur reduced reporting costs. Second, for the vast majority of substances submitted under this exemption, for which the 21-day review period is not extended, there will be a potential for significant reduction in the delay in introducing new polymers. Manufacturers, and the general public, will be able to take advantage of the benefits of individual polymeric substances more quickly, including any increases in efficiency and decrease in cost.

Assuming that from 85 to 216 polymers a year would take advantage of the exemption, net benefits would be between $0.165 and $1.65 million annually. Of this amount, a significant portion consists of the savings in costs due to delay. The delay cost savings for polymers range from about $0.1 to $0.25 million annually. Total industry costs associated with the PMN program are presently estimated at $3.715 to $9.915 million annually. The final polymer exemption rule will therefore reduce the program cost to industry by about 4 to 17 percent.

4. *Conclusion.* As discussed above, a finding concerning the existence or absence of an unreasonable risk under section 5 requires a balancing of risks and benefits which result from a particular action. As explained above, EPA has determined that the risks likely to result from substances manufactured under this exemption are very low, based on the inherent properties of the category of substances considered for exemption, the conditions in the rule limiting the polymers eligible for the exemption, and the procedural safegrards EPA has included in the exemption, including the limited PMN, the 21-day review period, and the Agency's authority and intention to extend the review period if there are significant questions about the risks posed by the substance.

Under EPA's interpretation of section 5(h)(4), because the risks of the exemption are small, EPA could make a finding that the substances would not present an unreasonable risk even if the benefits of the exemption were small. However, EPA believes that there are substantial benefits to be considered. First, substances addressed by the rule have clear benefits to society. While these benefits are difficult to quantify, the Agency believes that they by themselves outweigh any risks which are presented by the exemption. In addition, the exemption will result in a reduction in PMN reporting costs for eligible polymers, reduction in the delay between submission of notices to EPA and commencement of manufacture, and increase in innovation because of lesser costs and lesser potential for regulatory delay. The fact that not all of these benefits are subject to precise quantification does not prevent EPA from considering them, because Congress recognized the limitations of quantitative solutions to such inherently judgmental decisions as "unreasonable risk". When these benefits are added to the benefits of the substances themselves, they even more strongly outweigh the risks posed by this exemption.

Finally, the Agency believes that it is prudent public policy to focus society's limited resources on chemical substances that have greater potential to present significant risks. Other regulatory bodies and society as a whole have largely recognized that polymers present limited risk potential and EPA has rarely identified significant risk concerns in reviewing PMN's on new polymers. The exemption of relatively low risk categories of substances, such as polymers, allows EPA to focus its attention on the review and control of chemical substances that may present more serious risks.

Given the above considerations, EPA has concluded that the manufacture, processing, distribution in commerce, use, and disposal of the substances eligible for this exemption will not, taking into account all the terms of the exemption, present and unreasonable risk of injury to health and the environment.

IV. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in **DATES** in this notice. The effective date has, in turn, been calculated from the promulgation date.

V. Record

EPA has established a record of this final rulemaking (Docket Number: OPTS–50033A): the public version of this record is available for inspection in the OPTS Reading Room, Rm. E–107, 401 M St., SW, Washington, D.C. 20460 from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. Persons who do not have access to the record in the public reading room should contact Edward A. Klein, Director, TSCA Assistance Office (TS–799), at the above address for assistance.

The preamble to the proposed rule (47 FR 33896) lists items entered into the record through June 1982. The list below identifies items entered into the record after that date.

61. Adhesives Manufacturers Association (AMA), Letter to USEPA-OTS, August 13, 1981.

62. USEPA-OTS, Letter to AMA, September 14, 1981.

63. National Paint and Coatings Association, "Coatings Polymers: General Properties and Uses. A General Mortality Study of Production Workers in the Paint and Coatings Manufacturing Industry," October 22, 1981.

64. Cargill Incorporated Reasearch Department, "Cargill PMN Exemption Petition," November 13, 1981.

65. Shell Oil Company, Documents from CIBA-GEIGY and Shell supporting CMA proposed exemption for epoxy resins, February 3, 1982.

66. American Cyanamid Company, "Studies on Water Soluble Polymers (I)," July 29, 1982.

67. USEPA-OTS, "Methodology for Estimating Aquatic Safety with Minimal Data," August 1982.

68. USEPA-OTS, "Proposed Rule: Exemption of Certain Polymers from Premanufacturing Notification Requirements," August 4, 1982.

