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Wednesday
October 23, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)

WHERE: Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.

RESERVATIONS: Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Rules and Regulations

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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-106-AD; Amdt. 39-5160]

Airworthiness Directives: Lockheed-California Company Model L-1011 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires periodic inspections for cracks and replacement, as necessary, of both pitch-system series trim-input bellcranks on Lockheed Model L-1011 series airplanes. This AD is prompted by a report of cracks found in both pitch system series trim-input bellcranks. This AD is necessary because loss of both bellcranks would result in loss of control of the airplane.

DATES: Effective November 12, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept 63-11, U-33, B-1. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: During a recent "C" check inspection, an operator found extensive cracks in both pitch-system series trim-input bellcranks on a Lockheed Model L-1011 airplane. Investigation revealed that stress corrosion had caused internal cracks and exfoliation, starting from the inside of the large diameter bore in the bellcranks. The majority of these cracks started along the forged parting plane.

The pitch-system series trim-input bellcranks transmit mechanical signals from the feel and electrical trim unit, and from the feel and mechanical trim unit through the series trim bar to both stabilizer servos. They also provide a dual load path to hold the trim bar, which is the reaction member for all autopilot and control column mechanical signals to both stabilizer servos. Loss of both bellcranks would disconnect the trim inputs and would allow a free-floating series trim bar. This free floating bar would cause 20 percent to 60 percent lost motion of the total control column available motion, depending on the stabilizer and control column position. With this amount of lost motion, neither normal pilot skill nor autopilot capability could control the pitch system.

Lockheed-California Company issued Service Bulletin 093-27-290, dated September 23, 1985, which provides operators with instructions for inspection, removal, modification, and reinstallation of affected pitch-system series trim-input bellcranks.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires periodic inspections and replacement, as necessary, of both pitch-system series trim-input bellcranks, in accordance with the service bulletin mentioned above.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent loss of pitch control as a result of loss of both pitch-system series trim-input bellcranks due to stress corrosion, accomplish the following:

A. Within 30 days after the effective date of this AD, visually inspect both pitch-system series trim-input bellcranks in accordance with Lockheed Service Bulletin 093-27-290 dated September 23, 1985, or later FAA-approved revision:

1. If no cracks are found, reinspect in accordance with paragraph A., above, at intervals not to exceed 8 months.

2. If only one bellcrank is cracked, the airplane may remain in service if:

a. There is no obvious damage or cracks outside the inspection area, as defined by Figure 1, Sheet 2 of Lockheed Service Bulletin 093-27-290, dated September 23, 1985, or later FAA-approved revision: and

b. At intervals not to exceed 10 days, both bellcranks are reinspected in accordance with paragraph A., above; and

c. Within 90 days after discovery of the cracked bellcrank, the torque-tube assembly is replaced.

3. If all of the conditions set forth in paragraph A.2., above, cannot be met, replace the torque-tube assembly prior to further flight.

4. If both bellcranks are cracked, replace the torque-tube assembly prior to further flight.

B. The repetitive inspections required by paragraph A.1., above, may be discontinued after the torque-tube assembly is replaced by an assembly modified in accordance with Lockheed Service Bulletin 093-27-290, dated September 23, 1985, or later FAA-approved revision.

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

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective November 12, 1985.

Issued in Seattle, Washington, on October 16, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-25197 Filed 10-22-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Publication of ranges of comparability for water heaters.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy costs for water heaters have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on September 12, 1983 and December 16, 1983 remain in effect until new ranges are published.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 376-8934.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges must remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for these product categories have changed by 15% or more since the last publication of the ranges on September 12, 1983 [5] and December 16, 1983.[6]

In consideration of the foregoing, the present ranges for water heaters will remain in effect for the next year.

List of subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling.

[1] Pub. L. 94-163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 28036 (April 17, 1980) 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[5] 48 FR 40882 (September 12, 1983).

[6] 48 FR 55840 (December 16, 1983).

Reporting and recordkeeping requirements.

Authority: Section 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-25198 Filed 10-22-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Rel. No. IA-991]

Uniform Investment Adviser Registration Application Form

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments and related rule amendments.

SUMMARY: The Commission is adopting amendments to Form ADV, the investment adviser registration application form, to make it a uniform form for registration with the Commission and jurisdictions which register advisers. Uniform Form ADV was developed by the Commission and the North American Securities Administrators Association, Inc. ("NASAA") to remove unnecessary administrative burdens on investment advisers registering with more than one governmental entity. The form as adopted differs in several significant respects from the proposed form and should result in cost-savings for advisers required to register with the Commission and the states.

EFFECTIVE DATE: January 1, 1986. Existing registrants will be required to amend their registrations by filing the new form by March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Podesta, Chief (202) 272-2107 or Jay Gould, Staff Attorney, (202) 272-2810, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Stop 5-2, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to Form ADV, the application form for registering with the Commission as an investment adviser. The revisions to Form ADV were developed jointly by the Commission and NASAA and were proposed by the Commission for public comment on April 24, 1985.[1] The new form, entitled Uniform Application for Investment Adviser Registration, is intended to serve as the investment adviser registration form for all jurisdictions requiring registration. The form as adopted differs in several respects from the proposal. In response to comments, technical and clarifying changes have been made and several items contained in Part II of the proposed form have been moved to Part I of the form or have been modified. The revisions to the form were approved by NASAA on September 29, 1985. In order to implement the new form, the Commission also is amending several related rules.

Form ADV will be effective on January 1, 1986 for applicants filing initial applications with the Commission. Advisers that are registered with the Commission on January 1, 1986 will be required to amend their applications by filing the new form by March 31, 1986. The Commission understands that the jurisdictions which register advisers will take prompt action to implement the form on the same dates applicable to filings with the Commission.

I. Background

Form ADV is used by the Commission to register advisers under the Advisers Act and contains two parts. Part II of the form can serve as an adviser's disclosure document to clients in that it contains the information that most advisers are required to furnish to clients under Rule 204-3, the Commission's "brochure rule."[2]

Thirty-eight states, Puerto Rico and Guam (hereafter, the "jurisdictions") require advisers to register but their registration requirements are not uniform. Advisers registering in a jurisdiction are required to file the jurisdiction's forms and to comply with its disclosure requirements. Although some jurisdictions now permit advisers to file Form ADV, in lieu of a separate state form, many often require advisers to file supplementary forms and schedules containing additional information.

As stated in the proposing release[3], the Commission and NASAA have undertaken to promote a more uniform system for adviser registration with the Commission and the jurisdictions. The first step is development of a uniform registration application form based on Form ADV, to be followed by adoption of uniform requirements for filing amendments and annual reports. The Commission and NASAA also intend to develop a central registration system for advisers such as the Central Registration Depository ("CRD") maintained by the National Association of Securities Dealers for NASAA to register agents of broker-dealers, or another system. Under a central registration system, an adviser would file one form; information on the form would be transmitted electronically to the Commission and to all jurisdictions in which the adviser was registering for review and granting of registration.[4]

The Commission received twenty-six comment letters on the proposed form. While the commentators strongly supported the concept of a uniform registration form, many expressed concern over certain features of the proposed form and several recommended that the Commission not adopt the proposed form without modifications. The major substantive comments involved: (a) New requirements in Part II of the form that would require additional disclosure to clients under the brochure rule, (b) the definitions in the proposal of "control" and "affiliated person" and (c) additions to the Part I disciplinary question. Several commentators also argued that without uniform federal-state standards for filing amendments to report changes in the information contained in the form, the purpose of the uniform form would not be achieved.

The final version of the form incorporates many of the suggestions made by the commentators. The discussion below is in two parts. The first part discusses the commentators' major substantive comments and the changes, if any, made in the form to address commentators' concerns. The second part contains an item by item description of the form that highlights any differences between the form as

[1] IA Release No. 967 (April 24, 1985), 50 FR 16500 (May 1, 1985).

[2] 17 CFR 275.204-3. With certain exceptions, the brochure rule requires advisers to provide to clients and prospective clients a written disclosure statement of pertinent information about the background and business practices of the adviser to assist the client in deciding to hire or to retain the adviser. The brochure may be either a copy of Part II of the adviser's Form ADV or another document which contains at least the information required to be in Part II of the form.

[3] IA Release No. 967 (April 24, 1985), 50 FR 16500 (May 1, 1985).

[4] As discussed below, several changes have been made in the form as adopted to facilitate, where possible, computer capture of information in a central registration system. Although the details of the central registration system have not been developed, the Commission expects that the central registration system will be implemented within two years.

adopted, existing requirements and the proposed form.

II. Discussion

A. Schedules of Individual Information

The proposed form would have increased significantly the information provided to clients under the brochure rule about the education and business background of certain persons associated with the adviser. In Part II of existing Form ADV, an applicant must provide information on the education and business background for the preceeding five years for members of applicant's investment committee or certain persons responsible for determing or approving the advice given by the adviser. Schedules of individual information, including business background for ten years and any disciplinary history, are filed with the Commission, but not included in the brochure, for these persons, the applicant, its owners, officers, control persons, directors, and partners and persons for whom a yes answer to any item of the disciplinary question is reported.

The proposed uniform form would have required as part of the registration application and the brochure schedules of information for each such individual. Schedules also would have been required for each individual giving investment advice in the jurisdiction in which the application is filed. The information required on Schedule F of the proposed form was substantially similar to that required on Schedule D of the existing form except that proposed Schedule F also would require information about names used by the individual and professional examinations and designations.

Several commentators argued that Part II of the proposed Form ADV, which contains the information delivered to clients and prospective clients under the brochure rule, should be a short, concise document, capable of being easily understood by clients. Commentators asserted that including schedules of individual information would create a voluminous brochure, hundreds of pages in length in some jurisdictions. Commentators argued that this additional disclosure would be irrelevant, confusing, and would obscure other more important disclosure. In addition, commentators specifically objected to the requirement that yes answers to the disciplinary question in Part I of the form involving applicant, its owners, officers, directors, partners, control persons, and members of its investment committee be disclosed to clients. Commentators argued that not all this information would be material to clients and that the absence of time limits in some of the items of the disciplinary question could operate unfairly.

Under the form adopted, schedules of individual information must be filed with regulators as attachments to Part I, but are not required to be included in the adviser's brochure.[5] Brochure disclosure would include that currently required by Item 6 of Part II of existing ADV, that is, education and five years of business background for members of the adviser's investment committee or those persons responsible for determining or approving its investment advice. To accommodate the interests of the jurisdictions, this information also would be required in the brochure for the adviser's principal executive officers.

One effect of these changes is that information about yes answers to the disciplinary question will not be required in an adviser's brochure. The Commission is persuaded that, because of the broad scope of the disciplinary question, not all past disciplinary events that will be required to be reported to regulators[6] would involve matters of importance to an adviser's clients or potential clients. In addition, the Commission interprets the antifraud provisions of Section 206 of the Advisers Act to require an adviser to disclose information about those disciplinary events which are material to the client's evaluation of the ability and integrity of the adviser. It should be noted that paragraph (e) of the brochure rule specifically states that the brochure rule does not relieve an adviser of other disclosure obligations required by the Advisers Act or any other federal or state laws.[7]

In *Securities and Exchange Commission v. Lowe,*[8] the district court refused to find a violation of Section 206 for an adviser's failure to disclose certain criminal convictions and sanctions in the absence of a Commission rule under section 204 requiring it. Neither the Court of Appeals nor the Supreme Court addressed this issue specifically on review[9] and the Commission continues to believe that its interpretation of section 206 is correct. The Commission is considering rulemaking action under section 206(4) to clarify this matter.[10]

B. Form ADV Definitions

Several commentators objected to the proposed form's definition of "control." The proposed definition, which was identical to that recently adopted in Form BD,[11] included certain presumptions including a presumption that ownership of 25% of applicant's voting securities, or entitlement to 25% or more of its profits, would constitute control. Commentators recommended that the Commission use the Advisers Act definition to avoid confusion over the meaning of control under the form and the Act. Because it is important to the jurisdictions to retain substantial similarity between Form ADV and Form BD, the definition of "control" in Form ADV is being adopted as proposed. In response to the comments, however, the instructions make it clear that the definition is used only for purposes of the form.

Commentators also objected to the proposed form's substitution of the term "affiliated person" for the term "person associated with an adviser" in several brochure rule items. The effect of using the term affiliated person is to require disclosure about persons under common control with the adviser, persons owning or controlling 5% or more of the voting securities of the adviser and persons 5% or more of whose outstanding voting securities are owned or controlled by the adviser. Commentators argued that not all the required information would be relevant to a client's decision to enter into an advisory relationship with the adviser. A number of changes have been made in the form as adopted to respond to the comments. First, a narrow term, "related person," is used instead of the term "affiliated person." A related person is defined in the form to include persons associated with an adviser and persons under common control with an

[5] Like the proposal, the form as adopted would require that schedules of individual information be filed with the jurisdiction, but not with the Commission, for all persons giving advice for the adviser in the jurisdiction in which the application is filed. Although some commentators questioned the need for this requirement, it has been retained because of its importance to the jurisdictions.

[6] The disciplinary questions in Item II of Part I, as adopted, are substantially identical to the questions contained in Uniform Form BD, the registration form for broker-dealers, as recently amended. *See* Securities Exchange Act Release No. 34-22468 (September 26, 1985). The questions, which were developed jointly by the Commission and NASAA for Form BD, would expand in several respects the kinds of disciplinary events advisers must report.

[7] 17 CFR 275.204-3.

[8] 556 F. Supp. 1359 (E.D.N.Y. 1983).

[9] No. 83-1911 (Sup., Ct., June 10, 1985), 725 F.2d 892 (2d Cir. 1984).

[10] Section 206(4) empowers the Commission to adopt rules to define and prescribe means reasonably designed to prevent fraudulent conduct by advisers.

[11] SEA Release No. 34-22468 (September 26, 1985).

adviser. Second, the information required about related persons has been limited to that which is material to the advisory business of the applicant or to its clients. The specific changes are discussed below.

C. The Disciplinary Questions

Several commentators commended the Commission and NASAA for drafting the disciplinary question in "plain English." Commentators also approved of eliminating clerical and ministerial employees from the category of persons for whom disciplinary information must be reported.

Several commentators, however, questioned the inclusion in proposed Form ADV of additional items in the disciplinary question. As proposed, the disciplinary question was identical to amendments to the disciplinary question in Form BD recently adopted by NASAA and the Commission [12] except that it included an additional item relating to bankruptcy. While commentators' principal objections to the revised disciplinary question related to the proposed requirement that affirmative answers be disclosed to clients, a number of specific suggestions also were made. Also, a few commentators questioned whether all the questions included in Form BS should be included in Form ADV.

The Commission has determined to adopt the disciplinary question substantially as proposed. As stated in the proposing release, prior to adoption of uniform Form BD by the Commission in November, 1983, the disciplinary questions of existing Form ADV were substantially identical to the corresponding items of the Commission's Form BD. In developing uniform federal-state registration forms, the disciplinary questions in both forms have been expanded to accommodate the regulatory interests of the jurisdictions.

The Commission wishes to clarify two matters. Item 11G asks whether applicant or any advisory affiliate is the subject of "any complaint, investigation, or proceeding" that could result in a yes answer to parts A through F of the item. The Commission interprets the term "proceeding" in that item in the same manner in which the term has been interpreted by the Commission previously in comparable items BD. The Commission's interpretation of the term is discussed in Securities and Exchange Act Release No. 34-22468 (September 26, 1985), adopting revisions to Form BD.

Several commentators questioned the scope of the word "found" in several questions of Item 11. While the word "found" is not defined in the form, the Commission would consider "found" in connection with agency or court proceedings to require disclosure of all adverse final self-regulatory organization, governmental agency or court actions, including consent decrees, but excluding deficiency letters, examination reports and memoranda of understanding and similar informal resolutions of matters.

D. Updating Requirements

In the proposing release the Commission proposed to amend Rule 204-1 to reflect technical changes in the proposed form but did not propose substantive changes in the timing for filing amendments. Several commentators offered suggestions concerning updating requirements associated with the form. These commentators argued that without uniform requirements for filing amendments, the purpose of a uniform form would not be achieved. Also, commentators noted that because the proposed form would be longer than the present form, thereby increasing the number and frequency of items to be updated, updating requirements should be revised.

The Commission agrees that without uniform updating and reporting requirements for investment advisers, the purpose of the uniform form will not be fully accomplished, and believes that such requirements should be developed as soon as possible. As stated in the proposing release, the Commission and NASAA intend to develop these requirements. The Commission hopes that uniform standards can be developed for presentation to NASAA in April, 1986. The Commission will defer considering substantive changes in its requirements on the timing for filing amendments until its staff had has the opportunity to work with NASAA on uniform federal-state requirements.

E. Item by Item Description of Form ADV

1. Part I

Instructions. A number of changes have been made in the Instructions to the form. Items have been added to describe the form and the purpose of each schedule and the reference in Instruction 1 to filing amendments has been clarified. As discussed above, an instruction to the definition of "control" has been added and the term "affiliated person" has been replaced by the narrower term, "related person." A definition of "client" has been added to make it clear that references in the form to clients are limited to investment advisory clients of the applicant. In response to comments, the definition of custody has been revised. For purposes of the form, an adviser has custody of client funds or securities if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. Under this definition an adviser has custody if it has a general power of attorney over a client's account or has signatory power over a client's checking account. Finally, an item has been added to the instructions to inform applicants that they may contact NASAA to obtain the address and telephone number of the securities administrator of a jurisdiction.

Item 1—Name. Item 1 is substantially similar to Item 2(a) of existing Form ADV.[13]

Item 2—Principal Place of Business. Item 2 requires applicant to state its principal place of business, the hours during which regular business is conducted, its mailing address and telephone number. Subpart B, which asks the hours during which business is conducted at applicant's principal office, is new and has been added in order to assist Commission staff in conducting examinations. To facilitate processing of the form, subpart E asks whether applicant's address is being amended. Other subparts of this question are similar to question 2(a) of existing Form ADV. Item 2 is being adopted substantially as proposed except for revisions to subpart F. In the form as adopted, the information required by subpart F about applicant's other offices will be limited to investment advisory offices and hours of business will not be required.

Item 3—Books and Records. Item 3 of the form relating to the location of books and records, is based on a similar item in item 2(a) of existing Form ADV, but has been expanded. To assist Commission staff in conducting examinations, if applicant's books and records are kept at a location different from the applicant's principal place of business, the name and address of the entity and its hours of business must be

[12] The revisions to Form BD, which is a uniform form for broker-dealers registering with the Commission and the jurisdictions, were developed by NASAA and the Commission. The revisions were adopted by NASAA in April, 1985. The Commission proposed the revisions for comment on April 26, 1985 (SEA Release No. 34-21961) and adopted them on September 26, 1985 (SEA Release No. 34-22468).

[13] Unless otherwise indicated, all of the references in this section to items of uniform Form ADV and existing Form ADV are to items contained in Part I of those forms.

given. This item is being adopted substantially as proposed.

Execution. Form ADV as adopted contains an Execution which is substantially identical to the Execution required on Uniform Form BD.

Item 4—Persons to Contact. This item is the same as Item 2(b) of existing Form ADV.

Item 5—Consent. This item is the same as Item 2(c) of existing Form ADV.

Item 6—Fiscal Year. This item is the same as Item 2(e) of existing Form ADV.

Item 7—Status in Jurisdiction. This item is similar to Item 3(a) of existing Form ADV except that an applicant will be required to designate any jurisdiction in which it withdrew an application prior to becoming registered. In response to comments, a new category has been added for an applicant to designate jurisdictions in which it previously was registered. Information about withdrawals prior to registration and previous registrations will be limited to those occurring within the last ten years.

Item 8—Type of Entity. This item combines questions 4, 5, 6, and 8 of existing Form ADV with minor modifications. In response to commentators' suggestions, if applicant is a sole proprietor, applicant must give the date on which its business began.

Item 9—Successor. This item is the same as question 7 of existing Form ADV except that applicant must provide details about the transaction on Schedule E, the continuation sheet for Part I of the form.

Item 10—Control and Financing. This item is the same as question 9 (a) and (b) of existing Form ADV and is being adopted substantially as proposed. In response to comment requesting clarification, question 10(B) relating to financing has been revised.

Item 11—Disciplinary Questions. The disciplinary questions require the applicant to provide information on past activities of applicant and certain persons associated with the adviser. Item 11 is substantially similar to the revised disciplinary question of uniform Form BD except that the uniform Form ADV as adopted requires information on "advisory affiliates"[14] and contains an additional item relating to bankruptcy not related to broker dealer activities.[15] The term "advisory affiliate" means any person named in Items 1A, 10A, or Schedules A, B, or C and persons directly or indirectly controlling or controlled by the applicant. As discussed above, the disciplinary question is being adopted substantially as proposed. The definition of advisory affiliate, however, has been revised to make it clear that information is sought only as to current employees.

Item 12—Individual's Education, Business and Disciplinary Background. This item requires the adviser to file Schedule D, a schedule of information, for the following individuals: The applicant; a control person; an owner of at least 10% of a class of applicant's equity securities; an officer, director, partner or individual of similar status; a member of applicant's investment committee or person responsible for determining or approving the advice given; any person for whom a yes answer to the disciplinary question is reported and a person giving investment advice on behalf of the applicant in the jurisdiction in which the application is filed. As adopted, this item is substantially similar to Item 11 of existing Form ADV except that an adviser filing in a jurisdiction will be required to provide schedules for those persons giving advice on its behalf in the jurisdiction. Schedule D of the form as adopted is similar to Schedule D of existing Form ADV except that information about names used by the individual and professional examinations and designations also is required. Under the proposed form the schedules would have been filed under Part II of the form and included in an adviser's brochure.[16] As discussed above, in response to comment, brochure disclosure of the schedules will not be required.

Item 13—Custody. This item is similar to that part of Item 12 of existing Form ADV requiring information about custody by applicant of any advisory client funds or securities except that a check-the-box format is provided, substituting ranges for exact figures for the value of client funds and securities in the adviser's custody. As stated above, in response to comment the definition of custody in the instructions in the form has been clarified. An adviser will be deemed to have custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. The form's instructions include as examples of custody having a general power of attorney over a client's account or signatory power over a client's checking account.[17]

Item 14—Custody By Related Persons. This item makes several changes to Item 12 of existing Form ADV on custody by persons associated with the applicant. As adopted, the form requires information about custody by a related person of the adviser, a term that is somewhat broader than person associated with the adviser but narrower than the term "affiliated person" used in the proposal. This item also asks whether any related person with custody is a registered broker-dealer under Section 15 of the Securities Exchange Act of 1934, and the value of those funds and securities held in custody at the end of applicant's last fiscal year. A check-the-box format substituting ranges for exact figures is used for information about the value of those funds and securities.

Item 15—Prepayment of Fees. To identify applicants subject to the audited balance sheet requirement of Part II Item 14, this item requires applicant to state whether it requires prepayment of fees of more than $500 per client [18] and more than six months in advance. This item is being adopted substantially as proposed.

Item 16—Brochure Rule. This new item, which is being adopted substantially as proposed,[19] seeks information on whether applicant will use Part II of Form ADV or a separate brochure to comply with Rule 204–3 under the Advisers Act.

Item 17—Employees; Clients. As proposed, Item 17 would require applicant to provide information, in check-the-box format, about the number of employees of applicant performing investment advisory functions. As

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[14] As noted in the proposing release for Form ADV, the revised disciplinary question of uniform Form BD seeks information about employees only in "control-type" positions because disciplinary history of agents of broker-dealers is filed on Form U–4, the Uniform Application for Securities/Futures Industry Registration or Transfer.