69. Comments after Proposed Rule (51 comments).

70. Public Meeting on Proposed PMN Exemptions (Six Exhibits), November 1, 1982.

71. A letter summarizing a conversation between E. Klein and J. Derbeck of Keller and Heckman, August 26, 1982.

72. USEPA/OTS, "Summary of Meeting with Burlin and Co., Inc.," September 14, 1982.

73. Tretolite Division, Petrolite Division, "Data on Cationic Polymers (II)," November 29, 1982.

74. American Cyanamid Company, "Toxicity Studies in Water Soluble Polymers," December 16, 1982.

75. Post Hearing Comments (10 comments).

76. USEPA-OTS, "Polymer Exemption Bibliography," October 1, 1982.

77. USEPA-OTS, "Technical Support Document: Risk Analysis of Polymers," July 12, 1983.

78. USEPA-OTS, "Economic Analysis of Final Section 5(h)(4) Polymer Exemption Rule," May 1983.

In accordance with section 19(a)(13) of the Act, the above lists together identify the complete rulemaking record. The public version of the record does not include confidential business information.

VI. Application of Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

This regulation does not satisfy any of the criteria for a major regulation described in Executive Order 12291; therefore, EPA has determined that a Regulatory Impact Analysis is not necessary. The annual impact of the rule on the economy will not exceed $100 million; instead it will provide substantial relief to the regulated industry. The rule will not burden any one particular geographic region and will not affect government agencies, except that it may slightly reduce the burden of PMN review for EPA. The exemption will not adversely affect the ability of domestic manufacturers to compete with foreign manufacturers, and it will encourage chemical innovation. EPA expects that the net effect of this exemption rule on the economy will be positive.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Also, the information requirements contained in this rule have been submitted to OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0012.

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA hereby certifies that this rule will not have a significant adverse economic impact on a substantial number of small businesses. Instead, it will provide relief from the present PMN requirements, which is likely to be particularly beneficial to small businesses. Since the exemption will reduce PMN filing costs and shorten production delays, small manufacturers will benefit from the rule. As stated in the document "Economic Analysis of TSCA section 5(h)(4) Exemptions: Polymers," the exemption will potentially benefit all manufacturers by reducing direct notification uncertainty, and delay costs associated with premanufacture review. Although it is difficult to determine the reduction in costs specific to small business, the exemption will not benefit large companies at the expense of small manufacturers, and may tend to improve small firms ability to compete and innovate by reducing their more critical direct costs.

Authority: Sec. 5, TSCA, 15 U.S.C. 2604.

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification exemption, Hazardous materials, Reporting and recordkeeping requirements.

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

PART 723—[AMENDED]

Therefore, 40 CFR Part 723 is amended by adding a new § 723.250 to Subpart B to read as follows:

§ 723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must: (i) Determine that the substance meets the definition of polymer in paragraph (b)(12) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a notice as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (r) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of TSCA, 15 U.S.C. 2602, the following definitions apply to this Part.

(1) "Act" means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(2) "Administrator" and "environment," have the same meanings as in section 3 of the Act (15 U.S.C. 2602).

(3) "Biopolymer" means a polymer directly produced by living or once-living cells or cellular components.

(4) "Category of chemical substances" has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

(5) "Cationic polymer" means a polymer that contains one or more covalently linked subunits that bear a net positive charge.

(6) "Chemical substance," "Director," "EPA," "importer," "impurity," "Inventory," "known to or reasonably ascertainable," "manufacture," "manufacturer," "mixture," "new chemical substance," "person," "possession or control," "process," and

"test data" have the same meanings as in § 720.3 of this chapter.

(7) "Internal subunit" means a subunit that is covalently linked to at least two other subunits. "Internal subunits" of polymer molecules are chemically derived from monomer molecules that have formed covalent links between two or more other subunits.

(8) "Monomer" means a chemical substance that has the capacity to form links between two or more other molecules.

(9) "Number-average molecular weight" means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

(10) "Polyester" means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal subunits together.

(11) "Polymer" means a chemical substance that consists of at least a simple weight majority of polymer molecules but consists of less than a simple weight majority of molecules with the same molecular weight. Collectively, such polymer molecules must be distributed over a range of molecular weights wherein differences in molecular weight are primarily attributable to differences in the number of internal subunits.

(12) "Polymer molecule" means a molecule which includes at least four covalently linked subunits, at least two of which are internal subunits.

(13) "Reactive functional group" means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo facile chemical reaction.

(14) "Reactant" means a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition.

(15) "Reasonably anticipated" means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(16) "Subunit" means an atom or group of associated atoms chemically derived from corresponding reactants.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under § 720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of polymer in paragraph (b)(11) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*—(1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b)(5) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes).

(2) *Polymers containing less than 32.0 percent carbon.* A polymer cannot be manufactured under this section if the polymer contains less than 32.0 percent by weight of the atomic element carbon.

(3) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) the elements listed in paragraph (d)(3)(i) of this section;

(B) Sodium, magnesium, aluminum, potassium, or calcium as the monatomic counterions Na^{+}, Mg^{+2}, Al^{+3}, K^{+}, or Ca^{+2};

(C) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(4) *Biopolymers.* A polymer cannot be manufactured under this section if the polymer is:

(i) A biopolymer as defined under paragraph (b)(3) of this section.

(ii) The synthetic equivalent of a biopolymer.

(iii) A derivative or a modification of a biopolymer if the initial biopolymer is substantially intact. A derivative of a biopolymer is a polymer that results from an additive chemical change of a biopolymer. A modification of a biopolymer is a polymer that results from a non-additive chemical change of a biopolymer. A derivative or a modification of biopolymer is substantially intact if it contains two or more internal subunits of a biopolymer in its structure.

(5) *Polymers manufactured from reactants containing halogen atoms or cyano groups.* A polymer cannot be manufactured under this section:

(i) If the polymer is manufactured from reactants containing, other than as impurities, fluorine, chlorine, bromine, or iodine atoms or cyano groups, or

(ii) If the polymer contains cyano groups other than as impurities.

(6) *Polymers containing reactive functional groups.* A polymer cannot be manufactured under this section if the polymer contains reactive functional groups that are intended or reasonably anticipated to undergo further reaction unless:

(i) The weight of the polymer that is equivalent to one gram-formula weight of reactive functional groups is 10,000 grams or greater.

(ii) The reactive functional groups are carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups, butenedioic acid groups; or conjugated olefinic groups in naturally-occurring fats, naturally-occurring oils, or naturally-occurring carboxylic acids.

(7) *Polymers which degrade, decompose, or depolymerize.* A polymer cannot be manufactured under this section if the polymer is designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers over 1,000 number-average molecular weight.* The polymer has a number-average molecular weight greater than 1000.

(2) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b)(10) of this section and is manufactured solely from one or more of the reactants in the following Table:

Table—List of Reactants From Which Polyesters May be Made

Monobasic Acids and Natural Oils

Benzoic acid (65-85-0)
Coconut oil (8001-31-8*)
Corn oil (8001-30-7*)
Cottonseed oil (8001-29-4*)
Dodecanoic acid (143-07-7)
Fatty acids, coco (61788-47-4*)
Fatty acids, linseed oil (68424-45-3*)
Fatty acids, safflower oil**
Fatty acids, soya (68308-53-2*)
Fatty acids, sunflower oil** (84625-38-7*)
Fatty acids, tall-oil (61790-12-3*)
Fatty acids, tall-oil conjugated**
Fatty acids, vegetable oil (61788-66-7*)
Heptanoic acid (111-14-8)
Hexanoic acid (142-62-1)
Hexanoic acid, 3,3,5-trimethyl- (3302-10-1)
Linseed oil (8001-26-1*)
Nonanoic acid (112-05-0)
Oils, *Cannabis*
Oils, anchovy
Oils, babassu palm
Oils, herring (68153-06-0*)
Oils, menhaden (8002-50-4*)
Oils, oiticica (8016-35-1*)
Oils, palm kernel (8023-79-8*)

Oils, perilla (68132-21-8*)
Oils, walnut (8024-09-7*)
Oils, sardine
Safflower oil (8001-23-8*)
Soybean oil (8001-22-7*)
Sunflower oil (8001-21-6*)
Tung oil (8001-20-5*)

Di and Tri Basic Acids and Anhydrides

1,2-Benzenedicarboxylic acid (88-99-3)
1,3-Benzenedicarboxylic acid (121-91-5)
1,4-Benzenedicarboxylic acid (100-21-0)
1,2,4-Benzenetricarboxylic acid (528-44-9)
Butanedioic acid (110-15-6)
2-Butenedioic acid (*E*) (110-17-8)
Decanedioic acid (111-20-6)
Hexanedioic acid (124-04-9)
Nonanedioic acid (123-99-9)

Polyols

1,3-Butanediol (107-88-0)
1,4-Butanediol (110-63-4)
1,4-Cyclohexanedimethanol (105-08-8)
1,2-Ethanediol (107-21-1)
1,6-Hexanediol (629-11-8)
1,3-Pentanediol, 2,2,4-trimethyl- (144-19-4)
1,2-Propanediol, (57-55-6)
1,3-Propanediol, 2,2-bis(hydroxymethyl)- (115-77-5)
1,3-Propanediol, 2,2-dimethyl- (126-30-7)
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)- (77-99-6)
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl- (77-85-0)
1,2,3-Propanetriol (56-81-5)
1,2,3-Propanetriol, homopolymer (25618-55-7)
2-Propen-1-ol, polymer with ethenylbenzene (25119-62-4)

Modifiers

Acetic acid, 2,2'-oxybis- (110-99-6)
1-Butanol (71-36-3)***
Cyclohexanol (108-93-0)
Cyclohexanol, 4,4,-(1-methylethylidene)bis- (80-04-6)
Ethanol, 2-(2-butoxyethoxy)- (112-34-5)
1-Hexanol (111-27-3)
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane (72318-84-4*)
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7-(1-methylethyl)- (13393-93-6)
Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane] (25036-25-3)
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68440-65-3*)
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated (68957-04-0*)
Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated (68957-06-2*)
Silsesquioxanes, Ph Pr (68037-90-1*)

* The * is used to designate chemical substances of unknown or variable composition, complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

** These substances and polyesters made from them may not be manufactured until notices for them are submitted under sections 5(a)(1) or 5(h)(4) of TSCA.