[15] Although a number of commentators questioned whether the meaning of certain terms used in this item were clear, these terms are used in a similar item in Form U–4.

[16] While the proposed form required this information to be filed on Schedule F, that schedule is substantially identical to Schedule D as adopted. The schedule has been re-designated as Schedule D to keep the schedules accompanying Parts I and II of the form in sequence.

[17] The Commission emphasizes that the definition and examples of custody contained in the form are included for the convenience of registrants. Depending upon the facts and circumstances, other situations not described in the definition or examples also may involve custody.

[18] One commentator urged the Commission to raise the $500 amount to take into account changes in the consumer price index since 1979 when the rule was adopted. The Commission believes that any action to raise the $500 amount should be taken in connection with a review of all dollar amounts specified in Advisers Act rules and after the benefit of general public comment.

[19] As proposed, Item 16 (proposed as Item 17), as well as several other items in the form, contained a box in which applicant could indicate the item was not applicable to applicant. To facilitate computer capture of information in the form, these items have been revised to eliminate the "N/A" box.

stated in the proposal the item is intended to provide the Commission and the jurisdictions with information about the advisory industry and to assist examiners in scheduling exams. Several commentators found the check-the-box format of the proposed item a substantial improvement over the existing item, which requires an adviser to state the number of persons it employs. While the item on employees is being adopted as proposed, a new subpart has been added to Item 17 to obtain information, in check-the-box format, on the number of clients to whom the adviser provided services during the adviser's last fiscal year. Information on the number of clients an adviser serves is necessary to evaluate the size of the adviser's business for the purpose of scheduling exams and to provide the Commission with pertinent information about the advisory industry. While Items 15 and 16 of existing Form ADV provide information about account managers' number of accounts and New Item 20 will provide information about clients of financial planners, this information is not sufficient to permit extrapolation of data on the number of clients served by advisers. The information sought by new Item 17B will be readily available to advisers and the check-the-box format of the question will minimize any burden on advisers in supplying the information. While specific Item 17B was not proposed for public comment, the Commission has determined that comment is unnecessary in that the new item provides, in aggregate form, information substantially similar to that obtained for specific types of advisory services under Items 15 and 16 of the existing form (Items 18 and 19 of the form as adopted) and new Item 20. Also, it is not in the public interest to delay adoption of this item in view of the importance of having the Commission adopt and implement the uniform registration form for advisers which was adopted by NASAA on September 29, 1985.

Item 18—Discretionary Management. This item requires applicant to state whether it provides discretionary management of securities portfolios and, if so, the number of its accounts and their aggregate market value at the end of applicant's last fiscal year. This question is substantially similar to Item 15 of existing Form ADV. A technical change has been made in this item and Item 19 to standardize responses to facilitate their data entry. Under the item as revised, a registrant managing accounts with a value f $1.5 million would be required to respond "$1,500,000" rather than "$1.5 million."

Item 19—Non-Discretionary Management. This question is substantially similar to Item 16 of existing Form ADV. It requires an applicant to state whether it manages or supervises client securities protfolios on a non-discretionary basis and, if so, the number of its accounts and their aggregate market value at the end of applicant's last fiscal year.

Item 20—Financial Planning. This new item will require an applicant which holds itself out as providing financial planning services to state the number of clients to whom applicant provided services during the last fiscal year and the total amount of client investments in financial products based on those services. The question has been revised in several respects. As proposed, the item was not limited to persons holding themselves out as financial planners. Commentators noted that without a definition of financial planning the applicability of the item was unclear. Also, Item 1B of Part II, which also seeks information about financial planning services, was limited to persons holding themselves out as providing those services. In response to these comments, the limitation in Item 1B of Part II has been included in this item. Commentators also questioned whether the requirement to state total client assets in the financial plans had clear meaning in the context of financial planning. In response to these comments the item has been revised to seek information about total client investments as a result of the advice given. Finally, the item has been revised to use a check-the-box format.

Item 21—Interests in Securities. This new item will require applicant to state whether it recommended to clients in its last fiscal year securities in which the applicant had an interest other than the receipt of a normal and customary sales commission or brokerage fee. The item also will require the applicant to check a box to indicate the approximate value of securities so recommended by the applicant in its last fiscal year. The item is intended to provide information to the Commission and the jurisdictions about advisers whose businesses may pose particular regulatory concerns.

Item 22—Balance Sheet. Item 14 of Part II of Form ADV requires certain advisers to file audited balance sheets and deliver copies of those balance sheets to clients under the brochure rule. Some jurisdictions impose additional requirements on advisers to file financial statements with the jurisdiction. A separate item for state filing requirements was added to Part I of the form to avoid confusion over whether financial statements filed under any additional state requirements must be included in the adviser's brochure under Rule 204-3. If the particular jurisdiction in which the applicant is filing requires submission of financial statements in circumstances other than those specified in Item 14 of Part II, the financial statements should be attached in response to Item 22 of Part I.[20]

2. Part II

Page 1—Table of Contents. The table of contents, which was added to Part II of Form ADV to provide clients receiving the brochure with a guide to the information contained in the brochure, is adopted substantially as proposed. The items have been revised, however, to reflect changes made in Part II of the form.

Page 2—Definitions. For convenience, definitions of terms used in Part II are provided at the beginning of Part II. As discussed above, in response to comments, the term "related person" has been used in the form as adopted instead of the proposed term "affiliated person."

Item 1A.—Advisory Services and Fees. This item requires applicant to provide information about the types of services it provides. The term is similar to item 1(a)-(h) of existing Form ADV[21] except that applicant also will be required to provide information about any timing services offered to clients. Also, for each type of service offered, applicant must provide the approximate percentage of total advisory billings derived from that service. While the majority of commentators did not object to this item a few commentators criticized this requirement or cited potential problems in computing the information. The Commission continues to believe that the information will be useful to prospective clients in assessing the nature of the adviser's business. In response to comment, an instruction has been added to indicate the time period on which the information should be based. Registrants that have been in business for a fiscal year must provide information for the most recent fiscal year. Registrants which have not

[20] Item 16 of the proposed form, which sought information on whether applicant's advisory personnel meet applicable qualifications requirements of the jurisdiction, has been deleted in the form as adopted. Several commentators indicated that, because not all states impose qualification requirements, use of this item would not permit advisers to file the same form in all jurisdictions.

[21] Unless otherwise indicated, all of the references in this section to items of uniform Form ADV and existing Form ADV are to items contained in Part II of those forms.

completed a fiscal year must estimate the percentage of total billings from each service for their first fiscal year.

Item 1B.—Financial Planning. This new item will require applicant to indicate whether it provides any of the advisory services described in Item 1A as part of financial planning services.

Item 1C. and 1D.—Fees. Item 1C, which is new, requires applicant to indicate the types of fees received by checking the appropriate boxes. This objective format facilitates computer analysis of the information by the Commission and the jurisdictions. Item 1D, which requires narrative information about the services provided and fees charged by the adviser, seeks substantially identical information to that required in Item 1 of existing Form ADV. In response to comment, one item of the instructions was deleted because the information it sought is covered by another item.

Item 2—Clients. This item is substantially similar to Item 2 of existing Form ADV except that the format is now objective and two new categories—corporations or other business entities; and trusts, estates, or charitable organizations—have been added.

Item 3—Types of Investments. This item is similar to Item 3 of existing Form ADV except that a new category for foreign issuers has been added. In response to comments, the question in the form as adopted has been clarified to ask whether applicant "offers" advice with regard to the investments listed rather than whether it "provides" it. Also, the caption of the item has been changed.

Item 4—Methods of Analysis, Sources of Information, and Investment Strategies. This item is substantially similar to existing Form ADV Item 4 except that the format is objective in the item as adopted.

Item 5—Education and Business Background. This item is the same as existing Form ADV Item 5.

Item 6—Education and Business Background. This item is substantially similar to Item 6 of existing Form ADV except that information also will be required for the principal executive officers of applicant or persons performing similar functions. As discussed above, the schedules of individual information which would have been required under Item 6 of the proposed form have been moved to Part I of Form ADV as adopted. In addition, Part II Item 7 of proposed Form ADV, which would have required that a discussion of the disciplinary history of certain business organizations be delivered to clients, has been deleted from Part II of the form. This item now is included in the instructions following the disciplinary question in Item 11 of part I.

Item 7—Other Business Activity. This item as adopted is similar to Item 7 of existing Form ADV except that it also seeks information on whether the principal business of applicant's principal executive officers involves something other than providing investment advice. In response to comment the scope of the item has been narrowed. As proposed the item would have required this information about all of applicant's officers and its controlling persons.

Item 8—Other Financial Industry Activities or Affiliations. This item is based on Item 8 of existing Form ADV but would expand that item significantly to require information about pertinent affiliations of applicant relating to financial services. As proposed the item required applicant to disclose affiliations relating to financial services and describe any business relationships with the affiliates. Commentators argued that not all the information sought by the item would be relevant to a client's decision to hire the adviser and that requiring this information would lengthen the brochure unnecessarily and could obscure essential information. In response to the comments, a number of changes have been made to narrow the scope of the item. First, as discussed above, the term "related person" is used instead of the broader term "affiliated person." Second, the information required will be limited to that which is material to the applicant's advisory business or to its clients. Finally, in response to a comment, the information about related persons sought by the item has been modified to include material relationships with insurance agencies as well as insurance companies.

Item 9—Participation or Interest in Client Transactions. This item is substantially similar to Item 9 of existing Form ADV except that information will be required for related persons of applicant. The item is being adopted substantially as proposed except that the term "related person" is substituted for the term "affiliated person." Several clarifying changes also have been made.

Item 10—Conditions for Managing Accounts. This item is similar to Item 10 of existing Form ADV, but has been expanded to require applicants to also include any conditions for providing financial planning services. In response to comment, the new information sought by the item is limited to persons holding themselves out as providing financial planning services.

Item 11—Review of Accounts. This item is similar to Item 12 of existing Form ADV but will also apply to advisers holding themselves out as providing financial planning services. The item also differs from existing Item 12 in that it will require more specific information about review procedures. The item is being adopted substantially as proposed.

Item 12—Investment or Brokerage Discretion. This item is being adopted substantially as proposed except that the term "related person" is used instead of the term "affiliated person." The questions in this item are similar to Item 11 of existing Form ADV; however, applicant also will be required to indicate whether it or any related person suggests brokers to its clients. Also, the existing item uses the term "person associated with the adviser." As discussed above, the term "related person" used in the item as adopted would include persons under common control with the adviser as well as associated persons of the adviser.

Item 13—Additional Compensation. This item is being adopted substantially as proposed except that the term "related person" is used instead of the term "affiliated person." This new item will require an applicant to indicate whether it or a related person has any arrangement where it receives any economic benefit (including commissions, equipment or non-reseach services) from a non-client in connection with giving advice to clients and whether applicant directly or indirectly compensates any person for client referrals. Applicant must fully describe any such arrangements on Schedule F.

Item 14—Balance Sheet. As adopted, this item is substantially identical to Item 13 of existing Form ADV. In response to commentators' recommendations, the reference to additional filing requirements of the jurisdictions has been moved to Part I. This change will make it clear that any additional financial statements filed with a jurisdiction would not be required to be given to clients under Rule 204–3.

Schedules. Schedules A, B, and C require information on corporations, partnerships and individuals, respectively, as required by Item 8A Part I. Schedule D is to be used for reporting information on individuals under Part I Items 11 and 12.

Schedules E and F, which are continuation sheets, correspond to Schedules E and F of existing Form ADV. Schedule G is to be used for the balance sheet requirement of Item 14 Part II.

III. Related Rule Amendments

The Commission is amending Rule 204–1(a) to provide transition rules for converting to the new form. Under Rule 204–1(a)(i) as amended, advisers who are registered on January 1, 1986, must amend their applications by filing new Form ADV by March 31, 1986. A substantial majority of registrants operate on a calendar year basis and would be required to file any annual amendments required by Rule 204–1(b)(2) by that date. To minimize the burden on registrants in converting to the new form, advisers will be relieved of their obligation to file Form ADV–S, or any annual update, required to be filed between January 1, 1986 and December 31, 1986.

Under Rule 204–1(a)(ii), as amended, an adviser whose registration is pending on January 1, 1986 must promptly amend its application by filing new Form ADV prior to its registration becoming effective. The following examples illustrate the operation of the transition rules.

Example 1

Adviser A, which is registered with the Commission, has a fiscal year ending November 30. Instead of filing Form ADV–S and any annual amendments, which otherwise would be required to be filed by February 28, 1986, the adviser will file a new Form ADV by March 31, 1986. It will subsequently file Form ADV–S and any annual amendments by February 28, 1987.

Example 2

Adviser B, which is registered with the Commission, has a fiscal year ending June 30, 1986. It will file new Form ADV by March 31, 1986. It will not be required to file Form ADV–S and any annual amendments until September 28, 1987.

Example 3

Adviser C files an initial application for registration with the Commission on December 20, 1985 which is pending on January 1, 1986. Ordinarily, assuming the application is not deficient, the Commission would grant the adviser's registration by February 3, 1986 or institute proceedings to deny registration. The adviser will be required to amend its application by filing new Form ADV prior to its registration becoming effective.

The Commission also is adopting technical amendments to Rule 204–1(b) relating to the filing of amendments to make the items specified in the rule correspond to the items of uniform Form ADV as adopted.

Rule 204–1 is also being amended to delete paragraph (b)(3). That paragraph requires a registrant to report changes in the information contained in response to Item 3 of Part I, relating to jurisdictions in which the adviser is registering or registered, within 90 days of the end of its fiscal year. However, if the adviser's registration in a jurisdiction is restricted, suspended, withdrawn, or voluntarily or involuntarily terminated, the adviser must report this information promptly. Under the form and Rule 204–1(b)(1) as adopted, all of the foregoing events, except for a voluntary withdrawal or termination of registration, will be reported promptly in an amendment to Item 11 of Part I, the disciplinary question. The Commission believes it is sufficient that an adviser report a voluntary withdrawal of registration in a jurisdiction within 90 days of the end of the adviser's fiscal year by amending Item 7 of Part I, which designates the jurisdictions in which the adviser is registered.

Conforming changes to Rule 0–7(b), relating to the definition of small entities for purposes of the Regulatory Flexibility Act, also are being adopted.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, which the Commission prepared in accordance with 5 U.S.C. 603 regarding the revision of Form ADV and amendments to related rules 0–7 and 204–1, was published in Investment Advisers Act Release No. 967. No comments were received on the analysis and the Commission has prepared a Final Regulatory Flexibility Act Analysis. Copies of the Final Regulatory Flexibility Analysis may be obtained by contacting Jay Gould in the manner specified above.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

IV. Text of Proposals

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is amended by adding the following citations:

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 15 U.S.C. 80b–3, 80b–4, 80b–11. * * *

Section 275.204–1 issued under Secs. 15(b)(1) and 23(a) (15 U.S.C. 78o(b)(1) and 78w(a)).

2. Section 275.0–7 is amended by revising paragraph (b) as follows:

§ 275.0–7 Small entities for purposes of the Regulatory Flexibility Act.

* * * * *

(b) As used in this rule, the term "other advisory services" means the services referred to in Form ADV, Part II, Item 1A (3)–(9).

3. Section 275.204–1 is amended by revising paragraphs (a) and (b) as follows:

§ 275.204–1 Amendments to application for registration.

(a)(1) Every investment adviser whose registration is effective on January 1, 1986 shall file as an amendment to the application a complete Form ADV (§ 279.1 of this chapter revised as of January 1, 1986) not later than March 31, 1986. An adviser filing an amendment under this paragraph need not file Form ADV–S, or any amendment required by paragraph (b)(2) of Rule 204–1, required to be filed between January 1, 1986 and December 31, 1986.

(2) Every investment adviser whose registration is pending on January 1, 1986 shall promptly file as an amendment to the application a complete Form ADV (§ 279.1 of this chapter as revised as of January 1, 1986), prior to its registration becoming effective, unless it shall have prior thereto so amended its application.

(b)(1) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason or if the information contained in response to any question in Items 9 and 10 and all of Part II (except Item 14) of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (§ 279–1 of this chapter) correcting such information. For all other changes not designated in paragraph (b)(1) of this section, the investment adviser shall file an amendment on Form ADV correcting such information within 90 days of the end of the fiscal year. In addition, a balance sheet as required by Item 14 of Part II shall be filed within 90 days of the end of the applicant's fiscal year.

* * * * *

Text of Form

Form ADV is revised to read as follows:

See Appendix A. Form ADV will not be codified in the Code of Federal Regulations.

By the Commission.

John Wheeler,

Secretary.

October 15, 1985.

Appendix A

1. This is a Uniform Form for use by investment advisers to:

- Register with the Securities and Exchange Commission and the jurisdictions that require advisers to register.
- Update those registrations. When updating, complete all amended pages in full and circle the number of the item being changed. Each amendment must include the execution page.

2. *Organization.*

The Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II can be given to clients to satisfy the brochure rule. The Form also contains the following schedules:

- Schedule A—for corporations;
- Schedule B—for partnerships;
- Schedule C—for entities that are not sole proprietorships, partnerships or corporations;
- Schedule D—for reporting information about individuals under Part I Item 12;
- Schedule E—for continuing responses to Part I items;
- Schedule F—for continuing responses to Part II items; and
- Schedule G—for the balance sheet required Item 14 of Part II.

3. *Format.*

- Type all information.
- Give all individual names in full, including full middle names.
- Use only the Form ADV and its Schedules or a reproduction of them.

4. *Signature.*

- All filings and amendments must be filed with a signed execution page (page 1).
- Each copy filed with the Securities and Exchange Commission and any jurisdiction must be manually signed.

If applicant is	Form ADV should be signed by
• A sole proprietor	the proprietor.
• A partnership	a general partner for the partnership.
• A corporation	an authorized principal officer for the corporation.
• Any other organization	the managing agent (an authorized person that participates in managing or directing applicant's affairs).

5. *General Definitions* (Additional definitions appear in Part I Item 11 and Part II.)

- Applicant—The investment adviser applying on or amending this Form.
- Client—An investment advisory client of the applicant.
- Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent of more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company. (This definition is used solely for the purpose of Uniform Form ADV.)
- Custody—A person has custody if it directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. An adviser has custody, for example, if it has a general power of attorney over a client's account or has signatory power over a client's checking account. (The definition and examples are for the convenience of registrants. Depending on the facts and circumstances, other situations also may involve custody.)
- Jurisdiction—Any non-Federal government or regulatory body in the United States, or Puerto Rico.
- Person—An individual, partnership, corporation or other organization.
- Related person—Any officer, director or partner of applicant or any person directly or indirectly controlling, controlled by or under common control with the applicant, including any non-clerical, non-ministerial employee.
- Self-regulatory organization—Any national securities or commodities exchange or registered association, or registered clearing agency.

6. *Continuation Sheets*—Schedules E and F provide additional space for continuing Form ADV items (Schedule E for Part I; Schedule F for Part II) but not for continuing Schedules A, B, C, D or G. To continue those schedules, use copies of the schedule being continued.

7. *SEC Filings*

- Submit filings in triplicate to the U.S. Securities and Exchange Commission, Washington, D.C. 20549. To register, submit a check or money order for $150 payable to the U.S. Securities and Exchange Commission. This fee is non-refundable. There is no fee for amendments.
- *Non-Residents:*—Rule 0-2 under the Investment Advisers Act of 1940 [17 CFR 275.0-2] covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204-2(j) under the Investment Advisers Act of 1940 [17 CFR 275.204-2] covers the notice of undertaking on books and records non-residents must file with Form ADV.
- *Updating.* Federal law requires filing amendments:

—promptly for *any* changes in: Part I—Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;

—promptly for *material* changes in: Part I, Items 9, 10 and all items of Part II except Item 14;

—within 90 days of the end of the fiscal year for any other changes.

- Federal Information Law and Requirements—Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number, which aids indentifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 USC 1001 and 15 USC 80b-17.

8. Filings in Jurisdictions—Consult the requirements of each jurisdiction in which you are filing to determine its requirements for, among other things:

- Filings
- Updates
- Financial statements
- Bonding
- Examinations and qualifications
- Photographs and fingerprints
- Limitations on advisory fees.

Information on a jurisdiction's requirements is available from its Securities Administrator. For the address and telephone number of the Securities Administrator in a jurisdiction, contact the North American Securities Administrators Association, Inc., 2930 S.W. Wanamaker Drive, Suite 5, Topeka, Kansas 66614, (913) 273-2600.

BILLING CODE 8010-01-M

FORM ADV

Uniform Application for Investment Adviser Registration

OMB APPROVAL
OMB No.: 3235-0049
Expires June 30, 1988

Part I - Page 1

This filing is an: ☐ Initial Application
or an ☐ Amendment

If this filing is an Amendment:
* Give the Applicant's SEC File Number 801-_____ Yes ☐ No ☐
* Is Applicant now active in business as an Investment Adviser? ☐ ☐

WARNING: Failure to complete this form accurately and keep it current subjects applicant to administrative, civil and criminal penalties.

1. A. Applicant's full name (If sole proprietor, state last, first and middle name):

B. Name under which business is conducted, if different:

C. If business name is being amended, give previous name:

2. A. Principal place of business: (Number and Street — Do not use P.O. Box Number) (City) (State) (Zip Code)

B. Hours business is conducted at this location:
from to

C. Telephone Number at this location: (Area Code) (Telephone Number)

D. Mailing address, if different from address given in 2.A): (Number and Street or P.O. Box Number) (City) (State)

E. Is the address in item 2A or 2D being amended in this filing? ..... Yes ☐ No ☐

F. On Schedule E give the addresses and telephone numbers of all offices at which applicant's investment advisory business is conducted, other than the one given in item 2A.

3. A. If books and records required by Section 204 of the Investment Advisers Act of 1940 are kept somewhere other than at the principal place of business given in item 2A, give the following information (if kept in more than one place, give additional names, addresses and hours of business on Schedule E):

Name and address of entity where books and records are kept:

(Number and Street) (City) (State) (Zip Code)

B. Hours business is conducted at this location:
from to

C. Telephone number at this location: (Area Code) (Telephone Number)

EXECUTION

For the purpose of complying with the laws of the State(s) I have marked in Item 7 relating to the giving of investment advice, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date: | Name of Applicant: | By (Signature):

Typed Name and Title:

Subscribed and sworn before me this _____ day of _____, 19____

By: _____

My commission expires County of State of

Answer all items.