*** These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Limited premanufacture notice*—The manufacturer must submit to the Administrator a limited premanufacture notice at least 21 calendar days prior to the date of manufacture. (1) *Notice form.* The information set forth in paragraph (f)(2) of this section must be submitted on the corresponding sections of Appendix A, 40 CFR Part 720 (EPA Form No. 7710-25) as identified below. The manufacturer must indicate clearly on the form that he or she is claiming an exemption from full premanufacture notice requirements under this section.

(2) *Contents of notice.* For substances exempt under paragraph (e) of this section the notice must include to the extent known to or reasonably ascertainable by the manufacturer:

(i) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact. (Part I, Section A, Appendix A, 40 CFR Part 720).

(ii) *Type of exemption.* A designation of whether the manufacturer is claiming an exemption under paragraph (e) (1) or (2) of this section. (Identify on page 1 of the notice.)

(iii) *Site of manufacture.* (Except for chemical substances that are imported.) The name and address of the site or sites of manufacture. (Identify as an attachment to the notice.)

(iv) *Chemical identity.* (A) The identity (by chemical name and CAS Registry Number) and the maximum percent (by weight) of each reactant as defined in paragraph (b)(14) of this section, used at any weight percent to manufacture the polymer. The manufacturer must specify any reactants used at 2 weight percent or less that should be included as part of the polymer description on the Inventory. (Part I, Section B.2b, Appendix A, 40 CFR Part 720.)

(B) A representative structural diagram of the polymer, if possible. The notice must also indentify synonyms and trade names of the new polymer. (Part I, Sections B.2c, B.4, B.5, Appendix A, 40 CFR Part 720.)

(v) *Number-average molecular weight.* The number-average molecular weight, as defined under paragraph (b)(9) of this section, of the lowest molecular weight composition of the substance anticipated to be manufactured under the exemption and a description of the method used to determine the molecular weight. (Part I, Sections B.2a, Appendix A, 40 CFR Part 720.)

(vi) *Residual monomer and other reactants and low molecular weight species content.* (A) The maximum weight percent of each monomer or other reactant that will be present as residual in the polymer as manufactured for commercial purposes. (Part I, Sections B.2b, Appendix A, 40 CFR Part 720.)

(B) The total maximum weight percent of all material below 500 absolute molecular weight and below 1,000 absoulute molecular weight in any composition of the polymer that will be manufactured. (Part I, Section B.2a, Appendix A, 40 CFR Part 720.)

(vii) *Impurity information.* The identity, by chemical name and CAS Registry Number, and estimated maximum weight percent of each impurity anticipated to be present in the polymer as manufactured for commercial purposes. If there are unidentified impurities, the notice must include an estimate of their total weight percent. (Part I, Section B.3, Appendix A, 40 CFR Part 720.)

(viii) *Maximum annual production volume.* The maximum production volume during the first 12-month period of production and the maximum production volume for any consecutive 12-month period during the first three years of production. (Part I, Section C.1, Appendix A, 40 CFR Part 720.)

(ix) *Category of use.* A description of each use for which the polymer would be manufactured, including its function and application (e.g., spray adhesive in the manufacture of laminates). The description of use must also indicate whether the use in industrial, commercial, consumer, and/or site-limited. (Part I, Section C.2a(1)–(4), Appendix A, 40 CFR Part 720.)

(x) *Generic chemical identity and use.* If chemical identity or use information provided under this section is claimed as confidential under paragraph (g) of this section, the notice must provide a non-confidential description of this information which is only as generic as necessary to protect the confidentiality of the information. (Part I, Sections B.6, C.2b, Appendix A, 40 CFR Part 720.)

(xi) *Test data and other data.* Test data on the polymer in the possession or control of the manufacturer, a description of other data concerning the health and environmental effects of the polymer that are known to or reasonably ascertainable by the manufacturer, and a decription of data on related chemicals, as required in § 720.50 of this chapter. (Identify as an attachment to the notice.)

(xii) *Cetification.* A certification that:

(A) The notice includes all test data and other data required.

(B) The person submitting the notice intends to manufacture or import the polymer for a commercial purpose other than for research and development.

(C) All information provided in the notice is complete and truthful as of the date of submission.

(D) The new chemical substance meets the definition of polymer, is not specifically excluded from the exemption, and meets the conditions of the exemption. (Certification, Appendix A, 40 CFR Part 720, plus statement (xii)(D).)

(xiii) *List of Attachments.* The notice must include a list of attachments submitted with the notice. (Part III, Appendix A, 40 CFR Part 720.)

(g) *Notice Procedures.* The following sections of Part 720 of this chapter apply to the review and handling of notices under this section.

(1) Section 720.25 *Determining whether a chemical substance is on the Inventory.*

(2) Section 720.40 *General.* (Notice Form, Paragraphs (e) through (h)).

(3) Section 720.57 *Imports.*

(4) Section 720.62 *Notice that notification is not required.*

(5) Section 720.70 *Notice in the* **Federal Register.**

(6) Section 720.80 *General Provisions.*

(7) Section 720.85 *Chemical Identity.*

(8) Section 720.87 *Categories or proposed categories of uses of a new chemical substance.*

(9) Section 720.90 *Data from health and safety studies.*

(10) Section 720.95 *Public file.*

(11) Section 720.102 *Notice of commencement of manufacture or import.*

(h) *Notification of receipt of notice.* EPA will notify the manufacturer by telephone of the date on which the Agency received the notice. This acknowledgement does not constitute a finding by EPA that the notice, as submitted, is in compliance with this section. EPA will consider a person to have submitted the notice on the date the notice is received by the EPA Document Control Officer for the Officer of Toxic Substances.

(i) *Errors in the notice. (1) Within 10 calendar days or receipt of the notice, EPA may request that the manufacturer remedy errors in the notice.*

(2) In the request to correct the notice, EPA will explain the action which the manufacturer must take to correct the notice.

(3) If the manufacturer fails to correct the notice within eight days of receipt of the requests, EPA may determine that the notice is incomplete under paragraph (j) of this section.

(j) *Incomplete submissions.* (1) *A submission is not complete, and the notification period does not begin, if:*

(i) The wrong person submits the notice form.

(ii) The manufacturer does not sign the notice form.

(iii) Some or all of the information in the notice or the attachments are not in English, except for published scientific literature.

(iv) The manufacturer does not use the notice form.

(v) The manufacturer does not provide information that is required by paragraph (f)(2)(xi) of this section.

(vi) The manufacturer does not provide information required or indicate that is is not known to or reasonably ascertainable by the manufacturer.

(vii) The manufacturer does not submit a second copy of the submission with all confidential information deleted for the public file, as required by § 720.80(b)(2) of this chapter.

(viii) The manufacturer does not include any information required by section 5(b)(1) of the Act and pursuant to a rule promulgated under section 4 of the Act, as required by § 720.40(g) of this chapter.

(ix) The manufacturer does not submit data which the manufacturer believes show that the chemical substance will not present an unreasonable risk of injury to health or the environment, if EPA has listed the chemical substance under section 5(b)(4) of the Act, as required in § 720.40(h).

(2) If EPA determines that a submission is incomplete, the Director, or his or her delegate, will notify the manufacturer within 21 days of receipt that the submission is incomplete and that the notice review period will not begin or continue until EPA receives a complete notice.

(3) The notification that a submission is incomplete under paragraph (j)(2) of this section will include:

(i) A statement of the basis for EPA's determination that the submission is incomplete.

(ii) The requirements for correcting the incomplete submission.

(iii) Information on procedures under § 720.65(c)(4) of this chapter for filing objections to the determination or requesting modification of the requirements for completing the submission.

(4) If EPA determines that a submission is incomplete under this paragraph, it will follow the procedures outlined in § 720.65(c) (4) and (5) of this filing objections to this determination.

(k) *Review period.* The notice review period runs for 21 calendar days from the date the EPA Document Control Officer for the Office of Toxic Substances receives a complete limited premanufacture notice submitted according to paragraph (f) of this section, unless the period is extended under paragraph (l) of this section. If EPA determines that the notice is incomplete as specified in paragraph (j) of this section, the 21-day review period will not begin until a compete notice is submitted to the Agency Document Control Officer.

(l) *Extension of the review period.* (1) At any time during the review period specified in paragraph (k) of this section, EPA may extend the review period to a total of 90 days from the date of notice submission if the Administrator determines that the polymer should be considered for regulatory action under sections 5(e) or 5(f) of the Act or that unresolved issues concerning toxicity or exposure require further review.

(i) If the Administrator makes this determination, the Director or his or her designee will notify the manufacturer by telephone, followed by a letter, that the notice review period has been extended. The letter will explain the reasons for the extension.

(ii) On receipt of such notification, the manufacturer must withdraw the limited premanufacture notice or suspend the review period and submit the additional information on the substance necessary to constitute a full notice under Part 720 of this chapter. If the manufacturer suspends the review period, the manufacturer must submit the required additional information within 60 days of the date of telephone notification. If EPA receives the information, EPA will review the information following the procedures in Part 720 of this chapter, except that the review period identified in § 720.75(a) will be shortened by an amount equal to the days already elapsed in the review period under paragraph (k) of this section. If the manufacturer withdraws the limited notice or fails to suspend the review period or fails to submit complete additional information within 60 days, manufacture of the polymer may not begin until the manufacturer complies with section 5(a)(1) of the Act and Part 720 of this chapter.