FORM ADV Part I - Page 2	Applicant:	SEC File Number: 801-	Date:	Official Use

4. A. Persons to contact for further information about this Form: (Name) (Title)

B. Mailing Address (Number and Street, City, State, Zip Code): | Area Code and Telephone Number: ( )

5. A. Applicant consents that notice of any proceeding before the Securities and Exchange Commission or a jurisdiction in connection with its investment adviser registration may be given by registered or certified mail or confirmed telegram to: (Last Name) (First Name) (Middle Name)

B. (Number and Street) (City) (State) (Zip Code) | 6. Applicant's fiscal year ends (Month) (Day):

7. In the box below, give status of applicant's investment adviser registration by indicating:

"1" for pending

"2" for registered

"3" for withdrawn before registration within the last 10 years

"4" for previously registered within the last 10 years

Securities and Exchange Commission ___

AL __	AK __	AZ __	AR __	CA __	CO __	CT __	DE __	DC __	FL __	GA __	HI __	ID __	
IL __	IN __	IA __	KS __	KY __	LA __	ME __	MD __	MA __	MI __	MN __	MS __	MO __	
MT __	NE __	NV __	NH __	NJ __	NM __	NY __	NC __	ND __	OH __	OK __	OR __	PA __	
RI __	SC __	SD __	TN __	TX __	UT __	VT __	VA __	WA __	WV __	WI __	WY __	Puerto Rico __	

Other _____ (Specify)

8. Applicant is a (check box that applies and complete those items):

	(1)	(2)
A. ☐ CORPORATION - Complete Schedule A.	(1) Date of Incorporation (Month, Day, Year):	(2) Jurisdiction where incorporated:
B ☐ PARTNERSHIP - Complete Schedule B	(1) Date of establishment (Month, Day, Year):	(2) Current legal address (Number, Street, City, State, Zip Code)
C. ☐ SOLE PROPRIETORSHIP	(1) Date Business Began (Month, Day, Year):	(2) Current residence address of proprietor: (Number, Street, City, State, Zip Code)
D. ☐ Other-Specify _____ Complete Schedule C	(1) Date of establishment (Month, Day, Year):	(2) Current legal address (Number, Street, City, State, Zip Code)

9. Is the applicant taking over the business of a registered investment adviser? (If "yes" describe the transfer on Schedule E, including the transfer date, and predecessor's full name, IRS employer number and SEC file number.)..... Yes ☐ No ☐

10. A. Does any person not named in Item 1A or Schedules A, B, or C, through agreement or otherwise, control the management or policies of applicant?..... Yes ☐ No ☐

(If "yes" state on Schedule E the exact name of each person and describe the basis for the person's control.)

B. Is the applicant financed by a person not named in Items 1A or Schedule A, B, or C other than by: (1) a public offering under the Securities Act of 1933; (2) credit given in the ordinary course of business by banks, suppliers or others; or (3) a satisfactory subordination agreement under Securities Exchange Act of 1934 Rule 15c3-1 (17 CFR 240.15c3-1)..... Yes ☐ No ☐

(If "yes" state on Schedule E the exact name of each person and describe the arrangement through which financing is made available including the amount).

11. Disciplinary questions.

Definitions:

- o Advisory affiliate — A person named in Items 1A, 10A or Schedules A, B or C; an individual or firm that directly or indirectly controls, or is controlled by the applicant including any current employee except one performing only clerical, administrative, support or similar functions.
- o Investment or investment-related — Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, savings and loan association or fiduciary).
- o Involved — Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 3	Applicant:	SEC File Number: 801-	Date:	Official Use

11. A. In the past ten years has the applicant, or an advisory affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") to:

(1) a felony or misdemeanor involving:

* investment or an investment-related business
* fraud, false statements, or omissions
* wrongful taking of property or
* bribery, forgery, counterfeiting, or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any court:

(1) in the past ten years, enjoined the applicant or an advisory affiliate in connection with any investment-related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or an advisory affiliate was involved in a violation of investment-related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or an advisory affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or an advisory affiliate to have been involved in a violation of its regulations or statutes? ..... Yes ☐ No ☐

(3) found the applicant or an advisory affiliate to have been a cause of an investment-related business losing its authorization to do business? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or an advisory affiliate's registration, barring or suspending its association with an investment adviser or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency or any state regulatory agency:

(1) ever found the applicant or an advisory affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or an advisory affiliate to have been involved in a violation of investment regulations or statutes? ..... Yes ☐ No ☐

(3) ever found the applicant or an advisory affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) in the past ten years, entered an order against the applicant or an advisory affiliate in connection with an investment related business? ..... Yes ☐ No ☐

(5) ever denied, suspended, or revoked the applicant's or an advisory affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

(6) ever revoked or suspended the applicant's or an advisory affiliate's license as an attorney or accountant? ..... Yes ☐ No ☐

E. Has any self-regulatory organization or commodities exchange ever:

(1) found the applicant or an advisory affiliate to have made a false statement or omission or been dishonest, unfair or unethical? ..... Yes ☐ No ☐

(2) found the applicant or an advisory affiliate to have been involved in a violation of its rules? ..... Yes ☐ No ☐

(3) found the applicant or an advisory affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) disciplined the applicant or an advisory affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? ..... Yes ☐ No ☐

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or an advisory affiliate related to investments or fraud? ..... Yes ☐ No ☐

G. Is the applicant or an advisory affiliate now the subject of any complaint, investigation, or proceeding that could result in a "yes" answer to parts A-F of this item? ..... Yes ☐ No ☐

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? ..... Yes ☐ No ☐

I. Does the applicant have any unsatisfied judgments or liens against it? ..... Yes ☐ No ☐

J. Has the applicant or an advisory affiliate of the applicant ever been a securities firm or an advisory affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? ..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 4	Applicant:	SEC File Number: 801-	Date:	Official Use

K. Has the applicant, or an officer, director or person owning 10% or more of applicant's securities failed in business, made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt?..... Yes ☐ No ☐

If a yes answer on Item 11 involves:

* an individual, complete a Schedule D for the individual

* a partnership, corporation or other organization, on Schedule E give the following details of any court or regulatory action:

  * the organization and individuals named
  * the title and date of the action
  * the court or body taking the action
  * a description of the action.

12. Individual's Education, Business and Disciplinary Background. Complete a Schedule D for each individual who is:

A. The applicant, named in Part I Item 1A

B. A control person named in Part I Item 10

C. An owner of at least 10% of a class of applicant's equity securities.

D. An officer, director, partner, or individual with similar status of applicant, described in Schedule A Item 2a, Schedule B Item 2, Schedule C Item 2.

E. A member of the applicant's investment committee that determines general investment advice to be given to clients.

F. If applicant has no investment committee, an individual who determines general investment advice (if more than five, complete for their supervisors only).

G. An individual giving investment advice on behalf of the applicant in the jurisdiction in which this application is filed.

H. An individual reporting a yes answer to the disciplinary question, Part I Item 11.

13. Does applicant have custody (see definition in instructions) of any advisory client:

A. funds..... Yes ☐ No ☐

B. securities..... Yes ☐ No ☐

C. If either answer is yes, the value of those funds and securities at the end of applicant's last fiscal year, rounded to nearest thousand, was:

(1) ☐ under $ 100,000 (3) ☐ $1,000,001 to $ 5,000,000

(2) ☐ $100,000 to $1,000,000 (4) ☐ Over $5,000,000

14. Does any of applicant's related persons have custody (see definition in instructions) of any advisory client:

A. funds..... Yes ☐ No ☐

B. securities..... Yes ☐ No ☐

If either is yes:

C. is that person a registered broker-dealer qualified to take custody under section 15 of the Securities Exchange Act of 1934? ..... Yes ☐ No ☐

D. the value of those funds and securities at the end of applicant's last fiscal year was:

(1) ☐ under $ 100,000 (3) ☐ $1,000,001 to $ 5,000,000

(2) ☐ $100,000 to $1,000,000 (4) ☐ Over $5,000,000

15. Does applicant require prepayment of fees of more than $500 per client and more than 6 months in advance?..... Yes ☐ No ☐

16. With a few exceptions, the "brochure rule" (Advisers Act Rule 204-3) requires that clients must be given information about the investment adviser. Will applicant be giving clients:

A. Part II of this Form ADV?..... Yes ☐ No ☐

B. Another document that includes at least the information contained in Form ADV Part II?..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part I - Page 5	Applicant:	SEC File Number: 801-	Date:	Official Use

17. A. The number of employees of applicant who perform investment advisory functions (including research, but excluding unrelated functions such as accounting) is: (check only one box)

(1) ☐ 1 person, part time
(2) ☐ 1 person primarily involved in providing investment advisory services
(3) ☐ 2-9 persons
(4) ☐ 10 or more persons

B. The number of clients to whom applicant provided advisory services during the last fiscal year was:

(1) ☐ 14 or less
(2) ☐ 15 to 50
(3) ☐ 51 to 100
(4) ☐ 101 to 500
(5) ☐ over 500

18. Does applicant manage client securities portfolios on a discretionary basis? ..... Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year these accounts:

A. numbered _____.

B. totalled in aggregate market value, rounded to nearest thousand..... $_____000.00

19. Does applicant manage or supervise client securities portfolios on a non-discretionary basis?..... Yes ☐ No ☐

If yes, at the end of applicant's last fiscal year these accounts:

A. numbered _____.

B. totalled in aggregate market value, rounded to nearest thousand..... $_____000.00

20. Does applicant hold itself out as providing financial planning or some similarly termed services to clients?..... Yes ☐ No ☐

If yes, during the last fiscal year applicant provided financial planning services to clients:

A. who numbered:

(1) ☐ 14 or less
(2) ☐ 15 to 50
(3) ☐ 51 to 100
(4) ☐ 101 to 500
(5) ☐ over 500

B. whose investments in financial products based on those services totalled:

(1) ☐ under $100,000
(2) ☐ $100,001 to $1,000,000
(3) ☐ $1,000,001 to $5,000,000
(4) ☐ over $5,000,000

21. Did applicant recommend securities to clients during its last fiscal year in which the applicant acted (itself or through a related person) as an underwriter, general or managing partner, or offeree representative, or had any ownership or sales interest (other than the receipt of normal and customary sales commissions as a broker or broker's representative)? ..... Yes ☐ No ☐

If "yes", the approximate value of securities so recommended during its last fiscal year is:

A. ☐ Under $50,000
B. ☐ $50,000 to $250,000
C. ☐ $250,001 to $1,000,000
D. ☐ over $1,000,000

22. Attach to this form any financial statements required by the jurisdiction in which applicant is filing, other than the balance sheet required by Part II Item 14.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV

Part II - Page 1

Uniform Application for Investment Adviser Registration

OMB APPROVAL
OMB No.: 3235-0049
Expires June 30, 1988

Name of Investment Adviser:

Address: (Number and Street)	(City)	(State)	(Zip Code)	Area Code:	Telephone Number:
				( )	

This part of Form ADV gives information about the investment adviser and its business for the use of clients. The information has not been approved or verified by any governmental authority.

Table of Contents

(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

FORM ADV Part II - Page 2	Applicant:	SEC File Number: 801-	Date:	Official Use

Definitions for Part II

Related person: Any officer, director or partner of applicant or any person directly or indirectly controlling, controlled by or under common control with the applicant including any non-clerical, non-ministerial employee.

Investment Supervisory Services - Giving continuous investment advice to a client (or making investments for the client) based on the individual needs of the client. Individual needs include, for example, the nature of other client assets and the client's personal and family obligations.

1. A. Advisory Services and Fees. (check the applicable boxes)

Applicant:

For each type of service provided, state the approximate % of total advisory billings from that service. (See instruction below.)

- [ ] (1) Provides investment supervisory services..... ___ %
- [ ] (2) Manages investment advisory accounts not involving investment supervisory services..... ___ %
- [ ] (3) Furnishes investment advice through consultations not included in either service described above.. ___ %
- [ ] (4) Issues periodicals about securities by subscription..... ___ %
- [ ] (5) Issues special reports about securities not included in any service described above..... ___ %
- [ ] (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities..... ___ %
- [ ] (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities. ___ %
- [ ] (8) Provides a timing service..... ___ %
- [ ] (9) Furnishes advice about securities in any manner not described above..... ___ %

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates).

	Yes	No
B. Does applicant call any of the services it checked above financial planning or some similar term.....	[ ]	[ ]

C. Does applicant offer investment advisory services for (check all that apply):

- [ ] (1) A percentage of assets under management?
- [ ] (2) Hourly charges?
- [ ] (3) Fixed fees (not including subscription fees)?
- [ ] (4) Subscription fees?
- [ ] (5) Commissions?
- [ ] (6) Other?

D. For each checked box in A above, describe on Schedule F:

* the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee.
* applicant's basic fee schedule, how fees are charged and whether its fees are negotiable.
* when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date.

2. Types of clients - Applicant generally provides investment advice to (check those that apply):

- [ ] A. Individuals
- [ ] B. Banks or thrift institutions
- [ ] C. Investment companies
- [ ] D. Pension and profit sharing plans
- [ ] E. Trusts, estates, or charitable organizations
- [ ] F. Corporations or business entities other than those listed above
- [ ] G. Other (describe on Schedule F)

3. Types of Investments. Applicant offers advice on the following (check those that apply):

A. Equity securities
- [ ] (1) exchange-listed securities
- [ ] (2) securities traded over-the-counter
- [ ] (3) foreign issuers

- [ ] B. Warrants
- [ ] C. Corporate debt securities (other than commercial paper)
- [ ] D. Commercial paper
- [ ] E. Certificates of deposit
- [ ] F. Municipal securities

G. Investment company securities:
- [ ] (1) variable life insurance
- [ ] (2) variable annuities
- [ ] (3) mutual fund shares

- [ ] H. United States government securities

I. Options contracts on:
- [ ] (1) securities
- [x] (2) commodities

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II - Page 3	Applicant:	SEC File Number: 801-	Date:	Official Use

J. Futures contracts on:

☐ (1) tangibles

☐ (2) intangibles

K. Interests in partnerships investing in:

☐ (1) real estate

☐ (2) oil and gas interests

☐ (3) other (explain on Schedule F.)

☐ L. Other (explain on Schedule F.)

4. Methods of Analysis, Sources of Information, and Investment Strategies.

A. Applicant's security analysis methods include (check those that apply):

(1) ☐ Charting

(2) ☐ Fundamental

(3) ☐ Technical

(4) ☐ Cyclical

(5) ☐ Other (explain on Schedule F.)

B. The main sources of information applicant uses include (check those that apply):

(1) ☐ Financial newspapers and magazines

(2) ☐ Inspections of corporate activities

(3) ☐ Research materials prepared by others

(4) ☐ Corporate rating services

(5) ☐ Timing services

(6) ☐ Annual reports, prospectuses, filings with the Securities and Exchange Commission

(7) ☐ Company press releases

(8) ☐ Other (explain on Schedule F.)

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

(1) ☐ Long term purchases (securities held at least a year)

(2) ☐ Short term purchases (securities sold within a year)

(3) ☐ Trading (securities sold within 30 days)

(4) ☐ Short sales

(5) ☐ Margin transactions

(6) ☐ Option writing, including covered options, uncovered options, or spreading strategies

(7) ☐ Other (explain on Schedule F.)

5. Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients?..... Yes ☐ No ☐

(If "yes" describe those standards on Schedule F.)

6. Education and Business Background.

For:

* each member of the investment committee or group that determines general investment advice to be given to clients, or

* if the applicant has no investment committee or group each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)

* each principal executive officer of applicant or each person with similar status or performing similar functions.

Give the:

* name

* year of birth

* formal education after high school

* business background for the preceding five years

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II - Page 4	Applicant:	SEC File Number: 801-	Date:	Official Use

7. Other Business Activities. (check those that apply)

☐ A. Applicant is actively engaged in a business other than giving investment advice.

☐ B. Applicant sells products or services other than investment advice to clients.

☐ C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F).

8. Other Financial Industry Activities or Affiliations. (check those that apply)

☐ A. Applicant is registered (or has an application pending) as a securities broker/dealer.

☐ B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.

☐ C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:

☐ (1) broker-dealer
☐ (2) investment company
☐ (3) other investment adviser
☐ (4) financial planning firm
☐ (5) commodity pool operator, commodity trading adviser or futures commission merchant
☐ (6) banking or thrift institution
☐ (7) accounting firm
☐ (8) law firm
☐ (9) insurance company or agency
☐ (10) pension consultant
☐ (11) real estate broker or dealer
☐ (12) entity that creates or packages limited partnerships

(For each checked box in C. on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest?..... Yes ☐ No ☐

(If "yes" describe on Schedule F the partnerships and what they invest in).

9. Participation or Interest in Client Transactions

Applicant or a related person (check those that apply):

☐ A. As principal, buys securities for itself from or sells it owns securities to any client.

☐ B. As broker or agent effects securities transactions for compensation for any client.

☐ C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.

☐ D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.

☐ E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

10. Conditions for Managing Accounts. Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services and impose a minimum dollar value of assets or other conditions for starting or maintaining an account?..... Yes ☐ No ☐

(If "yes", describe on Schedule F.)

11. Review of Accounts. If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. For reviews, include their frequency, different levels, and triggering factors. For reviewers, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

B. Describe below the nature and frequency of regular reports to clients on their accounts.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM ADV Part II - Page 5	Applicant:	SEC File Number: 801-	Date:	Official Use

12. Investment or Brokerage Discretion.

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

	Yes	No
(1) securities to be bought or sold?	☐	☐
(2) amount of the securities to be bought or sold?	☐	☐
(3) broker or dealer to be used?	☐	☐
(4) commission rates paid?	☐	☐

B. Does applicant or a related person suggest brokers to clients? ☐ Yes ☐ No

For each yes to A describe on Schedule F any limitations on the authority.

For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

* the products, research and services;

* whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services,

* whether research is used to service all of applicant's accounts or just those accounts paying for it; and

* any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

13. Additional Compensation

Does the applicant or a related person have any arrangements, oral or in writing, where it:

	Yes	No
A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients?	☐	☐
B. directly or indirectly compensates any person for client referrals?	☐	☐

For each yes, describe the arrangements on Schedule F.

14. Balance Sheet. Applicants:

* with custody of client funds or securities; or

* requiring prepayment of more than $500 in fees per client six or more months in advance

must provide a balance sheet for the most recent fiscal year on Schedule G.

Has applicant provided a Schedule G balance sheet? ☐ Yes ☐ No

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of Form ADV FOR CORPORATIONS

Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Item 8.)

1. This form requests information on the owners and executive officers of the applicant.

2. Please complete for:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and

   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the applicant.

3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this form.

FULL NAME Last	First	Middle	Beginning Date Month	Year	Title or Status	Ownership Code	Control Person	CRD No., or, if none, Social Security Number	OFFICIAL USE ONLY

List below names reported in the most recent previous filing under this item that are being DELETED:

FULL NAME Last	First	Middle	Ending Date Month	Year	Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule B of Form ADV FOR PARTNERSHIPS	Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Item 8.)

1. This form requests information on the owners and partners of the applicant.

2. Please complete for all general partners and with respect to limited and special partners all those who have contributed directly or indirectly through intermediaries, 5% or more of the partnership's capital.

3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not subject to Sections 12 or 15(d) of the Securities and Exchange Act of 1934 but are:

   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or

   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.

4. If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.

5. Ownership codes are: NA - 0 up to 5% A - 5% up to 10% B - 10% up to 25% C - 25% up to 50% D - 50% up to 75% E - 75% up to 100%

6. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest or control. Double asterisk (**) names new on this filing.

7. Check "Control Person" column if person has "control" as defined in the instructions to this form.

FULL NAME Last	First	Middle	Beginning Date Month	Year	Title or Status	Ownership Code	Control Person	CRD No., or, if none, Social Security Number	OFFICIAL USE ONLY

List below names reported in the most recent previous filing under this item that are being DELETED:

FULL NAME Last	First	Middle	Ending Date Month	Year	Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule C of

Form ADV for OTHER THAN Partnerships and Corporations

Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Item 8.)

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the nature of their authority and their beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.

FULL NAME			RELATIONSHIP			CRD Number or, if none, Social Security Number	Description of Authority and Beneficial Interest
			Beginning Date		Title or Status		
Last	First	Middle	Month	Year			

List below names reported in the most recent previous filing under this item that are being DELETED

FULL NAME			Ending Date		
Last	First	Middle	Month	Year	Social Security Number

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule D of Form ADV Page 1	Applicant:	SEC File Number: 801-	Date:	Official Use

(Answers for Form ADV Part I Items 11 and 12.)

This Schedule is submitted for an individual who is: (Check all boxes that apply)

- ☐ A. the applicant, named in Part I, Item 1A
- ☐ B. a control person, named in Part I, Item 10A
- ☐ C. an owner of at least 10% of a class of applicant's equity securities
- ☐ D. an officer or director, partner, or individual with similar status of applicant, described in Schedule A Item 2a, Schedule B Item 2, or Schedule C Item 2
- ☐ E. a member of the applicant's investment committee that determines general investment advice to be given to clients
- ☐ F. if applicant has no investment committee, an individual who determines general client advice (if more than 5, complete for their supervisors only)
- ☐ G. an individual giving investment advice on behalf of the applicant in the jurisdictions checked below:

AL __	AK __	AZ __	AR __	CA __	CO __	CT __	DE __	DC __	FL __	GA __	HI __	ID __	
IL __	IN __	IA __	KS __	KY __	LA __	ME __	MD __	MA __	MI __	MN __	MS __	MO __	
MT __	NE __	NV __	NH __	NJ __	NM __	NY __	NC __	ND __	OH __	OK __	OR __	PA __	
RI __	SC __	SD __	TN __	TX __	UT __	VT __	VA __	WA __	WV __	WI __	WY __	Puerto Rico __	

Other _____
(Specify)

- ☐ H. involved in any yes answer to the disciplinary question, Part I Item 11.

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule D of Form ADV Page 2

Applicant:	SEC File Number: 801-	Date:	OFFICIAL USE

(Answers for Form ADV Part I Items 11 and 12.)

1. Applicant investment adviser (see Part I, Item 1A): | IRS Empl. Ident. No.:

2. Individual's full name for whom this Schedule is being completed | Social Security Number: | CRD No., if any: | IRS Empl. Ident. No.:

3. (a) Residence of individual (Number and Street) (City) (State) (Zip Code):

(b) Birth Date:	(c) City:	(d) State or Province:	(e) Country:

4. NAMES USED. List all names other than the one given in Item 2 above that the individual has used, including maiden names. (Last) (First) (Middle)

5. EDUCATION. Start with last high school attended. If no degree received, state "none."

School: (Name, City and State)	Years Attended	Year Graduated	For College and above Degree	Major

6. BUSINESS BACKGROUND. Provide complete consecutive statement of all employment for the past ten years, beginning with the most recent position first.

Name of Firm and Address	Kind of Business	Exact Nature of Connection or Employment	Beginning Date Month	Beginning Date Year	Ending Date Month	Ending Date Year

7. EXAMINATIONS/PROFESSIONAL DESIGNATIONS. List all jurisdiction, self-regulatory organization, and professional examinations and designations. Give examination or designation name (include any examination's title and number), body giving it, and date taken or conferred. If examination was waived, give details.

8. PROCEEDINGS. For each yes answer to Part I Item 11 involving the individual, give the following details of any court or regulatory action:

* the adviser and individuals named,
* the title and date of the action,
* the court or body taking the action, and
* a description of the action

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule E of Form ADV Continuation Sheet for Form ADV Part I	Applicant:	SEC File Number: 801-	Date:

(Do not use this Schedule as a continuation sheet for Form ADV Part II or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule F of
Form ADV
Continuation Sheet for Form ADV Part II

Applicant:	SEC File Number: 801-	Date:

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.

Item of Form (identify)	Answer

Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule G of Form ADV Balance Sheet	Applicant:	SEC File Number: 801-	Date:

Answers in Response to Item 4 of Form ADV-S, or Form ADV Part II Item 14.

1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.

Instructions

1. The balance sheet must be:
   A. Prepared in accordance with generally accepted accounting principles
   B. Audited by an independent public accountant
   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity
2. Securities included at cost should show their market or fair value parenthetically
3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et seq.)
4. Sole proprietor investment advisers:
   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities.
   B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution page (page 1).

[FR Doc. 85-25224 Filed 10-22-85; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 189

[Docket No. 81N-0292]

Cinnamyl Anthranilate; Prohibition of Use in Human Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is prohibiting the use of cinnamyl anthranilate in human food. This action is based primarily on a National Cancer Institute (NCI) study that found that ingestion of cinnamyl anthranilate induces cancer in mice. This document removes the listing for cinnamyl anthranilate from § 172.515 (21 CFR 172.515) and lists cinnamyl anthranilate as a substance prohibited from use in food.

DATES: Effective November 25, 1985; objections by November 22, 1985.

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

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 25, 1982 (47 FR 22545), FDA proposed to prohibit the use of cinnamyl anthranilate in human food. FDA published this proposal after reviewing the data referenced in the proposal including an NCI study that found that ingestion of cinnamyl anthranilate induces cancer in mice.

Copies of the NCI report, other scientific literature, surveys, and FDA documents used in developing the proposal were made available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA allowed a period of 60 days during which interested persons could review the proposal and other relevant information and file written comments regarding the proposal.

FDA received three comments on cinnamyl anthranilate in response to the proposal. Two comments from the same consumer group supported the proposal to prohibit the use of cinnamyl anthranilate in human food. The other comment was from the Flavor and Extracts Manufacturers Association (FEMA).

I. FEMA's Comments

FEMA contended that the results of the NCI bioassay are insufficient evidence to dispel either the reasonable certainty of safety that the agency found in 1964 or the continuing general recognition of safety that, according to FEMA, exists. In support of this contention, FEMA questioned the validity of the results of the NCI bioassay on the following grounds: (1) That the dose administered in the study was excessive and caused significant (up to 30 percent) decrements in weight gain compared to control animals (i.e., the maximum tolerated dose had been exceeded); (2) that the mouse strain used was particularly susceptible to liver tumors; and (3) that studies of two other substances, one of which was determined to be a liver carcinogen, were conducted in the same room at the same time that the studies on cinnamyl anthranilate were being conducted.

FEMA also argued that the word "cancer" signifies a malignant neoplasm to most scientists. It contended that the only statistically significant difference in malignant neoplasms between test and control animals reported in the NCI study was the hepatocellular carcinomas in the female mice, a group that also experienced a decrement in weight gain. Although FEMA acknowledged that a statistically significant increase in hepatocellular adenomas occurred in both male and female test mice, FEMA questioned the conclusion that cinnamyl anthranilate is a carcinogen for mice. FEMA further argued that other factors may have contributed to or produced the observed results. FEMA cited a number of possible contributing factors, such as high dietary level of an unpalatable ingredient, gavage with such an ingredient, metabolic stress, or unknown toxicant-nutrient interaction.

FEMA submitted a list of studies-in-progress on cinnamyl anthranilate. According to FEMA, these studies were designed to test the hypothesis that the liver "damage" observed in the NCI bioassay resulted from enzyme induction caused by the high levels of cinnamyl anthranilate fed in the bioassay. FEMA stated that it was cosponsoring these studies with the Research Institute for Fragrance Materials and requested that FDA delay final action on the proposal until the results of these studies were available for review. FDA effectively granted the request by deferring final action on the proposal until after receipt of the studies.

A. Maximum Tolerated Dose

FEMA argues that the NCI bioassay did not satisfy the conditions and definition of maximum tolerated dose. According to NCI, the maximum tolerated dose should be selected for each sex of each strain to be used in a chronic study and is the highest dose of the test agent given during the chronic study that can be predicted not to alter the animal's normal longevity from effects other than carcinogenicity. The maximum tolerated dose is estimated after a review of the subchronic data. The maximum tolerated dose should be the highest dose that causes no more than a 10 percent weight decrement, as compared to the appropriate control groups, and that does not produce mortality, clinical signs of toxicity, or pathologic lesions (other than those that may be related to a neoplastic response) that would be predicted to shorten the animal's natural life span. (Guidelines for Carcinogenicity Bioassay in Small Rodents—NCI-CG-TR-1, pp. 14-15.)

The highest dose of cinnamyl anthranilate, which was selected by NCI on the basis of the results of subchronic study, met the requirements of this definition. It did not cause more than a 10 percent decrement in weight gain in the subchronic study. Although it did cause a 30 percent decrement in weight gain in treated animals in the chronic study, it did not affect mortality or induce any clinical signs of toxicity (other than carcinogenicity) in the chronic study. With regard to the selection of the high dose, the view of a number of experts, and the one that the agency has held, is that that depression of weight gain from the maximum dose does not invalidate a study so long as it is compatible with prolonged survival. (See, Page, N., "Concepts of a Bioassay Program in Environmental Carcinogenesis," *Environmental Cancer*, 3, "Advances in Modern Toxicology," Wiley & Sons 1979, and other references that FDA has filed with the Dockets Management Branch.) Therefore, FDA believes that the decrement in weight gain in the high-dose group does not provide a basis for invalidating NCI's finding of carcinogenicity.

B. Mouse Strain Used

As for FEMA's second issue, the agency recognizes that the $B_6C_3F_1$ hybrid mouse, the strain of mouse used in the NCI carcinogenesis bioassay program, has long been a subject of scientific debate because of the high incidence of spontaneous liver neoplasms in these animals. Nonetheless, the $B_6C_3F_1$ mouse is still

widely used in carcinogenic bioassays. The Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation of the National Toxicology Program (NTP) has recommended that this strain of mouse be continued as one of the rodent species used in its bioassay program because of the long history of use of this mouse strain and because of the availability of data on spontaneous tumor rates at specific organ sites in this strain.

C. Housing of Test Animals

The evidence from the NCI bioassay report does not support FEMA's claim that the animals used in the cinnamyl anthranilate bioassay were affected by the other compounds that were tested in the same room. The agency acknowledges that rats and mice fed cinnamyl anthranilate during the chronic phase of the study were housed for 3 weeks with animals (rats and mice) that were being used in subchronic testing of 4,4'-oxydianiline (later shown to be a liver carcinogen in both rats and mice of both sexes) and for 10 weeks with animals (rates and mice) that were being used in subchronic testing of 2,6-toluenediamine dihydrochloride (later shown not to be a carcinogen). The agency concludes, however, that the housing conditions during the bioassay on cinnamyl anthranilate did not affect the results of this bioassay. There are several reasons for this conclusion:

(1) The exposure, if any, of the animals in the cinnamyl anthranilate bioassay to either 4,4'-oxydianiline or 2,6-toluenediamine dihydrochloride would have been extremely low. Any exposure of 4,4'-oxydianiline or 2,6-toluenediamine dihydrochloride by animals in the cinnamyl anthranilate bioassay would have occurred through transfer of material in the vapor state. However, both of these chemicals have high melting points (190 °C for 4,4'-oxydianiline and 105 °C for 2,6-toluenediamine dihydrochloride). Therefore, the agency believes that very little, if any, of these two chemicals would vaporize at room temperature.

(2) The length of any exposure of the animals in the cinnamyl anthranilate bioassay to either 4,4'-oxydianiline or 2,6-toluenediamine dihydrochloride was very short compared to their exposure to cinnamyl anthranilate. The agency does not believe that such short exposure to either of these chemicals (3 weeks for 4,4'-oxydianiline and 10 weeks for 2,6-toluenediamine dihydrochloride) would have any significant effect on liver tumor induction in mice when compared to the 104 weeks the animals were exposed to cinnamyl anthranilate. In two separate chronic bioassays, animals fed 2,6-toluenediamine dihydrochloride were housed for the entire 2-year period in the same room with animals being fed 4,4'-oxydianiline. Although both rats and mice of both sexes fed 4,4'-oxydianiline demonstrated significant increases in liver neoplasms as well as tumors at other organ sites, neither rats nor mice receiving 2,6-toluenediamine dihydrochloride exhibited significant increases in tumor incidence.

(3) Some groups of animals in the cinnamyl anthranilate bioassay did not develop an increased incidence of liver tumors, even though they were housed with animals fed 4,4'-oxydianiline. For example, the control mice in the cinnamyl anthranilate study did not develop a significant increase in liver tumors when compared with the historical rate of this strain of mouse at the performing laboratory. In addition, the rats fed cinnamyl anthranilate did not develop significant increases in liver tumors.

For these reasons, the agency does not believe that the presence of animals being fed 2,6-toluenediamine dihydrochloride or 4,4'-oxydianiline in the same room for a short period of time with the animals on cinnamyl anthranilate compromised the outcome of the cinnamyl anthranilate study.

D. Interpretation of Mouse Liver Proliferative Lesions

As noted above, FEMA asserts that cinnamyl anthranilate had not been shown to cause cancer in mice. Although FEMA agreed that there was a significant increase in the incidence of hepatocellular carcinomas in female mice in the high-dose group, it questioned whether benign and malignant tumors occurring in the same tissue and at the same organ site should be separated or combined for statistical analysis.

Both the Subcommittee on Environmental Carcinogenesis of the National Cancer Advisory Board ("General Criteria for Assessing the Evidence for Carcinogenicity of Chemical Substances: Report of the Subcommittee on Environmental Carcinogenesis, National Cancer Board," *Journal of the National Cancer Institute*, 58:461–4865, 1977) and the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation Report of the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation, U.S. Government Printing Office, 1984–421–132:4726, pp. 266–233, August 17, 1984) have recommended that benign tumors at certain organ sites (liver is one of the cited examples) should be combined with malignant tumors occurring in the same tissues and at the same organ site for the purpose of statistical evaluation. The agency has followed these recommendations in its analysis of tumor data.

Hence, in analyzing the results of the NCI bioassay on cinnamyl anthranilate, the agency noted that cinnamyl anthranilate induced a statistically significant increase in the incidence, when compared to the concurent control groups, of hepatocellular adenomas alone, hepatocellular carcinomas alone, and hepatocellular adenomas plus carcinomas in femal mice. FDA also noted a statistically significant increase in hepatocellular adenomas alone and hepatocellular adenomas plus carcinomas, but not hepatocellular carcinomas alone, in male mice. These increases were dose related.

Other biological evidence from the NCI bioassay on cinnamyl anthranilate was consistent with a finding that cinnamyl anthranilate is carcinogenic. (1) Hyperplastic lesions were found in the liver of treated, but not control, animals. (2) The latency period for the onset of the liver tumors found in the treated groups was shorter than for the tumors found in control animals. (3) The degree of malignancy of the tumors was higher in the treated groups than in the control group, as evidenced by numbers of metastases. In light of all of these findings, NCI concluded that "under the conditions of this bioassay, cinnamyl athranilate was carcinogenic for male and female B6C3F1 mice, including increased incidences of hepatocellular adenomas or carcinomas." FDA agrees with this conclusion.

FDA concludes that the NCI mouse bioassay of cinnamyl anthranilate meets defined criteria for a valid carcinogenicity study and thus provides an adequate basis for the agency to assess the safety of cinnamyl anthranilate as a food additive.

II. New Data Submitted by FEMA

In January 1984, FEMA submitted to FDA prepublication data from pharmacokinetic/metabolic studies of cinnamyl anthranilated in mice. These data were from three studies: a single-dose gavage study, a 4-day feeding study, and a 19-day feeding study. FEMA contended that these studies would demonstrate that the doses used in the NCI carcinogenicity bioassay were in excess of the animal's capacity to metabolize cinnamyl anthranilate, and thus that the results obtained at high doses in that study are of little value in assessing the safety of cinnamyl anthranilate.

FDA has completed its review of all the data submitted by FEMA. FEMA

asserts that the liver tumors in the mouse bioassay resulted from enzyme induction in the liver caused by the high dose of cinnamyl anthranilate. FEMA claims that support for this hypothesis is provided by observed metabolic alterations in the experiments it conducted at the doses used in the NCI bioassays. The data that FEMA provided, however, did not link these alterations to the liver tumors observed in the chronic bioassay. Moreover, it is not possible to determine whether the alterations observed in FEMA's experiment were a real effect because they were seen only in a single experiment that involved few animals and were of questionable biological significance.

The agency finds that the data submitted are not adequate to support the hypothesis that cinnamyl anthranilate causes liver tumors in mice by a secondary mechanism, and, hence, that there is no basis on which to establish a threshold for the carcinogenicity of cinnamyl anthranilate. Therefore, the agency concludes that there is no basis for altering its previous conclusions base on the NCI bioassay. The agency will evaluate any additional data submitted on this issue and will consider whether, in the light of such data, the status of cinnamyl anthranilate should be changed.

It should be noted that although FDA has calculated a risk estimate for ingestion of cinnamyl anthranilate (47 FR 22546), that estimate was for the purpose of determining whether a product recall should be proposed. The agency does not believe that the data underlying that risk assessment permit a broader regulatory judgment concerning the carcinogenic risk of cinnamyl anthranilate, and no additional data have been submitted. Moreover, as noted in the proposal, an industry survey indicated that there was not food use of cinnamyl anthranilate, and that the only manufacturer of cinnamyl anthranilate had ceased to make it before the date of the proposal. Concsequently, there is both insufficient information to assess the risk posed by use of cinnamyl anthranilate and no reason to do so in view of the lack of any known current use of the additive in food.

III. Conclusion

Therefore, after evaluating the issues raised, the information submitted as comments on the proposal, and all other available evidence, the agency has determined that no change in its proposed action on cinnamyl anthranilate is warranted. Under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), the agency is removing cinnamyl anthranilate from the list of food additives permitted for direction addition to human food (21 CFR 172.515) and establishing a new regulation (21 CFR 189.113) prohibiting its use in human food. Under this rule, the addition of cinnamyl anthranilate to food would cause the food to be adulterated within the meaning of section 402(a) of the act (21 U.S.C. 342(a)) and would subject the food to regulatory action. Should new data be submitted on the basis of which cinnamyl anthranilate can be approved, the regulation prohibiting its use in food will be withdrawn.

The agency concludes that the protection of the public health does not require the recall of food (including intermediates) containing cinnamyl anthranilate from the market or the destruction of food to which the substance has already been added. There are no fixed criteria for deciding whether to recall a product. Each case must be judged on its own facts.

As noted, according to FDA's information, cinnamyl anthranilate is not currently used in the United States. Consequently, it is likely that very few, if any, food products that contain cinnamyl anthranilate remain on the market. Therefore, the agency believes that it is appropriate to permit the depletion of stocks of any food products (including intermediates) that do contain cinnamyl anthranilate that may have been manufactured before the effective date of the final rule.

Any person who will be adversely affected by this regulation may at any time on or before November 22, 1985 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. The filing of objections and a request for a hearing on regulations on food additives does not automatically stay the effect of the regulations. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (May 25, 1982; 47 FR 22545). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency has considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has also assessed the potential economic effects of this rule and determined that the rule is not a major rule as defined in Executive Order 12291. The agency has not received any new information or comments that would alter these determinations.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities are contained in a threshold assessment in the docket for this proceeding, found in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects

21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

21 CFR Part 189

Food ingredients, Prohibited food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 172 and 189 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 is revised to read as follows:

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

§ 172.515 [Amended]

2. In § 172.515 *Synthetic flavoring substances and adjuvants* in paragraph (b) by removing the entry "Cinnamyl anthranilate".

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

3. The authority citation for 21 CFR Part 189 is revised to read as follows:

Authority: Secs. 201(s) 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

4. By adding new § 189.113 to read as follows:

§ 189.113 Cinnamyl anthranilate.

(a) The food additive cinnamyl anthranilate ($C_{16}H_{15}NO_2$, CAS Reg. No. 87–29–6) is the ester of cinnamyl alcohol and anthranilic acid. Cinnamyl anthranilate is a synthetic chemical that has not been identified in natural products at levels detectable by available methodology. It has been used as a flavoring agent in food.

(b) Food containing any added cinnamyl anthranilate is deemed to be adulterated in violation of the act based upon an order published in the **Federal Register** of October 23, 1985.

Dated: October 16, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–25201 Filed 10–18–85; 1:53 pm]

BILLING CODE 4160–01–M

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21 CFR Parts 436 and 440

[Docket No. 85N–0393]

Antibiotic Drugs; Amoxicillin Trihydrate-Clavulanate Potassium Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of amoxicillin trihydrate-clavulanate potassium, amoxicillin trihydrate-clavulanate potassium chewable tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 23, 1985. Comments, notice of participation, and request for hearing by November 22, 1985. Data, information, and analyses to justify a hearing by December 23, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of amoxicillin trihydrate-clavulanate potassium, amoxicillin trihydrate-clavulanate potassium chewable tablets. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 440 (21 CFR Parts 436 and 440) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 23, 1985. However, interested persons may, on or before November 22, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 22, 1985, a written notice of participation and request for hearing, and (2) on or before December 23, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, Parts 436 and 440 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Part 436 is amended in § 436.215 by alphabetically inserting a new item into the table in paragraph (b) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Stirring blade[1]	Sampling time(s)
Amoxicillin trihydrate and clavulanate potassium chewable tablets	900 mL distilled water.	75	30 minutes.

[1] Stirring blade rotation rate (revolutions per minute).

* * * * *

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 440 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. Part 440 is amended by adding new § 440.103f to read as follows:

§ 440.103f Amoxicillin trihydrate-clavulanate potassium chewable tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate-clavulanate potassium chewable tablets are composed of amoxicillin trihydrate and clavulanate potassium with or without one or more suitable lubricants, diluents, flavorings, and binders. Each tablet contains amoxicillin trihydrate equivalent to either 125 or 250 milligrams of amoxicillin and clavulanate potassium equivalent to 31.25 or 62.5 milligrams of clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams of clavulanic acid that it is represented to contain. Its moisture content is not more than 6 percent. It passes the dissolution test if the quantity Q, of amoxicillin at 30 minutes, is 85 percent or greater. The amoxicillin trihydrate conforms to the standards prescribed by § 440.3(a)(1). The clavulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5 of the chapter, this drug shall be labeled *"amoxicillin-clavulanate potassium chewable tablets".*

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, safety, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for amoxicillin content, clavulanic acid content, moisture, and dissolution rate.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 100 tablets.

(*b*) *Tests and methods of assay*—(1) *Amoxicillin and clavulanic acid contents.* Proceed as directed in § 436.351 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl hydrocarbon bonded silicas. Reagents, working standard and sample solutions, system suitability requirements, and calculations for amoxicillin or clavulanic acid content are as follows:

(i) *Reagents*—(*a*) *0.05M Sodium phosphate buffer solution, pH 4.4.* Transfer 7.8 grams of sodium monobasic phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust the pH to 4.4±.1 with 18*N* phosphoric acid or 10*N* sodium hydroxide. Dilute to volume with distilled water. Mix Well.

(*b*) *Mobile phase.* Mix methanol: 0.05*M* sodium phosphate buffer solution, pH 4.4 (5:95 v/v) and ultrasonicate for no less than 2 minutes. Degas by passing through a 0.5-micron filter with vacuum. The mobile phase may be sparged with the helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of methanol to aqueous buffer as necessary to obtain satisfactory retention of the peaks.

(ii) *Working standard and sample solutions—(a) Preparation of working standard solution.* Dissolve and dilute accurately weighed portions each of the amoxicillin trihydrate working standard and the clavulanate lithium working standard with water to obtain a solution containing 0.5 milligram of amoxicillin and 0.25 milligram of clavulanic acid per milliliter. Use within 1 hour after preparation or within 4 hours if stored under refrigeration.

(*b*) *Preparation of sample solution.* To obtain a concentration of 0.5 milligram of amoxicillin per milliliter, dissolve a representative number of tablets in water with the aid of a magnetic stirrer or ultrasonication. Filter an aliquot through Whatman #42 filter paper or equivalent, discard the first 10 milliliters of filtrate, and use the remaining portion as the sample solution. Alternatively, a suitable membrane filter may be used. Prepare samples not more than 1 hour before the chromatographic injection.

(iii) *System suitability requirements—(a) Tailing factor.* The tailing factor (T) is satisfactory if it is not more than 1.5.

(*b*) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates in a 30-centimeter column for each active component.

(*c*) *Resolution.* The resolution (R) between the clavulanic acid and amoxicillin peaks is satisfactory if it is not less than 3.5.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.351(b) of this chapter.

(iv) *Calculations.* Calculate the milligrams of amoxicillin or clavulanic acid content per tablet as follows:

$$\text{Milligrams of amoxicillin or clavulanic acid per tablet} = \frac{A_u \times C_s \times \frac{V}{}}{A_s \times N}$$

where

A_u = Response of the amoxicillin or clavulanic acid peak in the chromatogram of the sample (at a rentention time equal to that observed for the standard);

A_u = Response of the amoxicillin or clavulanic acid peak in the chromatogram of the amoxicillin or clavulanic acid working standard;
C_s = Concentration of standards in milligrams of amoxicillin or clavulanic acid per milliliter of the standard solution;
V = Volume of sample solution (milliliters); and
N = Number of tablets taken for assay.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. Dissolution rate is determined by dissolution of the amoxicillin component using the high-performance liquid chromatographic assay described in this section.

Dated: October 11, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-25202 Filed 10-22-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Farmland Industries, Inc., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make completed feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., Kansas City, MO 64116, is the sponsor of a supplement to NADA 46-415 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in chickens, beef cattle, and swine. The supplement is approved and the regulations are amended to reflect the approval.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. In § 558.625 by revising paragraph (b)(83) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(83) To 021676: 5-, 10-, 20-, and 40-grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

Dated: October 11, 1985.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 85-25204 Filed 10-22-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Farmland Industries, Inc. The supplement provides for manufacturing premixes containing 5, 10, or 20 grams per pound each of tylosin and sulfamethazine used to make finished swine feeds. The regulations are also amended to codify a previously approved premix containing 40 grams each of tylosin and sulfamethazine for the same uses.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., Kansas City, MO 64116, is sponsor of supplemental NADA 91-749 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of premixes containing 5, 10, or 20 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to subsequently make finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. The sponsor was previously granted approval for the manufacture of a premix containing 40 grams per pound each of tylosin and sulfamethazine. At that time, approvals were not routinely codified in the regulations. Accordingly, the regulations are also amended to reflect this previous approval.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human

environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and Sulfamethazine* is amended in paragraph (b)(10) by adding numerically the number "021676,"

Dated: October 11, 1985.

Richard A. Carnevale

Acting Associate Director for Scientific Evaluation Center for Veterinary Medicine.

[FR Doc. 85-25205 Filed 10-22-85; 8:45 am]

BILLING CODE 4160-01-M

POSTAL SERVICE

39 CFR Part 111

Detached Address Cards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule establishes a uniform size standard for all detached address cards, wherever their use is authorized, and enables the Postal Service to gain processing economies associated with letter-size mail. It also eliminates the present use of detached address cards of many sizes, which adversely affects the casing of mail.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. George Thomas, (202) 245-4512.

SUPPLEMENTARY INFORMATION: On August 5, 1985, the Postal Service published for comment in the **Federal Register** (50 FR 31628) proposed changes in sections of the Domestic Mail Manual relating to a uniform size standard for all detached address cards.

Interested persons were invited to submit comments on the proposed changes by September 4, 1985.

Written views were received from four commenters, all of whom favored establishing a uniform size standard for all detached address cards. However, while one commenter agreed with the maximum size of 4 by 9 inches, which we had proposed, three commenters suggested three different maximum sizes. One of these suggested that the maximum size be 6⅛ by 11½ inches (the maximum for letter-size mail as stated in 128.2, Domestic Mail Manual). The commenter said that this would make it possible to case detached address cards, but still afford mailers greater flexibility in using a card of specific dimensions that would not disrupt or add additional costs to mail processing. The Postal Service declines to adopt this suggestion. On some delivery routes, a card with a maximum height of five inches is all that can be effectively accommodated in the carrier casing equipment. In order to afford mailers the greatest amount of flexibility and to be consistent with Postal Service operational needs, we are changing the maximum size of a detached address card to five by nine inches.