(2)(i) At any time during the review period specified in paragraph (l)(1) of this section, EPA may determine that good cause exists to extend the notification period under section 5(c) of the Act. If EPA makes such a determination, the Director will:

(A) Notify the manufacturer by telephone followed by a letter, that EPA is extending the period for a specified length of time. The letter will specify the length of the extension and state the reasons for the extension; and

(B) Publish a notice in the Federal Register, which states that EPA is extending the review period and gives the reasons for the extension.

(ii) The extension under paragraph (l)(2)(i) of this section may be for a period of up to 90 days. If the extension is for less than 90 days, EPA may make additional extensions. However, the total period of extensions under paragraph (l)(2) of this section may not exceed 90 days for any notice.

(m) *Withdrawal of a notice by the manufacturer.* (1) A manufacturer may withdraw a notice during the notice review period specified in paragraph (k) or (l) of this section. A statement of withdrawal must be made in writing to the Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, 401 M Street, SW., Washington, D.C. 20460. The withdrawal is effective upon receipt of the statement by the Document Control Officer (OMB Control No. 2070-0012).

(2) If a manufacturer or importer who withdraws a notice later resubmits a notice for the same chemical sustance, a new notice review period begins.

(n) *Expiration of review period.* If the review period identified in paragraph (k) of this section expires without notification of extension by EPA, manufacture or import may begin under the terms of the exemption. The fact that EPA does not initiate regulatory action during the review period does not constitute EPA approval or certification of the substance, and does not mean that EPA may not take regulatory action on the substance in the future.

(o) *Inventory.* For any polymer for which the review period has expired under paragraph (k) of this section, and for which a notice of commencement of manufacture has been submitted under § 720.102 of this chapter, EPA will add the substance to the Inventory. The substance will be identified on the Inventory by:

(1) The name of each reactant used at greater than 2 percent by weight in the manufacture of the polymer and by those reactants used at 2 weight percent or less as identified under paragraph (f)(2)(iv) of this section.

(2) The criteria identified in paragraph (d) (1) through (7) of this section.

(3) The information provided in paragraph (f)(2)(vi) of this section.

(4) For substances exempt under paragraph (e)(1) of this section, the minimum permissible number-average molecular weight of 1,000.

(p) *Actions under sections 5(e) and 5(f) of the Act.* EPA will act under section 5(e) or 5(f) of the Act on a substance submitted under paragraph (e) of this section if the Agency determines that the statutory criteria for such action are met.

(q) *Notification of Ineligibility*—(1) *During the period from notice submission until commencement of manufacture.* If at any time between submission of a notice under paragraph (f) of this section and commencement of manufacture of the new chemical substance described in the notice, the Director determines that the new chemical substance does not meet the terms of this section, the Director or his or her designee will immediately notify the manufacturer by telephone, and subsequently by certified letter, that the substance does not meet the terms of this section and will explain the reasons for the determination. After receiving notice of such a determination, the manufacturer may not begin to manufacture the new chemical substance without complying with section 5(a)(1) of the Act and Part 720 of this chapter.

(2) *After commencement of manufacture.* (i)(A) If at any time after commencement of manufacture of a chemical substance which was the subject of a notice under paragraph (f) of this section, the Director determines that the chemical substance being manufactured does not comply with the identification entered on the Inventory under paragraph (o) of this section and that the substance is not otherwise on the Inventory, the Director or his or her designee will notify the manufacturer by telephone, and subsequently by certified letter, that EPA believes that the new chemical substance is being manufactured in violation of this section.

(B) The manufacturer may continue to manufacture, process, distribute in commerce, or use the chemical substance after receiving notification under paragraph (q)(2)(i)(A) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of telephone notification and if the manufacturer submits objections or an explanation under paragraph (q)(2)(ii) of this section. Manufacturers not manufacturing, processing, distributing in commerce, or using the chemical substance at the time of telephone notification may not begin such activity until EPA makes its final determination under paragraph (q)(2)(iii) of this section.

(C) If EPA brings an enforcement action under this section, the manufacturer will not be subject to penalty under section 15 of the Act for continuing commercial activity from the date of telephone notification under paragraph (q)(2)(i)(A) of this section through the date of notification under paragraph (q)(2)(iii) of this section.

(ii) A manufacturer which has received notice under paragraph (q)(2)(i) of this section may submit detailed objections to the determination or an explanation of its diligence and good faith efforts in attempting to comply with the terms of this section and with the identification of the substance on the Inventory, or both, within 15 days of receipt of the written notification.

(iii) The Director will consider any objections or explanation submitted under paragraph (q)(2)(ii) of this section, will make a final determination, and will notify the manufacturer of the final determination by telephone within 15 days of receipt of the objections or explanation, and subsequently by certified letter.