The same commenter also asked that we not prohibit perforations on detached address cards, since it is easier for a consumer to separate a coupon along a perforated edge than to tear or cut it from a card. The commenter noted correctly that the proposed prohibition is designed to ensure that the card remains stiff enough to facilitate casing. Our experience with this type of card has demonstrated that carrier casing proficiency is greatly reduced when detached address cards are perforated. This is especially true when carriers attempt to case cards into cases which already contain other mail. For these reasons, the Postal Service declines to change the final rule to permit perforated detached address cards. We are, however, delaying the effective date of the final rule to March 1, 1986, to allow time for mailers to use existing stocks of perforated detached address cards.

Upon consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621; 42 U.S.C. 1973 cc-13, 1973 cc-14.

PART 452—ADDRESSING

2. Revise 452.41 to read as follows:

452.4 Address Cards.

.41a. The address card must be made of paper or cardboard stock.

b. The address card must NOT:

(1) be folded, perforated, or creased.

(2) measure less than 3½ by 5 inches.

(3) measure more than 5 by 9 inches.

(4) measure less than 0.007 of an inch thick.

c. The address for each flat must be placed on an address card. There must be one and only one address card for each flat. The address card must contain the recipient's address and the mailer's return address. Each address card must carry the following words in a bold type size of at least ⅛ inch:

Postal Service regulations require that this address card be delivered together with its accompanying postage paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster.

d. Nothing other than an address, the above quoted language, and an indicium of postage payment may appear on the front of the card, except for official pictures and data disseminated by the National Center for Missing and Exploited Children.

PART 661—ADDRESSING

3. Revise 661.331 to read as follows:

661.33 Address Cards.

.331a. The address card must be made of paper or cardboard stock.

b. The address card must NOT:

(1) be folded, perforated, or creased.

(2) measure less than 3½ by 5 inches.

(3) measure more than 5 by 9 inches.

(4) measure less than 0.007 of an inch thick.

c. The address for each flat must be placed on an address card. There must be one and only one address card for each flat. The address card must contain the recipient's address and the mailer's return address. Each address card must carry the following words in bold type size of at least ⅛ inch:

Postal Service regulations require that this address card be delivered together with its accompanying postage paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster.

d. Nothing other than as address, the above quoted language, and an indicium of postage payment may appear on the front of the card, except for official pictures and data disseminated by the

National Center for Missing and Exploited Children.

PART 664—MERCHANDISE SAMPLES

4. Revise 664.24 to read as follows:

664.2 Address Cards.

.24a. The address card must be made of paper or cardboard stock.

b. The address card must NOT:

(1) be folded, perforated, or creased.

(2) measure less than 3½ by 5 inches.

(3) measure more than 5 by 9 inches.

(4) measure less than 0.007 of an inch thick.

PART 767—PREPARATION OF BOUND PRINTED MATTER

5. In 767.7, redesignate 767.7g as 767.7i and revise and redesignate the introductory paragraph and 767.7a through f to read as follows:

767.7 Optional Handling of Bulk Mailings.

At the option of the mailer, address cards and unaddressed pieces mailed at bound printed matter rates, which are addressed for delivery only in the mailer's local parcel post zones, may be mailed separately for local delivery at the office of mailing, subject to all of the following conditions:

a. The address card must be made of paper or cardboard stock.

b. The address card must NOT:

(1) be folded, perforated, or creased.

(2) measure less than 3½ by 5 inches.

(3) measure more than 5 by 9 inches.

(4) measure less than 0.007 of an inch thick.

c. The address cards must show the full name, address, and either the ZIP +4 or the 5-digit ZIP Code of the sender and addressee and must be sorted by the mailer to the fourth and fifth digit of the ZIP Code.

d. Postage must be paid by permit imprints for each card including cards returned as undeliverable. The imprint may be placed on the pieces or on the cards (see 145).

e. The mailer must submit a completed Form 3605, *Statement of Mailing-Bulk Zone Rates*, with each mailing.

f. The total weight of pieces placed in a sack, carton, crate, or any other type of container must not exceed 70 pounds.

g. The mailer must send the address cards to the postmaster at the delivery office. It is recommended that the mailer include with the cards separate documentation specifying the number of pieces sent for each 5-digit ZIP Code delivery unit.

h. Address cards bearing incorrect, nonexistent, or otherwise undeliverable addresses are corrected or endorsed to show why they are undeliverable and returned to the mailer. Each envelope is rated with postage due at the address correction fee (see 712.2) for each address label contained in the envelope. At the request of the mailer, the postmaster will notify the mailer (at the mailer's expense and by any reasonable means specified by the mailer and approved by the postmaster) of the number of address labels being returned. The request for notification must accompany the labels. Correctly addressed labels will be held awaiting arrival of the pieces.

i. * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-25217 Filed 10-22-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[SW-FRL-2912-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the regulations on hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous six wastes generated during the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI). In addition, the Agency is amending 40 CFR 261.33(f) by adding two compounds to the list of commercial chemical products which are hazardous wastes when discarded, and is adding several toxicants to Appendix VIII of Part 261. The effect of this regulation is that all of these wastes will be subject to regulation as hazardous wastes under 40 CFR Parts 262–266, and Parts 270, 271, and 124.

DATES: Effective Date: This regulation becomes effective on April 23, 1986.

Compliance dates:

Notification—The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, he must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

Interim Status—All existing hazardous waste management facilities (as defined in 40 CFR 270.2) which treat, store, or dispose of hazardous wastes covered by today's rule, and which qualify to manage these wastes under interim status under section 3005(e) of RCRA, must file with EPA an amended Part A permit application by April 23, 1986 and meet the criteria in 40 CFR 270.72. Under the Hazardous and Solid Waste Amendments of 1984, a facility also is eligible for interim status if it was in existence on the effective date of any statutory or regulatory change under RCRA that requires it to obtain a section 3005 permit. See RCRA (amended) section 3005(e)(1)(A)(ii). Facilities which have qualified for interim status under section 3005(e)(1)(A)(ii) will not be allowed to manage the wastes covered by today's rule after April 23, 1985, unless they have an EPA identification number and they submit an amended Part A permit application with EPA by April 23, 1985.

If the facility has received a permit pursuant to section 3005, however, it will not be allowed to treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

ADDRESSES: The official public docket for this rulemaking is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical

information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 475-6728.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1984, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous six wastes generated during the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI). (See 49 FR 19608–19611.) The hazardous constituents in these wastes include carcinogenic, mutagenic, teratogenic, or otherwise chronically and acutely toxic compounds.[1] One or more of these toxicants are typically present in each waste at significant levels (although each waste does not contain all of the individual toxic constituents of concern); in addition, the hazardous constituents are mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. Furthermore, waste K111 is corrosive. (See the preamble to the proposed rule at 49 FR 19608 for a more detailed explanation of our basis for listing these wastes.) After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA had determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. In addition, the Agency proposed to add two compounds to the list of commercial chemical products which are hazardous wastes when discarded, as well as adding a number of toxic constituents to Appendix VIII, the list of contaminants identified by the Agency as exhibiting toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. (See 49 FR 19608–19611.)

The Agency received a number of comments on these proposed waste listings. We have evaluated these comments carefully, and have modified the regulations, as well as the supporting documentation, accordingly. This notice finalizes the regulation proposed on May 8, 1984, and outlines EPA's response to many of the comments received on that proposal. (EPA also received comments on the following issues: (a) Production processes and chemistry; (b) management of the wastes; (c) damage incidents; (d) fate and transport; and (e) toxicity of the hazardous constituents. The Agency's response to these other comments is set forth in the revised listing background document available in the public docket for this rulemaking at EPA Headquarters—see "ADDRESSES" section—and in the EPA regional libraries.)

II. Response to Comments

This section presents some of the major comments received on the proposed rule, as well as the Agency's response. (As stated above, the other comments are addressed in the revised listing background document.)

A. Clarification of the Scope of Waste K111—Product Washwaters From the Production of Dinitrotoluene Via Nitration of Toluene

One commenter felt that, because of the heavy emphasis on the TDI relationship, it was unclear if DNT produced as an intermediate to TNT (trinitrotoluene) production is included in the proposed listing. If it is, and if this proposal included the munitions industry, it should say so.

The commenter was correct that there was heavy emphasis on the production of toluene diisocyanate in the proposal; however, this is because these wastes are generated mostly in relation to the production of TDI. It also was stated in the premable, however, that the listing was not limited to TDI production; we clearly indicated that any wastes which meet the listing description and are generated by the processes described in the background document are included in this rulemaking, regardless of the end-product or industry in which it takes place (see 49 FR 19608). Accordingly, product washwaters from the production of DNT by nitration of toluene, as an intermediate to TNT production, also are covered by this listing. To clarify this point, the background document has been revised accordingly.

B. Clarification of the Scope of Waste K113-Light Ends From the Purification of Toluenediamine in the Production of Toluenediamine Via Hydrogenation of Dinitrotoluene

Several commenters stated that they concur with the Agency's implied decision not to include gaseous emissions as part of waste K113, but request this interpretation be explicity stated in the definition of "light ends." In addition, one commenter indicated that they are aware of EPA's concern that some operators may be tempted to heat liquid light ends in order to escape regulation (see 49 FR 5314, February 10, 1984). The commenter stated, however, that heating wastes so as to cause them to change to gaseous state would be a form of hazardous waste treatment and, therefore, subject to regulation (see 40 CFR 260.10).

As the commenters have correctly noted the Agency has not made a decision yet concerning the regulatory staus of condensible process emissions. In a previous proposal to list certain wastes from chlorinated aliphatics production (see 49 FR 5313–5315, February 10, 1984), the Agency claimed authority and proposed to list light ends which may be emitted in the gaseous phase, but condense to liquids at ambient temperature and pressure. The comment period for that rulemaking has ended, and the Agency is currently evaluating these comments. Until EPA reaches a decision in that rulemaking, the Agency has decided not to include the uncondensed light ends as part of the listing. Thus, as stated in the propoal, the waste stream being regulated as EPA Hazardous Waste No. K113 is light ends after condensation to liquid. (See 49 FR 19608.) To avoid any confusion, the Agency has modified EPA Hazardous Waste No. K113 to "Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene" to clarify this intent. This change has been made throughout the listing background document as well.

With respect to the comment regarding the heating of liquid light ends in order to escape regulation, we agree with the commenter that this would constitute treatment and would be subject to the appropriate regulations. We are explicitly stating this point in the background document to clarify this interpretation.

C. Total Organic Load and Waste Volume

Two commenters stated that the Agency has overstated the exposure and risk data by considering as hazardous the entire volume of wastes generated annually, instead of the actual amount of hazardous organic constituents.

The commenters are partially correct when they indicate that by looking at the total volume of waste, one may overstate exposure (*i.e.*, if the waste contains 99% water, one should not count this in considering one's exposure to the toxic compounds). Our analysis, however, did not look simply at the total volume of waste that is generated, but rather how this value relates to the

[1] The toxicants of concern for these wastes are: 2,4-dinitrotoluene, 2,4-tohuenediamine, *o*-toluidine, *p*-toluidine, aniline, carbon tetrachloride, tetracholorethylene, chloroform, and phosgene.

concentration in the waste, and the potential for these constituents to escape into the environment. In particular, the volume of waste that is generated has a direct relationship to the total amount of the hazardous constitutents that may escape into the environment (*i.e.*, the larger the volume of waste that is generated, the greater the potential for more toxicants to escape into the environment and cause a problem). In reviewing the data for those wastes, we see that the total mass loading for the specific hazardous constituent are:

Constituent	Total annual generation rate (KKG)
2,4-dinitrotoluene	342
2,4-toluenediamine	6513
o-toluidine	242
p-toluidine	162
Aniline	0.24
Carbon tetrachloride	113
Tetrachloroethylene	23
Chloroform	11
Phosgene	45

These quantities, in general, are quite high when considering the toxicity of the constitutuents, and the levels at which those constituents may cause a substantial hazard to human health and the environment. See the preamble to the proposal for more detailed discussion (49 FR 19608, May 8, 1984). In considering these quantities, EPA believes that the risk to those persons who may come into contact with these wastes may be substantial. We, therefore, believe that our analysis is sound, and that these wastes may pose a substantial hazard to human health and the environment.

One commenter stated that the total of 647,000 kkg of wastes produced annually is an improbability when compared with the total of 315,000 kkg production capacity for TDI.

The total of 647,000 kkg of waste generated annually is correct. This volume of waste is high compared to the production capacity because there is generally a large volume of water used in washing or purifying.

D. Concentrations of Hazardous Constituents

One commenter felt that by designating zero as the lower end of the concentration range for some hazardous constituents in the wastes, as at least a partial basis for listing, the Agency precludes potential future delisting based on data which demonstrates that none of the specified hazardous constituents (or any other Appendix VIII constituents) are present in the wastes. They object to using a zero concentration level as the lower end of the range, and request the Agency to reconsider and designate a more appropriate lower concentration threshold as a listing justification.

The range of concentrations of hazardous constituents reported in the preamble to the proposed rule is an aggregation of analytical results and data submitted by different facilities under RCRA section 3007, both of which are confidential business information (CBI). The data were presented in this way to protect CBI. In addition, due to process-specific variations, not all hazardous constituents may be present at a given facility. The zero, which was used in the background document, indicates either this, or that the particular hazardous constituent was not detected in an analysis, or was not reported in the RCRA section 3007 questionnaries. The designation "NR" was used in the preamble to the proposal for purposes of simplification. In order to clarify this point, the zeros in the background document have been changed to "†," with a footnote explanation of the term.

It should be noted, however, that the use of zero as a lower end of a range would not have precluded delisting. Facilities wishing to have their wastes delisted would have to demonstrate, among other things, that none of the hazardous constituents cited as the basis for listing the waste are present, or are present at concentrations which would not present a substantial hazard to human health or the environment, or although present in the waste in high concentrations, would not migrate from the waste into the environment (see 40 CFR 260.22(d)). Also, based on the Hazardous and Solid Waste Amendments of 1984, petitioners would have to provide sufficient information for the Agency to determine whether other factors (including if additional constituents are reasonably present in the wastes) cause the waste still to be hazardous.

E. Toxicity

One commenter provided a number of citations pertaining to toxicity of the hazardous constituents. The Agency has carefully reviewed them, and has decided that although additional data were available, the Agency's conclusions on toxicity should not change. None of these more recent data, unavailable at the time the Health and Environmental Effects Profiles (HEEPs) were developed, indicate that initial concerns on toxicity of the hazardous constituents were unfounded. See the listing background document for specific responses to these comments.

One commenter stated that the Agency should test the toxicity of the dilute waste stream proposed to be listed, rather than the pure hazardous constituents.

The commenter raises a good point. The Agency, however, has not yet developed a test to determine the toxicity of waste streams (*i.e.*, bioassay testing). Although the Agency is conducting research in this area, we don't expect to have a validated bioassay for several years. Until such a test is developed and put out for comment, the Agency will continue to use the criteria for listing wastes cited in 40 CFR 261.11. In particular, a waste will be listed as hazardous if it contains any of the substances listed in 40 CFR Part 261, Appendix VIII, unless, after considering a number of factors (see 40 CFR 261.11(a)(3)), the Administrator concludes that the waste is not capable of posing a substantial present or potential threat to human health or the environment if improperly managed.[2] (Substances are listed on Appendix VIII if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms.) The Agency has evaluated the wastes using these criteria and determined that they are hazardous. (See the preamble to the proposed regulation for a more detailed discussion of our basis for listing.)

Since the public comments on the proposal to list wastes generated during the production of DNT, TDA, and TDI have not changed the Agency's initial basis for listing these wastes, we are listing them in 40 CFR 261.32 in today's action.

(There are additional public comments and Agency response in the sections on CERCLA impacts, the regulatory status of hazardous waste-waters, and the regulatory impact analysis.)

F. Deletion of Three Hazardous Constituents

In the proposal to list these wastes as hazardous, we included 2,6-dinitrotoluene as a constituent of concern in EPA Hazardous Waste No. K111, and 2,6- and 3,4-toluenediamine as constituents of concern in EPA Hazardous Waste Nos. K112, K113, K114, and K115 (see 49 FR 19608–19611).

[2] Wastes will also be listed if they exhibit any of the characteristics of hazardous wastes (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity), or if they are defined as acutely hazardous.

As a result of comments received and a re-evaluation of these contaminants, we now believe that they should not be identified in Appendix VII as constituents of concern. In particular, both 2,6-dinitrotoluene and 2,6-toluenediamine, although toxic, are not present in the waste at significant levels (*i.e.*, if these contaminants were to migrate from the waste into the environment, the concentration expected at a nearby receptor well is expected to be below the health-based standard). See Table 5 of the revised listing background document. With respect to 3,4-toluenediamine, not enough data is available to calculate a health-based standard; as a result, we are not able to determine whether the concentration found in the waste is significant. Consequently, these compounds are not being included in the final rule as Appendix VII hazardous constituents.[3]

It should be noted that by removing these compounds as constituents of concern, we are not deleting any of the listings from the rule since all the listings still contain at least one specified hazardous constituent. In addition, it also should be clear that the Agency still believes that these contaminants are toxic. (See section V.C. on the health effects in the revised background document.) Therefore, 2,6-dinitrotoluene will remain on Appendix VIII of Part 261, while 2,6- and 3,4-toluenediamine are being added to Appendix VIII in today's rule (see section IV, below).

III. Substances Added to 40 CFR 261.33(f)

The Agency also proposed to add *o*- and *p*-toluidine to § 261.33(f). There were no comments received on this proposed action. The Agency, therefore, is finalizing their addition to § 261.33(f), the list of commercial chemical products or manufacturing chemical intermediates which are identified as hazardous wastes when discarded.

IV. Toxicants Added to 40 CFR Part 261, Appendix VIII

In addition, the Agency proposed to add *o*- and *p*-toluidine to Appendix VIII, as well as identify the specific isomers 2,4-, 2,6-, and 3,4-toluenediamine, which are already listed in Appendix VIII as toluenediamine. There were no comments received on this part of the proposal, either. Thus, the Agency also is finalizing this action.

V. Test Methods for New Appendices VII and VII Compounds

EPA is today adding nine compounds to Appendix VII (the basis for listing), some of which have not been identified before as constituents of concern. These are *o*- and *p*-toluidine and phosgene.

In addition, three compounds, 2,4-dinitrotoluene, 2,6-toluenediamine and 3,4-toluenediamine, which we proposed to add to Appendix VII, are not being listed as hazardous constitutents (see section II.F., above). However, as stated above, since they are toxic, 2,6- and 3,4-toluenediamine are being added to Appendix VIII; 2,6-dinitrotoluene is already on Appendix VIII.

Persons wishing to submit delisting petitions are to use the methods listed in Appendix III to demonstrate the concentration of these toxicants in the waste.[4] See, *e.g.*, 40 CFR 260.20(d)(1). Among other things, petitioners should submit quality control data demonstrating that the methods they have used yield acceptable recovery (*i.e.*, >50% recovery at concentrations above 1 μg/g) on spiked aliquots of their waste.

Accordingly, the Agency is designating test methods in Appendix III for all those compounds for which appropriate methods exist. Method Number 8250 is to be used for aniline, *o*- and *p*-toluidine, and 2,4-, 2,6-, and 3,4-toluenediamine. Method Numbers 8060 and 8250 are to be used for 2,6-dinitrotoluene.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783-3238, Document Number: 055-002-81001-2.

VI. CERCLA Impacts

All hazardous wastes designated by today's rule will, upon the effective date, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (at (800) 424-8802 or (202) 426-2675) of the release. (See CERCLA section 103 and 50 FR 13456-13522, April 4, 1985.)

In the May 8, 1984 proposal, the Agency stated that RQs of one pound would be imposed pursuant to CERCLA section 102(b) for the listed wastes (K111, K112, K113, K114, K115, and K116), as well as for the commercial chemical products, *o*- and *p*-toluidine, which were proposed to be added to 40 CFR 261.33(f). Although this rule is not changing Table 302.4 of 40 CFR 302.4, the RQs as stated here are effective upon the effective date of today's action, pursuant to the statutory requirements of CERCLA section 102(b). These listed wastes, as well as *o*- and *p*-toluidine, and their RQs, will be added to Table 302.4 at its next update.

Several comments were received on this provision. Two commenters stated that RQs of one pound for the listed wastes are unreasonable because the one-pound RQ category was intended to represent the pure substance, and not a dilute mixture. The commenters stated that the RQ for aqueous substances should be calculated by dividing the RQ for the pure constituent by that constituent's concentration in the waste.

The Agency's policy in this area is that the RQ for a hazardous waste is the lowest RQ of those established for each of the hazardous constituents in the waste. See 50 FR 13463, April 4, 1985. If a person completely analyzes the wastes, however, and determines that the amount of each constituent in the waste spilled is below the RQ established for that constituent, no notification is required. The commenters are correct about calculating the RQ for the listed wastes, as long as they can demonstrate this point. Since the composition of the wastes may vary, the burden is placed on the regulated community to determine the quantity of each constituent that is spilled. It should be noted, however, that CERCLA does not impose any testing requirements. Therefore, the releaser should use the RQ of the listed waste stream if the concentrations of the hazardous substances in the waste are not known.

One commenter felt that CERCLA section 101 is time-specific, that section 102 does not mandate one pound RQs, and that section 102 should be used in this instance. At the time of CERCLA passage, Congress defined CERCLA hazardous substances pursuant to section 101(14). This definition has nothing to do with being "time-specific," as suggested by the commenter. Rather, the statute states that when the Agency

[3] Although these contaminants are not being identified as Appendix VII hazardous constituents, petitioners who submit delisting petitions will need to address these compounds as part of their petition.

[4] Test methods are currently designated in 40 CFR Part 261 Appendix III for the following compounds: Method Numbers 8010 and 8240 are to be used for analyzing for carbon tetrachloride, chloroform, and tetrachloroethylene; Method Numbers 8090 and 8250 are to be used for analyzing for 2,4-dinitrotoluene.

adds new listings, as is the case with section 101(14)(C) of CERCLA for newly promulgated RCRA section 3001 hazardous waste listings, they automatically become CERCLA hazardous substances. In addition, section 102(b) of CERCLA mandates a one-pound RQ for any newly listed CERCLA hazardous substance until such time as the Administrator adjusts the RQ by regulation.

One commenter also stated that the Agency has not contemplated the cost of the retroactive application of CERCLA to the industry. The commenter is correct that our cost analysis did not contemplate the retroactive cost of application of CERCLA notification to the industry. However, there is no retroactive application involved. Notification pursuant to CERCLA section 103(a) need only occur when a hazardous substance, as defined in CERCLA section 101(14), has been released in an amount that equals or exceeds its RQ. Since the hazardous wastes described in this rulemaking action do not become CERCLA hazardous substances until the effective date of this final rule, there is no requirement to notify the National Response Center of past releases, and no retroactive application of CERCLA notification requirements to the industry.

Although it was not explicitly stated, the commenter may have been referring to all CERCLA costs, including clean-up costs. However, CERCLA clean-up costs are not a direct consequence of this listing decision and, thus, should not be included in the regulatory impact cost estimate.

VII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. The Agency believes that it is extremely important to clearly specify which EPA regulations implement HSWA, since these requirements are immediately effective in authorized States. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1 as discussed in the following section of this preamble.

B. Effect on State Authorizations

Today's announcement promulgates regulations that are effective in all States, since the requirements are imposed pursuant to section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(e)(2). Section 222 of those amendments states, "the Administrator shall make a determination of whether or not to list . . . the following wastes: . . . TDI (toluene diisocyanate) . . . ." This requirement is not limited to toluene diisocyanate or the wastes directly resulting from its production. The HSWA provision encompasses the entire TDI production process, including intermediates. In a June 9, 1982, letter following the RCRA Reauthorization hearings, Senator Chafee asked the Agency a number of questions, including which wastes EPA intended to list within two to five years. In his response, Lee Thomas, then Acting Assistant Administrator for Solid Waste and Emergency Response, answered that, among others, wastes from toluene diisocyanate production would be considered for listing. The Agency thus was considering a particular project which included DNT, TDA, and TDI wastes. This position is supported by the fact that DNT and TDA are often generated as intermediates in TDI production and so the wastes generated from their production can be ascribed to that process. In addition, the TDI proposal had been published on May 8, 1984, before the HSWA. The Agency often referred to this listing as "TDI," and we believe Congress did likewise in the HSWA. Accordingly, all wastes listed today are requirements under HSWA. This includes product washwaters from the production of DNT via nitration of toluene when the DNT is produced as an intermediate in the production of trinitrotoluene (TNT). These wastes are part of the TDI listing, which is a requirement of HSWA. Thus, EPA will implement the standards in nonauthorized States and in authorized States until they revise their programs to adopt these rules, and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program revisions under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may have listings similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these listings in lieu of EPA until the State program revision is approved. As a result, the regulations promulgated in today's rule apply in all States, including States with listings similar to those in today's rule. States with existing listings may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than

take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

VIII. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste regulations, tanks that are treating or storing hazardous wastewaters are exempt from the Parts 264 and 265 management standards when the treatment unit is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (CWA). (See 40 CFR 260.10 for definition of "tank.")

When wastewaters, including those covered by the listings promulgated today, are stored or treated in tanks, they are presently exempt from the Parts 264 and 265 management standards, whereas wastewaters that are stored or treated in surface impoundments are subject to regulation.

One commenter stated that treatment and disposal of the wastewaters listed in the proposal (K111 and K112) are currently controlled adequately by the NPDES regulations under sections 301, 302, 303, 304, 305, 306, 307, and 402 of the CWA; additional regulation will be burdensome, wasteful, and unnecessary. They also argue that if the proposed wastewater streams are listed as hazardous, then the wastewater treatment facilities receiving them will become subject to RCRA provisions.

The commenter is correct that when these wastewaters are listed, they will be subject to RCRA control. As indicated above, however, and as explained in the preamble to the proposed rule, when treated in tanks they will be exempt from regulation, but when treated in surface impoundments they will be subject to regulation. The commenter also believes that the CWA already adequately controls wastewater. We disagree. The CWA only controls the actual discharge point; any storage or treatment of these wastewaters before discharge is not controlled under the CWA. See 45 FR 33098, May 19, 1980, and 40 CFR 261.4(a)(2).

Furthermore, it should be noted that impoundments pose a particular threat of contaminating ground water and also have been one of the chief concerns of the hazardous waste management program. Not only is containment without a liner system probably impossible, but materials are constantly in the presence of liquids, creating the situation most conducive to forming leachate. Since most impoundments are unlined and many are underlain by permeable soils, the potential for downward seepage of contaminated fluids into ground water is high. Moreover, wastewaters do not always go to wastewater treatment facilities; some other known management methods of these wastewaters include surface impoundment and deep well injection. In addition, there may be other management techniques currently being employed of which the Agency is unaware at this time. Since the Agency has determined that these wastewaters are hazardous, they should be regulated as such. If any facility wishes to have its waste delisted, it can petition the Agency to do so.

IX. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. In the proposal, EPA addressed this issue by citing the results of an initial economic analysis that was conducted based on a worst case scenario (*i.e.*, none of these wastes are currently being handled as hazardous and, thus, they would be subject to the hazardous waste rules for the first time); the total combined cost was $52 million. The Agency received a number of comments on this figure.

One comment concerned the need for a review and consideration of the basis for deriving the Agency's cost estimates, and the consideration of facility-specific costs.

EPA agrees that both of these requirements should be addressed. The original economic analysis of this listing represented a worst case situation based on the total costs of hazardous waste management. An additional analysis that considers facility-specific costs has now been completed. The following approach was used in the revised economic impact analysis.

- For each facility generating the listed wastes, waste composition, waste generation rates, production volumes, waste management methods, RCRA compliance status, and economic profiles were characterized. These profiles were based primarily on information collected directly through industry surveys.
- The RCRA compliance requirements for each facility were projected, and incremental compliance costs were estimated. These compliance cost estimates were annualized, and include incremental Parts 262 and 264 compliance costs, permit modification costs, groundwater monitoring costs, and the incremental projected costs of new waste management methods. We also considered any requirements imposed by the new RCRA amendments. The sum of these costs for the regulated industry was compared to the $100 million threshold for a "major economic burden." Using this method, EPA estimated that the total annualized cost of the DNT/TDA/TDI listings is less than $500,000, which is well below the "major" rule threshold.
- The annualized compliance costs were used to calculate a series of ratios that measure economic impacts. The ratios calculated for DNT/TDA/TDI manufacturing facilities indicate that none of the facilities affected by the DNT/TDA/TDI listings will bear a significant economic burden.

Industry has requested that EPA make a revised economic impact assessment document available for review and extend the comment period for 60 days following the release of the document.

The revised economic impact assessment document contains mostly confidential business information (CBI) and, therefore, cannot be made public. In addition, sanitizing the analysis so that no CBI would be released would not provide much useful information. As a result, EPA did not put this analysis out for comment.

Although the commenters stated that the costs to industry are far higher than were stated in EPA's economic analysis, they failed to provide any data to support their allegations. EPA is using the revised economic analysis as the basis for the final figure.

As stated above, based on the revised economic analysis, the total combined cost for disposal of the wastes as hazardous is less than $500,000. In addition, we also evaluated the impact on the costs, prices, and markets of these products. Based on this evaluation, EPA has determined that major increases in consumer prices are not likely, and since these products have negligible foreign competition, the implementation of these regulations will have little or no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in either domestic or export markets.

EPA stated in the proposal that the addition of the new toxicants of concern to Appendix VIII also will not result in any significant increased burden in ground-water monitoring requirements. One comment addressed the issue of costs associated with adding compounds to Appendix VIII of Part 261. These costs are incurred by those land disposal facilities which have initiated ground-water compliance monitoring programs. See 40 CFR 264.99. The commenter stated that under current

regulations, such facilities are required to establish background values for the new Appendix VIII compounds in their ground water, and thus, the facilities will incur the additional costs associated with sampling and analysis.

The cost of monitoring for the additional Appendix VIII compounds is an insignificant portion of the cost of sampling for all Appendix VIII compounds. Both the cost of establishing background values and monitoring for new Appendix VIII compounds have been included in the economic impact analysis of the DNT/TDA/TDI listing and do not consitute a significant economic burden. The total cost of analyzing for all Appendix VIII compounds is approximately $5000. Each additonal compound is about $25, or about 0.5% of the total cost. therefore, the addition of two compounds (*o*- and *p*-toluidine) to Appendix VIII will add a minimal cost of about 1% to the total cost.

One commenter also raised the issue of start-up costs, such as the preparation of standards. The cost of preparation of standards is overhead built into the cost of analysis. Since most Appendix VIII analyses are performed by contract laboratories, these start-up costs will be shared by a large number of facilities.

Furthermore, one commenter pointed out that the new listing may require permit modification. The cost of permit modifications has also been included in the economic analysis of the listing and, likewise, does not constitute a significant economic impact. The cost of permit modifications is about 0.5% of the overall cost of getting a permit.

Furthermore, the addition of *o*-toluidine and *p*-toluidine to 40 CFR 261.33(f) (list of commercial chemical products) also will be minimal. Since the chemicals listed in § 261.33 are only hazardous when discarded, and we believe they are rarely discarded due to their inherent value, there will be minimal regulatory impact.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in costs of prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or export markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

X. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regualtory flexibility analysis.

XI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergrovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply

Dated: October 7, 1985

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 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), 6921, and 6922).

§ 261.32 [Amended]

2. § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
. . . . .		
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
. . . . .		

§ 261.33 [Amended]

3. In § 261.33(f), add the following entries in alphabetical order:

Hazardous waste No.	Substance
. . . . .	
U328	2-Amino-l-methylbenzene
U353	4-Amino-l-methylbenzene
U328	*o*-Toluidine.
U353	*p* Toluidine.
. . . . .	

Appendix III [Amended]

4. In Table 1 of Appendix III of Part 261, remove the column headed "First edition method(s)", revise the heading for the column now entitled "Second edition method(s)" to read "Method Numbers", and add the following compounds and analysis methods in alphabetical order:

Compound	Method numbers
. . . . .	
2-Amino-l-methylbenzene (*o*-Toluidine)	8250.
4-Amino-l-methylbenzene (*p*-Toluidine)	8250.
Aniline	8250.
2,6-Dinitrotoluene	8060 or 8250.
2,4-Toluenediamine	8250.
2,6-Toluenediamine	8250.
3,4-Toluenediamine	8250.
. . . . .	

Appendix VII [Amended]

5. Add the following entries in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
. . . . .	
K115	2,4-Dinitrotoluene.

EPA hazardous waste No.	Hazardous constituents for which listed
K112	2,4-Toluenediamine, *o*-toluidine, *p*-toluidine, aniline.
K113	2,4-Toluenediamine, *o*-toluidine, *p*-toluidine, aniline.
K114	2,4-Toluenediamine, *o*-toluidine, *p*-toluidine
K115	2,4-Toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.

* * * * *

Appendix VIII [Amended]

6. Add the following hazardous constituents, in alphabetical order, to Appendix VIII of Part 261:

Constituent
* * * * *
Benzene, 2-amino-1-methyl (*o*-Toluidine)
Benzene, 4-amino-1-methyl (*p*-Toluidine)
2,4-Toluenediamine
2,6-Toluenediamine
3,4-Toluenediamine
* * * * *

7. Change the hazardous constituent listing in Appendix VIII of Part 261 from "toluenediamine" to "toluenediamine, N.O.S."

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

8. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 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), and 6926).

§ 271.1 [Amended]

9. Section 271.1(j) is amended by changing Table 1 as follows:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
Jan. 14, 1985	Listing Dioxin-Containing Wastes.
Apr. 30, 1985	Paint Filter Liquids Test.
July 15, 1985	Codification Rule.
Oct. 23, 1985	Listing Wastes from the of Production of Dinitrotoluene, Toluenediamine, and Toluene Diisocyanate

[FR Doc. 85-25253 Filed 10-22-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6683]

Flood Plain Insurance; Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final Rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet the statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 USC 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subject in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganizaton Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
			Region I		
Massachusetts: Essex	Newburyport, city of	250097C	Oct. 6, 1972, Emerg.; Feb. 5, 1978, Reg.; Nov. 1, 1985, Susp.	July 26, 1974, Oct. 22, 1976, Feb. 15, 1978 and Nov. 1 1985.	Nov. 1, 1985.
			Region II		
New Jersey: Bergen	Oakland, borough of	345309C	June 30, 1970, Emerg.; June 30, 1970, Reg.; Nov. 1, 1985, Susp.	July 1, 1970, July 1, 1974, July 23, 1976, Aug. 20, 1982 and Nov. 1, 1985.	Do.
New York: Ulster	Rosendale, town of	360662B	Aug. 18, 1975, Emerg.; Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	May 31, 1974, July 2, 1976 and Nov. 1, 1985.	Do.
			Region III		
Maryland: Queen Anne's	Queen Anne, town of	240059E	Oct. 12, 1979, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Aug. 9, 1974 July 9, 1976 and Sept. 27, 1985.	Do.
Pennsylvania: Franklin	Waynesboro, borough of	420473A	May 4, 1973, Emerg., Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	Dec. 3, 1976 and Nov. 1, 1985	Do.
			Region IV		
Florida: Okaloosa	Valparaiso, city of	120176C	June 19, 1970, Emerg.; Apr. 1, 1977 Reg.; Nov. 1, 1985, Susp.	June 17, 1970, Jan. 9, 1975, Apr. 1, 1977 and Nov. 1, 1985.	Do.
Kentucky: Pike	Elkhorn City, city of	210356B	Sept. 1, 1979, Emerg.; Nov. 1, 1985 Reg.; Nov. 1, 1985, Susp.	Mar. 16, 1979 and Nov 1, 1985	Do.
			Region VI		
Louisiana:					
Jefferson	Gretna, city of	225198B	Aug. 14, 1970, Emerg.; June 18, 1971, Reg.; Nov. 1, 1985 Susp.	June 18, 1971, July 1,1974, Feb. 13, 1976 and Nov. 1, 1985.	Do.
Do	Kenner, city of	225201B	Nov. 13, 1970, Emerg., June 25, 1971, Reg., Nov. 1, 1985, Susp.	June 26, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.	Do.
Texas: Harris	LaPorte, city of	485467D	Aug. 28, 1970, Emerg.; Feb. 12, 1971, Reg.; Nov. 1, 1985, Susp.	Feb. 17, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.	Do.
			Region VII		
Missouri: St. Louis	Unincorporated areas	290327E	Sept. 3, 1971, Emerg.; Sept. 15, 1978, Reg.; Nov. 1, 1985, Susp.	Sept. 15, 1978, July 13, 1979, Nov. 16, 1983 and Nov. 1, 1985.	Do.
			Region VIII		
Wyoming: Uinta	Evanston, city of	560054	Mar. 2., 1977, Emerg.; Nov. 1, 1985, Susp.	May 21, 1976	Do.
			Region I Minimal Conversions		
Maine:					
Piscataquis	Brownville, town of	230161B	June 19, 1975, Emerg.; Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	Sept. 6, 1974 and Nov. 1, 1985	Nov. 1, 1985.
Somerset	Caratunk town of	230539A	Apr. 25, 1975, Emerg.; Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	Nov. 1, 1985	Nov. 1, 1985.
Do	Athens, town of	230354B	June 20, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Jan. 17, 1975, July 30, 1976 and Sept. 27, 1985.	Nov. 1, 1985.
Waldo	Knox, town of	230259A	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Jan. 17, 1975 and Sept. 27, 1985	Do.
Do	Liberty, town of	230259A	July 23, 1975, Emerg.; Sept 27, 1985, Reg.; Nov. 1, 1985, Susp.	Mar. 4, 1975 and Sept. 27, 1985	Do.
Somerset	St. Albans, town of	230369A	Aug 6, 1975, Emerg.; Sept 27, 1985, Reg.; Nov 1, 1985, Susp.	Apr. 11, 1975 and Sept. 27, 1985	Do.
Vermont:					
Rutland	Benson, town of	500259B	June 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Dec. 13, 1974, Oct. 8, 1976 and Sept. 27, 1985.	Do.
Orange	Braintree, town of	500235A	Nov. 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Dec. 13, 1974, May 8, 1979 and Sept. 27, 1985.	Do.
Orleans	Coventry, town of	500246A	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Feb. 21, 1975, and Sept. 27, 1985	Do.
Do	Derby, town of	500248B	Feb. 13, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Dec. 13, 1974, Nov. 19, 1976 and Sept. 27, 1985.	Do.
Essex	East Haven, town of	500209B	Mar. 16, 1976, Emerg., Sept 27, 1985, Reg., Nov. 1, 1985, Susp.	Dec. 13, 1974, May 7, 1976 and Sept. 27, 1985.	Do.
Chittenden	Hinesburg, town of	500322B	Mar. 5, 1976, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Jan. 31, 1975, Feb 7, 1978 and Sept. 27, 1985.	Do.
Bennington	Readsboro, town of	500017B	July 17, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	May 31, 1974, Feb. 18, 1977 and Sept. 27, 1985.	Do.
Do	Readsboro, village of	500182B	Nov. 3, 1975, Emerg.; Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	Aug. 9, 1974, Oct. 29, 1976, and Nov. 1, 1985.	Do.
Caledonia	Sheffield, town of	500194A	July 22, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Feb. 7, 1975, and Sept. 27, 1985	Do.
			Region IV		
Alabama: Tallapoosa	Alexander City, city of	010210A	Dec. 17, 1975, Emerg.; Sept 27, 1985, Reg.; Nov. 1, 1985, Susp.	Nov. 8, 1974, June 18, 1976 and Sept. 27, 1985.	Do.

State and county	Location	Community No.	Effective dates of authorization cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Kentucky: Lincoln	Hustonville, city of	210144B	Aug. 26, 1976, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Aug. 2, 1974, June 18, 1976 and Sept. 27, 1985.	Do.
Breathitt	Jackson, city of	210024B	July 21, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	May 17, 1974, Jan. 2, 1976 and Sept. 27, 1985.	Do.
Mississippi: Tallahatchie	Glendora, city of	280210B	Apr. 9, 1974, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Jan. 10, 1975, Dec. 9, 1976, and Sept. 27, 1985.	Do.
		Region V			
Illinois: Pulaskie	Ullin, village of	170566B	May 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Apr. 12, 1974, May 14, 1976 and Sept. 27, 1985.	Do.
Minnesota: Hennepin	Eden Prairie, city of	270159B	May 16, 1975, Emerg.; Sept. 27, 1975, Reg.; Nov. 1, 1985, Susp.	Mar. 1, 1974, Sept. 26, 1975 and Sept. 27, 1985.	Do.
Mille Lacs	Unincorporated areas	270624B	Apr. 15, 1974, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Feb. 2, 1979, and Sept 27, 1985.	Do.
		Region VII			
Iowa: Sioux	Rock Valley, city of	190253B	Sept. 24, 1976, Emerg.; Nov. 1, 1985, Reg.; Nov. 1, 1985, Susp.	Nov. 1, 1985.	Nov. 1, 1986.
Nebraska: Buffalo	Gibbon, city of	310015B	June 25, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	May 31, 1974, July 23, 1976 and Sept. 1, 1985.	Nov. 1, 1985.
Do.	Shelton, village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.	Mar. 19, 1976, Sept. 3, 1976 and Sept. 27, 1985.	Do.

Code for reading 4th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.
[1] Date certain Federal assistance no longer available in special flood hazard area.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.
Issued: October 17, 1985.
[FR Doc. 85-25238 Filed 10-22-85; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-1235; FCC 85-540]

Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order adopting guidelines.

SUMMARY: The Commission adopts guidelines which govern MTS optional calling plans offered by dominant carriers. The Commission believes the guidelines are necessary to permit dominant carriers, such as American Telephone & Telegraph Co., to offer flexible pricing packages to consumers in light of increased competition in the interstate long-distance market while protecting other ratepayers and promoting fair competition. The guidelines reject a requirement that the plans be based upon the carriers' fully distributed costs. Instead, the guidelines require that a plan be reasonably projected to increase net revenues for switched services (MTS and WATS) both within the 12-month period following the date local exchange carrier access charges are revised to reflect the optional calling plan-stimulated demand and within the 36-month period following the effective date of the plan. The guidelines also permit a dominant carrier to levy subscription, minimum monthly and termination charges, provided that they are cost-based and not anticompetitive. The Commission also requires that optional calling plans not be geographically deaveraged and that they be offered nationwide within a reasonable period of time. The Commission rejected other guidelines which had been proposed in the Notice of Proposed Rulemaking, such as zones of flexibility which would have permitted a dominant carrier without Commission approval to decrease its prices by 10 percent or to offer a plan involving less than $100 million in annual expenses.

EFFECTIVE DATE: October 17, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Greg Vogt or Beverly Baker at (202) 632-6917 or John Cimko at (202) 632-6387.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the matter of Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans, CC Docket No. 84-1235.

Adopted: October 4, 1985.
Released: October 17, 1985.

By the Commission: Commissioner Dawson dissenting in part and issuing a statement at a later date.

TABLE OF CONTENTS

I. Introduction

1. This proceeding was initiated to establish tariff review principles for certain message telecommunications service (MTS) offerings proposed by dominant carriers.[1] The guidelines

[1] CC Docket No. 84-1235, Notice of proposed rulemaking, 50 FR 1881 (Jan. 14, 1985) (*Notice*).

developed in this proceeding will be used to review optional calling plans (OCPs) such as the American Telephone and Telegraph Company (AT&T) PRO America plan which was recently rejected by the Commission,[2] and other supplemental MTS tariffs.[3] In developing these guidelines, and in connection with our inquiry in *Long-Run Regulation of AT&T's Basic Domestic Interstate Service*,[4] we seek to limit regulatory burdens on all dominant [5] suppliers of interstate MTS offerings while ensuring just, reasonable and nondiscriminatory rates for all consumers.

2. Under the Communications Act of 1934, it is unlawful for a carrier to charge unjust, unreasonable or unreasonably discriminatory rates. *See* sections 201(b) and 202(a) of the Act, 47 U.S.C. 201(b) and 202(a). In addressing the "reasonableness" of rates charged by AT&T, the Commission has traditionaly been concerned with protecting consumers from rates which were discriminatory or too high. With the increase in competition in the interstate telecommunications market, however, the Commission must also address whether the rates proposed by AT&T are anticompetitive or too low. There may be circumstances in which a reduced rate serves an anticompetitive purpose. The concern is that a dominant carrier might price without regard to cost, or deliberately sacrifice current revenues in order to drive competitors out of the market and then recoup its losses through higher prices and profits earned in the absence of competition.[6]

3. The guidelines developed in this proceeding will therefore constitute a policy statement designed to prevent anticompetitive behavior while allowing dominant carriers increased pricing flexibility. We view this action as a step toward the development of a fully competitive telecommunications market. These guidelines are intended to provide consumers with some of the benefits of competition as the telecommunications market continues to mature. These guidelines will supplment the Commission's traditional regulation of basic MTS offerings.

II. Notice of Proposed Rulemaking

4. In the *Notice* in this proceeding, the Commission discussed a number of proposed guidelines and policy statements regarding OCPs generally and individual rate elements of OCPs. The Commission asked interested parties to comment on the proposed guidelines and to address specific questions about the fully distributed cost (FDC) standard currently used by the Commission.

5. In particular, the Commission proposed and asked for comment on a guideline which would require the dominant carrier to demonstrate that its proposed OCP would increase net MTS revenues over a certain period. Alternatively, the Commission proposed a guideline in the *Notice* which would require tariff proposals to be reasonably projected to increase the contribution to overhead cost recovery within the relevant service category. The Commission also stated that it would consider alternatives such as a "zone of flexibility" for MTS rates.[7] Finally, it sought comment on how competitive responses might be taken into account in setting a standard.[8]

6. In addition to proposing pricing standards, the Commission requested comment on whether our "existing resale requirements, and the requirement that AT&T continue offering existing services along with new services, are sufficient to prevent unreasonable or unjust discrimination among customers." [9] Further, interested parties were asked to address multipart pricing.[10] We also asked for comment on whether any duration requirements should be imposed on OCPs or whether AT&T should be required to obtain advance approval before raising the rates charged under an OCP.[11] Comments were requested as well on whether a more elaborate version of the Interim Cost Allocation Manual (ICAM) could be used in tariff review or whether the standards enunciated in the *Private Line Guidelines Order* [12] should be applied to OCPs.[13]

7. In addition to proposing guidelines to be applied to OCPs generally, the *Notice* addressed, and requested comment on, certain OCP rate elements. The Commission asked commenters to discuss distance sensitive rate elements;[14] subscription, minimum monthly and termination charges;[15] and geographic deaveraging.[16]

8. The guidelines and rate elements discussed in the *Notice* and addressed in the comments are discussed in greater detail below. Lists of the parties who filed comments and replies appear in Appendices A and B, respectively, to this Order.[17]

III. Costing Standards

A. Fully Distributed Cost Standard

9. In the *Notice*, the Commission tentatively concluded that compliance with the FDC standard should not be the test of just, reasonable and nondiscriminatory optional MTS offerings.[18] Pricing which fails to recover fully distributed costs may, nonetheless, not be predatory or anticompetitive.[19]

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[2] AT&T Transmittal No. 301, filed Feb. 12, 1985. *See* AT&T Communications Tariff F.C.C. No. 1, PRO America Optional Calling Plan and Alascom, Inc., Tariff F.C.C. No. 1, Block-of-Time Call America, CC Docket No. 85-128, Memorandum Opinion and Order, FCC 85-510 (released Sept. 30, 1985).