(iv) EPA may begin an enforcement action against the manufacturer if:

(A) The Director does not receive objections or an explanation within the 15 days specified in paragraph (q)(2)(ii) of this section.

(B) The Director determines, after considering the objections or explanation, that the chemical substance does not comply with the identification on the Inventory and is not otherwise on the Inventory and that the manufacturer did not act with due diligence and in good faith to comply with all of the terms of this section and with the identification of the substance on the Inventory.

(C) The Director makes the determination specified in paragraph (q)(2)(v) of this section, but the manufacturer continues manufacture of the new chemical substance without submitting a full notice under Part 720 of this Chapter as specified in paragraph (q)(2)(v) of this section.

(v) The Director may determine, after considering the explanation and objections, if any, that, while the chemical substance does not comply with the identification on the Inventory and is not otherwise on the Inventory, the manufacturer acted with due diligence and in good faith to comply with the terms of this section and the identification of the substance on the Inventory. If the Director makes such a determination, the manufacturer may continue manufacturing, processing, distributing in commerce, and using the new chemical substance if:

(A) It was actually manufacturing, processing, distributing in commerce, or using the chemical substance at the time it received the telephone notification specified in paragraph (q)(2)(i) of this section.

(B) It submits a full notice on the new chemical substance under section 5(a)(1) of the Act and Part 720 of this chapter within 15 days of receipt of the telephone notification under paragraph (q)(2)(iii) of this section. Such manufacture, processing, distribution in commerce, and use may continue unless EPA takes action under sections 5(e) or 5(f) of the Act.

(3) Action under this paragraph does not preclude action under sections 7, 15, 16, and 17 of the Act.

(r) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e) (1) or (2), of this section must keep the records described in this paragraph for 5 years from the date of commencement of manufacture.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) Records of production volume for the first 3 years of manufacture, the date of commencement of manufacture, and documentation of this information.

(ii) Documentation of any other information provided in the limited premanufacture notice, including:

(A) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(B) Information to demonstrate that the polymer meets the exemption criteria in paragraph (e) (1) or (2) of this section.

(3) The manufacturer must submit the records listed in paragraph (r)(2) of this section to EPA upon written request by the Director of the Office of Toxic Substances. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of any officer or employee of EPA designated by the Administrator, must permit such person at all reasonable times to have access to and to copy these records.

(s) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E–401, 401 M St., SW., Washington, D.C. 20460.

(t) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) A person who manufactures or imports a new chemical substance before a notice is submitted and the notice review period expires is in violation of section 15 of the Act.

(3) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 or this rule is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(6) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(7) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of this Act (15 U.S.C. 2606) or section 17 of this Act (15 U.S.C. 2616).

(u) *Inspections.* EPA will conduct inspections under section 11 of the Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

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November 21, 1984

Part IV

Environmental Protection Agency

40 CFR Part 265

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Technical Amendment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL 2656-8]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Technical Amendment.

SUMMARY: The Environmental Protection Agency is today promulgating a technical amendment to the interim status standards for owners and operators of hazardous waste facilities. This amendment merely clarifies the existing interim status standards regarding the applicability of requirements to facilities whose interim status is terminated. Today's amendment does not change any substantive requirements.

DATE: These amendments are effective December 5, 1984.

ADDRESS: Background material relating to this amendment is maintained by the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is available for viewing from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346 or 382-3000 in Washington, D.C.; or Libby Scopino in the Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, Washington, D.C., (202) 475-8731.

SUPPLEMENTARY INFORMATION: EPA has promulgated regulations implementing Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6901 *et seq.*, establishing a comprehensive program for the handling and management of hazardous waste (40 CFR Parts 260-265, 270, 271, and 124). Pursuant to Section 3005(a) of RCRA, the regulations require owners or operators of hazardous waste management facilities to have a permit.

Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, Section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. EPA refers to such an owner or operator as one who has interim status.

Section 3004 of RCRA requires EPA to promulgate performance standards applicable to owners and operators of facilities that treat, store or dispose of hazardous wastes. These Section 3004 standards are independently enforceable national standards which are separable from the Section 3005 permit/interim status provisions. See 45 FR 33158 (May 19, 1980).

EPA promulgated both Part 264 general permitting standards and Part 265 interim status standards under the authority of Section 3004. EPA has, by regulation, limited the requirements for facilities with interim status to those found in 40 CFR Part 265. See 40 CFR 270.71(b). Pursuant to § 265.1 of the RCRA regulations, the standards in Part 265 apply "during the period of interim status." These standards apply to owners and operators of hazardous waste facilities who have fully complied with the interim status requirements, "until final administrative disposition of their permit application is made." (§ 265.1(b)).