[3] For the purpose of applying the guidelines established in this Order we are adopting the following definitions.

Basic MTS: MTS service as it was offered pursuant to AT&T tariffs in effect before June 7, 1984, the effective date of the AT&T "Block of Time" plan. *See* AT&T Communications: Revisions to Tariff F.C.C. Nos. 1 and 263 (Transmittal No. 79) Mimeo No 4711, released June 6, 1984, *aff'd* FCC 84-563, adopted Nov. 21, 1984 (*Block of Time Order*).

Optional Calling Plan: A supplemental or additional MTS offering which allows customers to take MTS under an alternative, non-traditional pricing mechanism. For example, an OCP may offer service on a distance-insensitive basis or in bulk at a reduced rate. An OCP may not involve changes to the rates or rate structure of the underlying basic MTS service.

[4] CC Docket No 83-1147, 96 FCC 2d 510 (1983) (*Long Run Inquiry*).

[5] Dominant and nondominant carriers are defined in the *Competitive Carrier Rulemaking*. Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) Second Report and Order, 91 FCC 2d 59 (1982); *recon.* 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, FCC 82-187, released Apr. 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo No. 33547, released June 14, 1983; Third Report and Order, Mimeo No. 012, released Oct. 6, 1983; Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 3d 1191; Sixth Report and Order, FCC 84-566, released Jan. 4, 1985, *rev'd*, MCI v. F.C.C. 765 F.2d 1186 (D.C. Cir. 1985).

[6] *See* III P. Areeda & D., Turner, Antitrust Law, para. 711b at 151. *See also* Southern Pacific Communications Co. v. American Tel. & Tel. Co., 740 F.2d 980 (D.C. Cir. 1984); MCI Communications Corp. v. American Tel & Tel. Co., 708 F.2d 1081, 1112 (7th Cir.), *cert. denied*, 464 US 891 (1983); Northeastern Tel. Co. v. American Tel. & Tel. Co., 651 F.3d 76, 86 (2d Cir. 1981), *cert. denied*, 455 U.S. 943 (1982).

[7] *Notice* at para. 40.

[8] *Id.* at paras. 33, 50-52.

[9] *Id.* at para. 46.

[10] *Id.* at paras. 47-49. Multipart pricing is defined as pricing with more than one rate element, such as a flat rate element plus a variable rate element.

[11] *Id.* at paras. 50-52.

[12] Private Line Rate Structure and Volume Discount Practices, CC Docket No. 79-248, 97 FCC 2d 923 (1984).

[13] *Notice* at para. 53.

[14] *Id.* at paras. 21-23.

[15] *Id.* at paras. 24-27.

[16] *Id.* at paras. 28-29.

[17] The late-filed reply comments of TDX Systems, Inc., and US Telecom, Inc., are hereby accepted.

[18] *Notice* at para. 34

[19] *Id. See* L. Johnson, Competition and Cross-Subsidization in the Telephone Industry 16-19 (1982).

As we found in the *Private Line Guidelines Order*, strict application of an FDC standard may inhibit the success of efficient firms, harm consumers and waste society's resources.[20] Additionally, an OCP that does not satisfy an FDC standard may, by stimulating demand and generating revenues which exceed the incremental costs of providing the OCP, thereby lead to lower MTS rates generally.[21]

10. The *Notice* asked for comment about the compatibility of the FDC standard with "an economic approach to telecommunications regulation" and the efficiency effects of reliance on the FDC standard.[22] Comment on whether certain equity considerations might only be met through the FDC methodology and whether the current ICAM procedures should be followed was also requested. Further, comment was sought regarding AT&T's incentives to reallocate common costs, the implications of an FDC standard for entry policies and what "dynamic considerations (productivity improvement and cost reduction) should govern exceptions to strict application of the FDC guidelines. . . ."[23]

11. In responding to the *Notice*, some commenters argue that the Commission should not move away from the FDC standard in reviewing OCPs. MCI, for example, argues that most of the concerns which prompted the Commission to adopt the FDC standard are still valid and that AT&T retains a number of advantages in the current telecommunications market. For example, MCI states, AT&T has a monopoly over "800 Service," and universal equal access is not yet available. MCI, Appendix A at 9–10; MCI Reply at 13–14. In its reply, MCI argues that although many commenters advocate abandonment of the FDC standard, they have not advanced a cost-based standard to replace FDC. MCI Reply at 11.

12. Competitive Telecommunications Association (CTA) argues that apart from the FDC standard, the Commission does not have a manageable cost methodology to protect against the danger that AT&T will file predatory and discriminatory rates. CTA at 2. The best alternative, CTA suggests, is to use the FDC standard but to allow AT&T to target first year earnings of a new offering to no more than 300 basis points below AT&T's midpoint authorized rate of return.[24] *Id.* at 2, 22–23; CTA Reply at 11.

13. In its comments, RCI Corp. (RCI) proposes that the Commission continue to use the FDC standard for a limited, specified transition period to permit recent and potential entrants to the telecommunications market to construct their networks. After the specified transition period, RCI argues, AT&T's MTS rates would be deregulated, but the FDC standard should be used until then. RCI at 10–15; RCI Reply at 19–20.[25] US Telecom also argues that the Commission should not move away from the FDC methodology and urges the Commission to terminate this proceeding. US Telecom at ii–iii, 14–15, 18–19.

14. In contrast to those who advocate use of the FDC standard for reviewing OCPs, AT&T, many of the Bell Operating Companies (BOCs), and the Department of Justice (DOJ) sharply criticize the FDC standard and argue that it has been discredited in economic literature and in the courts. Those commenters thus applaud the Commission's proposal to review OCPs under a different and more flexible standard than FDC.

15. AT&T contends that the Commission must move away from the FDC standard because application of that standard hinders AT&T's ability to make competitive offerings and diminishes the benefits of competition. The FDC standard, AT&T argues, provides a price "umbrella" which protects inefficient behavior by protected firms and denies consumers the benefits they would otherwise receive from the low-cost firm. AT&T Reply at 8–9. AT&T argues that requiring it to price on a FDC basis, while not requiring its competitors to do so, loads onto AT&T's offerings uneconomic costs which its competitors are not required to recognize. AT&T at 4. Also, AT&T contends, the current FDC standard is easily manipulated by unregulated carriers to delay AT&T's legitimate offerings. *Id.* at 5. According to AT&T, the regulation of basic MTS would not change under the proposed guidelines, and basic MTS rates would act as a price ceiling. On the other hand, the concern about unreasonably high rates is inapplicable to OCPs. Rather, the concern is predatory pricing, AT&T argues, and that concern is not addressed by the FDC standard because the FDC methodology does not distinguish between predation and legitimate price competition. *Id.* at 6.

16. Southwestern Bell (SWB) also concludes that the FDC methodology is economically inappropriate. SWB asserts that the fundamental flaw of the FDC method is the arbitrary allocation of joint and common costs among service categories. SWB at 2–4. Further, the standard has outlived its usefulness. SWB contends, because the two equity considerations which had been met by the FDC test are no longer appropriate. One consideration, SWB notes, is that in a monopoly environment, the FDC standard allows manipulation if common costs to produce subsidies which are consistent with public policy goals. Second, with open entry policies, SWB argues, the FDC methodology can artifically create competition where none exists. These considerations are inapplicable, however, because AT&T no longer has a monopoly and does face competition in the interstate telecommunications market, SWB maintains. *Id.* at 5–6. It claims that increased productivity and decreased costs can be expected if the Commission steps away from the FDC standard, because that standard maintains prices at an artificially high level. *Id.* at 7–8.

17. Other BOCs also argue that the FDC standard is economically inefficient. NYNEX, for instance, contends that the FDC methodology does not allocate the relevant economic costs and prevents efficient markets. The FDC standard allows for non-economic entry into the market by less efficient competitors, NYNEX agrues. NYNEX at 23–24. Similarly, Pacific Bell urges that use of the FDC standard encourages under-utilization of resources, impairs competition on the basis of relative efficiency and thereby harms consumers. Pacific Bell at 14. BellSouth also asserts that the FDC standard is incompatible with economic efficiency and leads to uneconomic entry, which in turn leads to over-investment and excess capacity. BellSouth at 2. Bell Atlantic suggests that the Commission abandon the FDC method for all services. Bell Atlantic at 7–8. US West also argues against the use of FDC studies and points out that state regulators have generally rejected the FDC standard. Fourteen of the states in

[20] *Private Line Guidelines Order* at paras. 36, 40.
[21] *Notice* at para. 34.
[22] *Id.* at para. 53
[23] *Id.*

[24] A basis point, used with reference to a rate of return expressed as a percentage, represents one one-hundredth of a percentage point.
[25] TDX Systems, Inc. (TDX) argues that a marginal cost standard will not maximize consumer welfare where a dominant firm has engaged in "predatory investment," that is, where it has intentionally invested in excess capacity. TDX at 15–18. It claims that AT&T, as a rate-base-regulated firm, has had the incentive to expand its rate base "by continuous, excessive expansion of plan." *Id.* at 16. The Commission's certification process under Section 214 of the Act, 47 U.S.C. 214, TDX contends, has not constrained such behavior. *Id.* at 17. TDX does not, however, assert in its comments that AT&T has in fact engaged in predatory investment.

which its companies provide service rely on incremental cost studies, US West asserts. US West Reply at 5–6.

18. DOJ contends that the FDC standard is inappropriate to determine whether an OCPO is just, reasonable and nondiscriminatory. Some approximation of a marginal cost standard rather than FDC should be used, DOJ argues. DOJ at 31–32. Use of FDC is unnecessarily restrictive and could promote inefficient use of interexchange facilities and services, DOJ reasons. DOJ Reply at 15–16.

19. We conclude that the FDC standard should not be used as a means of determining the reasonableness of OCP rates. A fundamental problem with using the FDC standard to review OCPs is that it relies on historical or embedded costs. Current and anticipated costs and revenues, however, rather than "sunk" historical costs, are generally the relevant factors influencing business decisions to enter markets and price products. *See MCI* v. *AT&T*, 708 F.2d at 1116–17. As discussed above, the concern about OCPs is not that they are priced too high, but whether they are priced too low.[26] For several reasons, in a competitive market the FDC standard is not a useful measure of whether rates are priced too low. The FDC standard results in "a quite arbitrary allocation of costs among different classes of service." *Id.* at 1116. Further, "FDC cannot purport to identify those costs which are *caused* by a product or service, and this is fundamental to economic cost determination." *Id.* (emphasis in original). It acts as a price "umbrella" which protects less efficient competitors from full price competition and, thus, can misallocate resources and result in higher prices and lower output for consumers. *Id.* at 1117; *see also Northeastern Tel. Co.* v. *AT&T*, 651 F.2d at 87.[27]

20. We also conclude that strict application of the FDC method is not necessary to prevent cross-subsidization of competitive services with revenues from monopoly services.[28] The Second Circuit considered the cross-subsidization argument but found it unpersuasive, pointing out that "when the price of an item exceeds the costs directly attributable to its production, that is, when price exceeds marginal or average variable cost, no subsidy is necessary. On the contrary, any surplus can be used to defray the firm's non-allocable expenses." *Northeastern Tel. Co. v. AT&T*, 651 F.2d at 90. Similarly, the Seventh Circuit rejected the cross-subsidization argument stating that:

> If AT&T were forced to price at FDA levels in competitive markets, its monopoly customers would probably be worse off. Because of the elasticity of demand in competitive markets, any rate substantially above [long run incremental cost] would cause AT&T to lose business against an equally efficient competitor and, hence, decrease AT&T's total revenue from competitive markets. There would be less revenue available from competitive services to contribute to the firm's joint or common costs, and monopoly customers would be required to provide a greater share of these costs.

MCI v. AT&T, 708 F. 2d at 1124.

21. We therefore conclude that departing from the FDA standard in favor of a standard that more closely approximates marginal or incremental cost for evaluating dominant carriers' OCPs will benefit competition and consumers in several ways. By reducing prices and increasing the service options available it will increase efficient utilization of the telecommunications network. This increased utilization will, by increasing total firm revenues, produce some contribution to the carrier's overall costs. It will, therefore, benefit the customers of the carrier's other services as well. Moreover, continued application of the FDC standard could well distort the development of competition and, ultimately, harm consumers by impairing the efforts of carriers to compete on the basis of relative efficiency. We are attempting in this proceeding to strike a balance between the competitive dangers of "predatory" pricing by dominant firms on the one hand and, on the other hand, the danger of stimulating economically inefficient entry by maintaining an artificially high pricing umbrella which serves to protect inefficient competitors and inflate prices to consumers. Finally, we recognize that as competitors increase their range of offerings, and increasingly impinge on the dominant carriers' markets, a competitive response by dominant carriers will be in the interest of consumers, as well as the dominant carriers themselves. Indeed, we believe this is the essence of the competitive process. The issue then is what standards or guidelines should be used to review OCPs, and that issue is addressed in the sections which follow.

B. Marginal Cost Standard

22. The Commission has determined that competition in the interexchange services market is feasible and desirable.[29] The standards used to test the reasonableness of OCPs must therefore be consistent with the goal of competition and efficiency. The courts which have criticized the FDC standard as inconsistent with such goals have looked to a marginal cost pricing standard as a better alternative. *See, e.g., MCI v. AT&T*, 708 F.2d at 1119–23; *Northeastern Tel. Co. v. AT&T*, 651 F2d at 90.

23. As this Commission well knows, however, there are problems with a marginal cost standard as well. *American Telephone and Telegraph Co., Long Lines Department*, Docket No. 18128, Memorandum Opinion and Order 61 FCC 2d 587 (1976). *American Telephone and Telegraph Company, The Associated Bell System Companies*, Docket No. 19129, Phase II Final Decision and Order, 64 FCC 2d 1 (1977), *recon.*, 67 FCC 2d 1429 (1978). As the commenters detail, there are severe practical difficulties in measuring marginal costs. *See* GTE at 12–14; TDX at 13–15; DOJ at 16. *See also* Areeda & Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 697, 716–18 (1975). As the Second Circuit has

[26] Should an OCP or other offering happen to cover its FDC as traditionally applied, however, there would be no concern that the offering is predatorily priced, even it is failed our other tests.

[27] The following example of the economic inefficiency which the FDC standard can cause is inspired by an example in Judge Wilkey's dissenting opinion in *Aeronautical Radio, Inc. v. F.C.C.*, 642 F.2d 1221, 1236 (D.C. Cir. 1980), *cert. denied*, 451 U.S. 920 (1981). Suppose Judge X accepts an invitation to participate in a law school moot court, with the law school paying for a hotel room costing $125 per night. Judge X's husband later decides to accompany Judge X even though the law school's moot court representative was unable to assure Judge X that her husband's expenses would also be paid by the law school. Judge X and Mr. X attend the moot court, and their hotel bill for two is $150 per night. Upon her return, Judge X sends the moot court board her itemized expenses explaining that she should be reimbursed for $150 a day if the board agrees to pay for her husband's trip or $125 a day, otherwise. Judge X then receives a check from the board reimbursing her for $75 per day. The note accompanying the check states that the board is unable to pay for the expenses of Judge X's spouse and, under a fully distributed cost methodology, it has allocated one half of the couple's daily $150 hotel bill to Judge X and one half to her husband. Judge X disagrees with the board's analysis because the room for one person would have cost $125 per day and she thinks that the relevant measure of Mr. X's stay is the $25 extra incurred for adding a second person in the hotel room. Had she known that the board was going to penalize her by calculating the costs in this manner she would not have asked Mr. X to accompany her but would have gone by herself at the agree all-expenses paid rate of $125 a day. As this example demonstrates, business decisions to add new services or incur additional expenses are based on anticipated costs and benefits rather than the fixed or historical costs.

[28] Application of an FDC standard, however, would be sufficient to alleviate concerns regarding predatory pricing.

[29] *MTS and WATS Market Structure*, CC Docket No. 78–72, Third Report and Order, 93 FCC 2d 241 (1983).

stated, "[m]arginal cost . . . cannot be generated by conventional accounting methods; it is an economist's construction." *Northeastern Tel. Co. v. AT&T*, 651 F. 2d at 87.

24. DOJ notes that the effectiveness of a marginal cost standard as a means of fostering an optimal allocation of resources and detecting predation is impaired by the Commission's current access charge system. Under the current method of assessing access charges, non-traffic sensitive costs are recovered through usage-based access charges. This recovery system, DOJ argues, is inefficient, is likely to result in market distortions and may give AT&T a lower marginal cost than its competitors for newly generated MTS traffic. DOJ at 16–17 nn.26 & 27. (*See* Section III.C, *infra*, for further discussion of access charges.)

25. The problems involved in applying a marginal cost standard lead us to conclude that we should not adopt it as a test for the review of OCPs. Our goal, in determining a standard for review of OCPs, is to prevent dominant firms from pricing in an anticompetitive manner while promoting fair competition. Because no non-traffic sensitive costs are associated with additional use of the network, we believe that a pure marginal cost standard would burden other customers with the need to provide revenues to cover the additional access charges which would result from the stimulation. DOJ suggests that the net MTS revenue test proposed in the *Notice* would be a useful proxy for a marginal cost pricing standard and would avoid application difficulties, yet be consistent with the goal of promoting fair competition. The net MTS revenue guideline is discussed in the section below.

C. Net Revenue Standard

1. Proposal in the Notice

26. In addition to requesting comment on the general question of whether the FDC standard should be applied to supplemental MTS tariffs, the Commission asked for comment on particular alternatives to the FDC test. The principal alternative standard proposed in the *Notice* is the net MTS revenue guideline. Under this test, the dominant carrier would have to show in its tariff support materials that a proposed MTS discount or package would increase the carrier's net MTS revenue, that is, its total MTS revenues less its total costs of providing MTS offerings, including access costs, over an appropriate period of time. *Notice* at para. 36. The dominant carrier filing an OCP would be required to specify its assumptions about demand, costs and revenues and to explain why those assumptions are reasonable. The OCP as a whole would be subject to the proposed standard. Individual components of the plan would not have to satisfy the net MTS revenue test. *Id.*

27. The rationale for this standard is that, if the OCP increased net MTS revenues over a reasonable period, it would not create a revenue shortfall burdening non-OCP customers and it would not, by definition, be receiving an anticompetitive subsidy from those customers. *Id.* The *Notice* proposed the requirement that OCPs be projected to increase net MTS revenues within 18 to 36 months. Projections over time are necessary because start-up expenses, such as marketing costs, may be incurred, demand for the offering may grow gradually and changes in some costs, for example switched access charges, will not occur simultaneously with the effective date of the offering.

2. Comments

28. Some commenters oppose the net revenue test as an unreliable means of preventing anticompetitive behavior by AT&T. *See, e.g.*, MCI at 6–10; MCI Reply at 2, 15–19; RCI at 4–7; CTA at 19–20; CTA Reply at 12–21; TDX at 18–20. These commenters suggest alternatives to, and refinements of, the proposed guideline. As noted above, CTA suggests that in lieu of the net MTS revenue standard, the Commission should allow more flexible use of the FDC standard. CTA proposes allowing AT&T to target the rate of return for an OCP 300 basis points below AT&T's authorized rate of return. CTA at 22–23; CTA Reply at 15.

29. The commenters opposing the proposed net MTS revenue test argue that it would not be an enforceable cost standard because it would rely on unverifiable estimates of demand, cost, demand elasticity and cross-elasticity of demand. MCI at 9; MCI Reply at 18; RCI at 4–7; CTA at 20; CTA Reply at 14–18; TDX at 18–20; GTE at 17–30. Several commenters argue that a net MTS revenue guideline will be illusory without highly reliable assumptions and estimates regarding demand, cost, demand elasticity and cross-elasticity of demand and other relevant factors. These assumptions and estimates, therefore, must be plainly provided and well-supported by the filing carrier. TDX at 18–20; TDX Reply at 29–30; DOJ at 21–22; GTE at 32; CTA Reply at 16–17.

30. Some commenters object to any marginal or incremental cost standard as unworkable under the current access charge plan. In addition to criticizing marginal or incremental cost pricing standards generally, the commenters raise three arguments against the proposed net MTS revenue standard relating to access charges and the proposed guidelines. First, a number of commenters emphasize that the transition to equal access is a crucial period in the development of competition. *See, e.g.*, MCI at Appendix C 3–10; RCI at 10–15; US Telecom at 7–12; ICA at 3; DOJ at 12. During this transition, customers will select their primary interexchange carriers and their choices are likely to be influenced, in part, by relative prices. The commenters suggest that a flexible costing guideline would not prevent AT&T from fashioning OCPs in a manner which would give AT&T an unfair advantage over competitors during the transition period.

31. A second argument is that the allocation of non-traffic sensitive costs on a traffic sensitive basis under the current access charge plan causes serious distortions and makes AT&T's marginal costs for newly generated traffic less than the marginal costs of equally efficient competitors. GTE at 26–28; TDX at 22–23; NYNEX at 6–11; NYNEX Response at 1–8; DOJ at 16–17, n.26, n.27; DOJ Reply at 18; MCI Reply at 25–26. The commenters argue that AT&T's alleged low marginal costs for newly stimulated MTS minutes are not a function of its efficiency but rather a function of the Commission's current transitional practice of recovering non-traffic sensitive costs by means of usage-based access charges and of AT&T's enormous size. *See, e.g.*, MCI Reply at 26; DOJ Reply at 18; NYNEX Response at 1.

32. The third argument relating to the access charge plan is that the current practice of recovering non-traffic sensitive costs through usage-based charges provides an incentive to AT&T to bypass local exchange carriers. NYNEX at 13–14; Pacific Bell at 6; USTA at 3–4; Bell Atlantic at 3–5. The commenters suggest that AT&T should not be permitted to use any savings from bypass and avoidance of access charges as a justification for proposed rate reductions. GTE at 30–32; USTA at 3–4. The burden of proof should be on AT&T, GTE contends, to demonstrate that the bypass is economic and, for all prospective customers of the OCP, the cost of bypass is less than the traffic sensitive rate elements for switched access. GTE at 31. The costs associated with an OCP in the projected net MTS revenue calculations should include traffic sensitive and non-traffic sensitive elements even if the OCP would bypass the local carrier. *Id.* at 30. NYNEX suggests that until economically efficient

access charges are implemented, AT&T should be required to obtain access for its OCPs through the local exchange carriers' switched access facilities. NYNEX at 17.

33. Aside from problems associated with the access charge plan, commenters raise a number of other issues regarding the proposed net MTS revenue standard. Some commenters argue that an 18- to 36-month projection period is too long. CTA proposes a 12- to 18-month period, GTE an 18-month period and DOJ a period of 18 to 24 months. CTA at 21; CTA Reply at 15; GTE at 18; DOJ Reply at 7–8. In contrast, AT&T argues that 36 months may not be long enough in some cases because some OCPs may have significant capital investment or extensive research and development costs. AT&T at 19. In most cases, AT&T states, 18 to 36 months would be sufficient but AT&T should be allowed to demonstrate why a longer start-up period would be necessary in a particular case. AT&T Reply at 23.

34. A few commenters argue that proposed OCPs should be required to meet the net revenue test on a present value basis. GTE at 16; GTE Reply at 5; DOJ Reply at 8; TDX Reply at 28. They contend that any prudent firm would analyze a new venture on this basis and if the Commission wishes to evaluate an OCP on an economic basis it must recognize that the value of funds is not constant from one year to the next.