The wording of § 265.1(b) implies that once a facility's interim status is terminated the facility would no longer have to meet the Part 265 interim status standards including the closure, post-closure and financial responsibility requirements. However, EPA has the statutory authority under Section 3004 to enforce the Part 265 standards at facilities which no longer have interim status. Some sections of the regulations clearly reflect that authority. For example, the provisions in § 265.112(c) and § 265.118(c) clearly require facilities whose interim status has been terminated to meet certain Part 265 closure and post-closure requirements. Section 265.112(c) requires that,

> The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:
>
> (1) *Termination of interim status* (except when a permit is issued to the facility simultaneously with termination of interim status; (emphasis added))
>
> (2) Issuance of a judicial decree or order under Section 3008 of RCRA to cease receiving wastes or close.

Clearly, § 265.112(c) envisioned that facilities would submit closure plans for approval subsequent to the termination of the facilities' interim status.

Further, many of the other substantive requirements of Part 265 are clearly stated to be applicable until final closure of the facility is certified. For instance, § 265.147(e) requires that liability insurance be maintained by the owner or operator of a facility until the certification of final closure is received by the Regional Administrator. A facility's interim status may be terminated prior to certification of final closure. In those instances, the Agency requires the facility whose interim status has been terminated to maintain liability insurance in spite of the language in § 265.1.

As stated above, EPA believes that it has both the statutory and regulatory authority to apply the Part 265 standards to those facilities whose interim status has been terminated. However, in order to clarify the Part 265 standards, the Agency is amending Section 265.1 to state specifically that the Part 265 requirements apply to an interim status facility until either a permit is issued under Section 3005 of RCRA or until all applicable Part 265 closure and post-closure responsibilities are fulfilled.

Good Cause Exception

This technical amendment is published without prior notice and comment because the Agency believes that such notice and comment is unnecessary pursuant to the good cause exception in the Administrative Procedures Act, 5 U.S.C. Section 553(APA). Today's amendment merely clarifies an existing Agency rule and as such is a routine, insignificant technical amendment. The impact of the amendment on the public is insignificant because the amendment does not impose any new substantive requirements. It merely codifies the already implied requirement that owners and operators of facilities whose interim status is terminated must comply with the applicable Part 265 standards until final closure and post-closure responsibilities are fulfilled.

Effective Date

RCRA Section 3010(b) provides that regulations and amendments to regulations under RCRA take effect six months from the date of promulgation. The purpose of this requirement is to allow sufficient lead time for regulated communities to prepare for compliance with major new regulations. Section 553(d) of the Administrative Procedures Act (APA) prohibits "publication or service of a substantive rule . . . less than 30 days before its effective date except for good cause."

For the amendment proposed today, EPA believes that an effective date six months or 30 days after promulgation would be unnecessary. These amendments simply clarify existing regulatory language and do not impose any new substantive requirements. Therefore, the Agency finds that there is

good cause that this amendment be effective two weeks after publication.

Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There would be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

These amendments were submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any response to those comments are available for viewing at the Office of Solid Waste Docket, Room S269–C, U.S.E.P.A., 401 M Street, SW., Washington, D.C. 20460.

Paperwork Reduction Act

There is no recordkeeping or reporting burden associated with today's action.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that Federal Agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such an analysis is not required, however, when the head of an Agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities.

I find that today's proposal, if promulgated, would have no impact on small entities because it does not impose any additional substantive requirements. Accordingly, I certify that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: October 25, 1984.

William D. Ruckelshaus,

Administrator.

PART 265—[AMENDED]

40 CFR Part 265 is amended as follows:

§ 265.1 [Amended]

1. Section 265.1 (a) is revised to read as follows:

(a) The purpose of this part is to establish minimum national standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

2. Section 265.1(b) is revised to read as follows:

(b) The standards of this part apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA and § 270.10 of this Chapter until either a permit is issued under Section 3005 of RCRA or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by Section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g). These standards apply to all treatment, storage and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Part or Part 261 of this Chapter.

Comment: As stated in Section 3005(a) of RCRA, after the effective date of regulations under that Section (i.e., Parts 270 and 124 of this Chapter), the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6905, 6912(a), 6924, 6925)

[FR Doc. 84–29121 Filed 11–20–84; 8:45 am]

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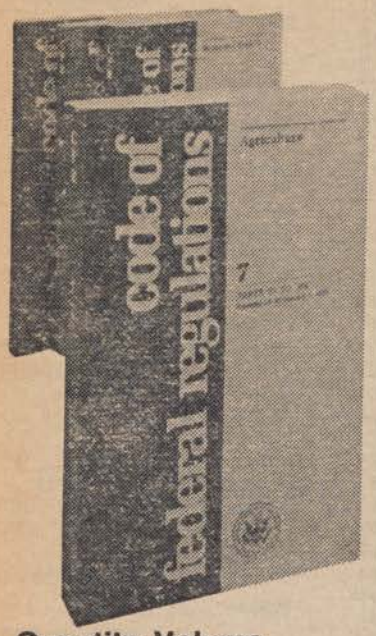

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