35. GTE also recommends that the Commission require that each element of an OCP be priced above its incremental cost. GTE at 19. Thus, instead of applying the net MTS revenue test to the plan as a whole, GTE argues it should apply that test to each element of an OCP. On the other hand, AT&T argues that it should not be required to show an increase in net MTS revenues but rather should only be required to show an increase in net revenues for the firm as a whole or, given the competitiveness of the MTS environment, a smaller decrease in the firm's net revenues than would have occurred without the offering. AT&T at 16–17; AT&T Reply at 25–26. DOJ, agreeing with the Commission's position in the *Notice*, recommends that the test apply to the MTS category rather than to the firm as a whole. DOJ Reply at 6. DOJ and AT&T both argue, however, that an "increase" in net revenues should be interpreted to mean an increase over what net revenues would have been without the OCP, even if overall net revenues did not increase. AT&T at 17; DOJ Reply at 5–6.

36. TDX and DOJ argue that AT&T should not be allowed to reallocate costs to other service categories in calculating projected net MTS revenues. DOJ at 19 n.30; DOJ Reply at 17; TDX Reply at 29. They argue further that the net MTS revenue projection should not be permitted to include a projected price increase for any MTS category. DOJ at 19; TDX Reply at 29. TDX maintains that the filing carrier's projections of net MTS revenues should not reflect estimated reductions in the carrier common line (CCL) charge anticipated to result from stimulated demand. GTE at 21–23; GTE Reply at 6; TDX Reply at 28–29. The net MTS revenue calculations should, however, reflect reasonably anticipated MTS rate decreases resulting from CCL reductions. TDX Reply at 29.

37. A number of commenters suggest that the Commission "track" OCPs after they are implemented and compare actual to projected revenues, costs, investment, demand and other relevant factors. Ad Hoc at 13–15; Ad Hoc Reply at 13–14; ICA at 5–8; GTE at 12; CTA Reply at 13–15, 18–19. AT&T should be required to file reports, these commenters argue, and explain any variance between projected and actual results.

38. GTE suggests that AT&T be required to show that the OCP stimulates access minutes rather than merely transferring them from another service. GTE at 24–26; GTE Reply at 6.

> If AT&T wishes to avail itself of the argument that its marginal cost is reduced by stimulation of access minutes, then the burden should be on AT&T to show how many new minutes have been stimulated by a plan, and how many would have been carried by other services in the absence of the plan.

GTE at 25–26.

39. Some commenters suggest that shareholders and not ratepayers should bear any losses attributable to inaccurate predictions of the revenue-generating potential of OCPs. Ad Hoc at 2, 11–12; Ad Hoc Reply at 13; ICA at 6; DOJ Reply at 17 n.16. DOJ argues that the Commission should not allow AT&T to make up revenue losses attributable to inaccurate predictions by raising rates or decreasing them more slowly than they otherwise would as access charges or other costs fall. DOJ Reply at 17 n.16.

3. Discussion

40. After considering the comments about the FDC, marginal cost and net MTS revenue standards, we have decided to adopt a net revenue standard for reviewing OCPs which requires a projection of increased revenues for switched services. While a marginal cost standard might, as DOJ suggests, be the economic ideal, the net revenue test, appropriately constructed to accommodate an increasingly competitive environment, is both reasonable and is more easily implemented. DOJ at 18–23; DOJ Reply at 14–15. One important trade-off we must consider is whether, in the name of increased pricing flexibility, we are in actuality imposing costing standards which impose such substantial administrative penalties and attendant time lag as to, for practical purposes, impede flexibility. Our choice, therefore, of the net revenue test reflects this concern since we believe this is a practical standard from the point of view of implementation and review. While some commenters argue that even the net MTS revenue test is too lenient and AT&T argues that it is too stringent, we believe the net switched service revenue test to be a reasonable compromise to meet the dual objectives of granting AT&T more pricing flexibility while continuing to protect against anticompetitive pricing. DOJ at 14–21. We conclude that difficulty in applying the net revenue guideline does not warrant abandonment of that standard, but rather refinement of it. We will discuss a number of such refinements in this section.

41. We further conclude that the comments regarding the access charge plan do not present sufficient reason to reject the net revenue standard or to apply the FDC test to OCPs. The comments have pointed out three factors regarding the access charge plan: (1) The transition to equal access is a crucial period for the development of competition; (2) the recovery of non-traffic sensitive costs on a traffic sensitive basis creates distortions and makes AT&T's marginal access costs lower than the marginal access costs of its competitors; and (3) the current access charge system may create some incentives for AT&T to bypass the local exchange. None of these factors support adherence to the FDC standard as a test to determine whether rates are too low because none of them address the problem of how to allocate costs to a new service. The commenters raising questions about the access charge plan are, in essence, requesting reconsideration of our access charge decisions in CC Docket No. 78–72.[36] This

[36] MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983), *modified on recon.*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd and remanded in part sub nom.* National Ass'n of Regulatory Utility Comm'rs v. F.C.C., 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1224 (Feb. 19, 1985), *modified on third recon.*, 49 FR 46383 (1984), 50 FR 18249 (Apr. 30, 1985), *appeal pending*, United States Telephone, Inc. v. F.C.C., No. 84–1115 (D.C. Cir., filed Mar. 23, 1985), *recon. pending*.

is not the proper proceeding, however, in which to reconsider those decisions. We agree with DOJ that any distortions caused by the access charge system should be dealt with directly. DOJ Reply at 19.

42. While we remain very concerned about the effects of uneconomic bypass, we also decline to prohibit AT&T from "bypassing" the local exchange in offering an OCP. Such a flat prohibition would require a determination of what bypass and, in particular, what uneconomic bypass is—an inquiry beyond the scope of this proceeding. We further conclude that AT&T should not be prohibited from including adequately substantiated estimates of savings from bypass. Cost savings, if substantiated, should be considered in the net revenue test even if the savings result from action which the local exchange carriers would like to deter. Specific concerns about the detrimental public impact of any specific proposals, however, can be considered in tariff proceedings.

43. Some commenters criticize a net revenue guideline because it would require reliance upon projections. The use of projections and estimates is not unique to the net revenue standard, however, since any tariff revisions filed by dominant carriers must be based on projected demand and expenses. Moreover, as DOJ notes in its reply, AT&T will bear the ongoing burden of explaining and justifying the assumptions upon which its projections are based, and others will be able to challenge those assumptions and projections. *See* DOJ Reply at 16.

44. In our deliberations we have been cognizant of the fact that AT&T is no longer operating in an environment in which it is the only carrier. Therefore, new factors that we have not previously been required to take into account must be addressed. Prior to the appearance of competition in MTS, AT&T was the sole initiator of MTS tariff changes, including new offerings. Investigations of those offerings focused primarily on the potential for abuse of monopoly power. But for our regulatory oversight, AT&T would have had great discretion in setting prices for its services.

45. In particular, we recognize that the essence of an emerging competitive process is that firms which at one time may have had great discretion in setting prices are no longer free to do so without competitive consequences. If competitors offer similar services at lower prices,[31] a failure to match those prices may lead to a loss of customers, and in due time, may be an unprofitable course of action for the firm to follow. It may be in the self interest of the firm, quite apart from any predatory or other strategic motives, that it respond by lowering its prices.[32] We are not suggesting that "meeting competition" is, by itself, a sufficient standard by which to judge optional calling plans.[33] To the extent that a dominant firm's rivals, firms which surely do not have market power, offer volume discount or other calling plans during a lengthy period of time, however, this may suggest that such plans are consistent with cost-justified pricing.[34]

46. Competitive pricing is the process by which prices move closer costs. Such price reductions are clearly in the interest of consumers. Any process which forces firms to price closer to costs benefits consumers, even if the level of profit in the industry as a whole falls. This is one of the major reasons underpinning our pro-competitive policies, and we will not lose sight of this end as we employ various means to achieve a more competitive environment. Therefore, while we will, of course, remain alert to the possibility of price reductions that are predatory in either intent or effect, we will permit price reductions to become effective where clearly beneficial to consumers without also harming competition. We remain convinced that, ultimately, consumer welfare will be maximized by a competitive telecommunications market.

47. Several commenting parties argue that it is too soon to permit dominant carriers to price flexibly. These parties argue that any reduction in the regulatory strictures on dominant carriers should await full implementation of equal access pursuant to the Modification of Final Judgment.[35] We believe that the market for interstate long-distance services has changed significantly enough to take the limited step we are taking today. First, equal access end office conversions appear to be occurring according to schedule and are due to be substantially complete by September 1, 1986. In addition, our action in the *Allocation Order*[36] to allocate customers in equal access areas to participating interexchange carriers when those customers do not affirmatively select a carrier should also improve the competitiveness of the market.

48. Furthermore, we do not believe it to be wise as a matter of policy to prevent AT&T from engaging in any competition until it is determined that the market is "fully competitive." To restrain AT&T from competing until such a hypothetical degree of competition develops would send erroneous signals to the marketplace. By taking this step at this time we believe that we can provide consumers with limited benefits from competition while also ensuring that AT&T fairly competes.

49. We conclude that although several useful refinements to the net revenue test are proposed by the commenters, no conceptually relevant tests are provided which serve the Commission's dual objectives of affording AT&T greater pricing flexibility while continuing to protect against anticompetitive pricing.[37] Therefore, we have concluded that a number of refinements to the net revenue standard should be adopted. First, we adopt the recommendation of GTE and DOJ and require the projected increase in net revenues to be measured on a present value basis. A prudent business person would look at present value in deciding whether to offer a new service and the Commission, too, should use present value to evaluate a proposed plan. This requirement is not unduly burdensome and should be useful in reviewing a proposed OCP.

50. Second, we require that a proposed supplemental or optional MTS calling plan increase the filing carrier's net revenues for switched services, that is, its total switched services revenues less its total cost of providing switched services offerings, including access charges, over the periods described

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[31] We recognize that a price *differential* may exist where the services differ in quality in equilibrium. We have no evidence, however, that the existing differentials between AT&T's services and its competitors' offerings are necessarily the appropriate ones. Indeed, the rapid growth of carriers other than AT&T in this market segment indicates it is not.

[32] These propositions are explained in almost any textbook or treatise on economics. For a particularly accessible treatment of the specific point being made here, see A. Alchian and W. Allen, *Exchange and Production*, 305–07 (2d ed. 1977).

[33] In the *Notice* at paragraphs 50–52 we considered meeting competition as a separate test. We do not here adopt that proposal. Nevertheless, an optional calling plan which is designed to meet competitors' prices and which also satisfies the net revenue standard would be permitted. *See* para. 77, *infra*.

[34] The fact that a firm maintains its pricing plan over a lengthy period of time is strong evidence that its prices are at least equal to its costs.

[35] United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[36] Investigation of Access and Access Related Tariffs, CC Docket No. 83–1145, Memorandum Option and Order, 50 FR 25962 (June 24, 1985), *recon. pending (Allocation Order)*.

[37] CTA's suggestion to use an FDC standard in which a rate of return can vary by up to 300 basis points from the allowed rate of return does not resolve the fundamental failure of an FDC-based standard to measure whether prices are too low.

below.[38] We reject, however, the notion that, because no new costs are created by use of non-traffic sensitive plant, none of the access charges associated with the use of the plant be assigned to the new service. Initially, we will first look for a plan to increase net revenues where "increase" has the meaning as that term is generally construed, that is to mean more, not merely "more than would have been" without the OCP.[39] This recognizes the inherent difficulty a carrier faces in projecting future developments, as well as the fact that the Commission cannot precisely verify the projection of reduced revenues either before the tariff becomes effective or once operating results are available. Nevertheless, we recognize that any plan which leads to net revenues that are higher than they would otherwise be will benefit all of AT&T's ratepayers. Therefore, we are willing to permit optional calling plans to be based on a projection that the carrier will sustain a smaller reduction in revenues, *i.e.*, greater profits, than if the plan had not been instituted, provided the carrier submits reliable documentation of the projected outcomes to be considered in reviewing the tariff. Although it is impossible to define outside of a particular factual context what would comprise reliable documentation, it is clear that routine customer survey information would be insufficient. If the carrier cannot provide such documentation, it would remain free to base its plan on a projection of an absolute increase in revenues.

51. Third, we require that proposed OCPs be projected to increase net revenues within 12 months after the effective date of any access tariff revisions which reflect the projected stimulation due to the OCP. In other words, the period in which an OCP must be projected to increase net revenues will be one year after an access tariff becomes effective which takes into account the projected increase in demand caused by the OCP. In any event, the OCP must be projected in increase net revenues within 36 months after it becomes effective regardless of any change in access tariffs.

[38] We note, however, that should an OCP meet an FDC standard, it would not become unlawful solely on the basis that it failed to meet the net revenue test.

[39] In addition, the projected increase in net revenues may not include increases due to factors other than the OCP in question. For example, the increase may not be based on increases in MTS rates. The calculation must adjust for a general MTS rate increase or for the effects of other OCPs. In other words, the calculation must isolate the revenue effect of the OCP.

52. Fourth, if a particular element of an OCP is offered separately, and there is a risk of anticompetitive behavior, the Commission will require the carrier to show that the element is priced consistent with the net revenue standard. For instance, if an access element were unbundled from an OCP, that element would have to satisfy the net revenue standard. We do not adopt, however, GTE's suggestion that each element of an OCP be required to meet the net revenue standard. That requirement would increase the support burden currently imposed on carriers with little, if any, benefit. As long as the OCP as a whole and each OCP element that is offered separately to customers meet the standard, we will generally not be concerned with applying the standard to each element. This is consistent with longstanding Commission policy which allows reasonable flexibility in distributing service costs over rate elements unless there is evidence or reason to suspect that a particular element is priced in a way which results in unreasonable discrimination. Of course, a dominant carrier remains free to justify an OCP or unbundled element under existing methods.

53. Fifth, to deter cross-subsidization, we require AT&T to demonstrate a net increase in switched services revenues rather than an increase in revenues for the firm as a whole or an increase in net MTS revenues. The *Notice* proposed a standard by which an OCP would be required to be reasonably projected to increase net MTS revenues. From the comments filed in this proceeding, however, we have determined that reliance on only MTS revenues may be overly narrow. The net MTS revenue standard fails to reflect the fact that the OCP-stimulated demand may also decrease costs to other switched services and not only MTS service. In addition, the net MTS revenue standard fails to reflect the cross-elasticities of demand which exist among the switched services categories.[40] We refuse to adopt, however, AT&T's suggestion that a net increase in firmwide revenues be adopted as the test. As DOJ has pointed out, such a standard fails to provide adequate assurances that the OCP is not being cross-subsidized from other service revenues.

54. Sixth, we will require the dominant carrier to provide and explain the assumptions and estimates filed with a proposed OCP. Reliable information about demand, cost, revenue, elasticity and cross-elasticity of demand is essential to an evaluation of OCPs. Seventh, to ensure that OCPs increase net revenues and thereby prevent any cross-subsidization of OCPs by other services, the dominant carrier will also be required to explain how costs are allocated to an OCP. Reallocations of costs that depart from the Commission's Rules or Commission Orders or that entail a modification of previously used methodologies must be explained and justified.

55. Eighth, quarterly financial reports comparing the actual operating results of an OCP with the projections will be required, even if the OCP is not designated for investigation. These reports will help the Commission to monitor whether an OCP is increasing or is likely to increase net MTS revenues and whether any action on our part is necessary. Data for the first three quarters of an OCP should be filed one year after the OCP becomes effective. Reports thereafter must be filed on a quarterly basis, with the report for each quarter being due not later than the end of the next following quarter. Any changes in basic MTS rates or CCL charges must be identified and isolated from the OCP revenue effects in these quarterly reports. *See* n.39, *supra*.

56. We note that two other proposals made by the parties are satisfied by the net revenues test we have adopted. When a carrier claims that an OCP will decrese access costs because of stimulated demand, the dominant carrier will be required to support its estimates of cross-elasticity of demand to show that the lower costs are derived from newly stimulated minutes, rather than transferred minutes from another service or stolen minutes from a competitor. In addition, we find that the net revenue standard satisfies the argument that we should require shareholders and not ratepayers to bear any losses attributable to OCPs. The net revenue test does not permit a carrier to show increased net revenues by an increase (or a lower decrease) in other service rates. In addition, shareholders will ultimately be liable for the losses if the OCP does not become profitable in three years since carriers are not permitted to make up past shortfalls through future rate increases.

57. In the section below we discuss alternatives to the net MTS revenue standard and other issues addressed in the *Notice* and in the comments.

[40] We reiterate that an increase in net revenues may not be based on projected increased revenues which occur because of price increases in other switched services categories.

D. Alternatives to Net Revenue Standard

1. Contribution to Overhead Standard

58. As an alternative to the net MTS revenue test, the Commission proposed a guideline which would require OCPs "to be reasonably projected to increase the contribution to overhead cost recovery within the relevant service category." *Notice* at para. 38. CTA argues that this standard should not be adopted because the Commission does not have a manageable methodology for calculating AT&T's overhead costs and determining whether a service increases the contribution to overhead cost recovery within the MTS category. CTA at 19–20. AT&T states that the contribution to overhead standard is merely redundant if the Commission employs the net MTS revenue standard. Both standards, AT&T argues, measure whether the additional revenues of the proposed service exceed its additional costs. AT&T at 17–18.

59. We conclude that the net revenue standard and the contribution to overhead test are redundant measures and that an OCP which generates revenues in excess of its costs will also contribute to overhead. For this reason, we will not adopt the contribution to overhead test.

2. Zones of Flexibility

60. In the *Notice*, the Commission indicated its willingness to consider alternatives to the net MTS revenue or contribution to overhead tests. One alternative is a "zone of flexibility" for MTS rates that would, for example, allow an OCP to become effective which lowered MTS rates by less than 10 percent or involved less than $100 million in annual expenses. *Notice* at para. 40.

61. In its comments, AT&T argues in favor of zones of flexibility, advancing four "such zones" or "safe harbors": OCPs which reduce rates by 10 percent; OCPs which involve less than $100 million in expenses; OCPs based on experimental tariffs; and OCPs required to meet competition. AT&T contends that the Commission should allow OCPs which reduce MTS rates by 10 percent or less to become effective without cost support and AT&T states, in support, that its MTS rates exceed its fully distributed costs and fully distributed costs generally exceed marginal costs. Therefore, a 10 percent reduction would still result in rates above its incremental costs. Second, AT&T contends that because the rates of many of its competitors "are substantially more than 10 percent below AT&T's MTS rates" a rate decrease of 10 percent is unlikely to be predatory. Third, AT&T asserts that the Commission may rely on the 10 percent reduction test "to satisfy itself that an OCP is not discriminatory" because an OCP which is not predatory is designed to protect the firm against lost revenues and benefits all customers of the firm. AT&T at 27–29.

62. In its reply, DOJ finds that AT&T's arguments for a 10 percent zone of flexibility are too speculative to relieve AT&T of the requirement to submit cost support material sufficient to demonstrate that an optional MTS plan will result in increased net MTS revenues. DOJ argues that it is not clear that all current MTS rates are above AT&T's FDC. Night and weekend rates, in particular, may not be. Further, the fact that AT&T's rates are above those of its competitors does not ensure that they are above AT&T's marginal cost or that reduced rates would have no exclusionary effect. DOJ also points out that AT&T currently enjoys a quality advantage over its competitors and that AT&T offers no sound reason for using its competitors' rates to estimate its own costs rather than looking at those costs directly. DOJ Reply at 9–10.

63. RCI also questions AT&T's argument that rates within 10 percent of existing MTS rates would not be predatory. There is no support in the record, RCI argues, for the conclusion that current MTS rates exceed FDC. Furthermore, RCI continues, AT&T provides no basis for its assertion that the rates of many of its competitors are substantially more than 10 percent below AT&T's MTS rates. According to RCI, AT&T's argument ignores its significant competitive advantages that offset its rivals' lower prices. RCI Reply at 10–11.

64. As another "safe harbor," AT&T proposes that OCPs involving expenses of less than $100 million per year should be permitted to become effective, without cost support data. AT&T argues that an offering involving less than $100 million in expenses would be sufficiently small that it would pose no anticompetitive threat or danger of cross-subsidization. AT&T at 35–36.

65. DOJ criticizes AT&T's argument, stating that it has not been justified by any explanation of why such offerings would pose no threat of anticompetitive pricing. AT&T fails to explain what "expenses" would be considered or why it would be appropriate to consider expenses without regard to changes in revenue, DOJ contends. Moreover, while $100 million may be a small amount relative to total MTS revenues, DOJ argues, it may be significant relative to a particular targeted market. DOJ Reply at 11. RCI points out that even if $100 million is *de minimis* to AT&T, it is more than the total revenues of many of AT&T's competitors. RCI Reply at 11. GTE argues that the size of an OCP has little to do with whether it is anticompetitive, below cost or discriminatory. GTE Reply at 22. Finally, a number of commenters point out that the cumulative effect of a series of "small" discounts under either the 10 percent or $100 million tests could be significant. CTA at 26; GTE Reply at 22; RCI Reply at 11–12; DOJ Reply at 11–12; Ad Hoc Reply at 7–8.

66. As a variation of the minimum size tests, AT&T proposes that it be permitted to "test market" OCPs without Commission review of their rate structure, rates or conditions of service. AT&T argues that it should not be required to disclose the objectives of the test or to describe the study methodology or sample selection. AT&T at 36–37.

67. DOJ contends that AT&T's experimental tariff proposal should be rejected because it raises serious concerns about selective and potentially anticompetitive discounts. DOJ Reply at 12. Ad Hoc also objects to AT&T's proposal, arguing that section 203(b) of the Communications Act, 47 U.S.C. 203(b), requires that the tariffs of dominant carriers be made available to the public for review. Ad Hoc Reply at 7. Ad Hoc points out that the Commission has previously noted problems with AT&T rate experiments. Ad Hoc Reply at 8, citing *American Telephone and Telegraph Co.*, 94 FCC 2d 551, 559–61 (1983) (experimental night/weekend optional calling plans).

68. A fourth "safe harbor" test proposed by AT&T is a "meeting competition" standard pursuant to which an OCP would be allowed to become effective without cost support if it were priced to meet the prices of competitors. AT&T at 29–35. AT&T argues that because the MTS market is highly competitive, non-dominant carriers have no incentive to price in a predatory manner and the Commission may presume that AT&T's incremental costs are not measurably higher than those of its competitors. *Id.* at 31–33.

69. A number of commenters dispute AT&T's contentions regarding the "meeting competition" standard. DOJ argues that if a price reduction made to meet competition satisfies the net MTS revenue test, it should be permitted. OCPs that do not satisfy the net MTS revenue test, however, should not be permitted, even if they are proposed to meet competition. DOJ at 29–30; DOJ Reply at 12. DOJ and GTE argue that the fact that AT&T's prices are the same as

its competitors does not ensure that they are above AT&T's marginal cost (AT&T pays premium access rates) or that they would have no exclusionary effect, given AT&T's quality advantage. DOJ Reply at 12; GTE Reply at 20; *see also* RCI Reply at 8–10. Furthermore, it is not clear that AT&T's competitors are pricing above their own incremental costs in an attempt to gain a foothold in the market, GTE argues. GTE Reply at 19. An additional problem with the standard proposed by AT&T, raised by Ad Hoc and GTE, is that the "competition" to be met is not defined, and it may be very difficult to define not only AT&T's competitors but also the relevant geographic and service markets. *Id.* at 21; Ad Hoc Reply at 6–7.

70. We have decided not to adopt any of the zones of flexibility or safe harbor tests proposed by AT&T. As discussed above, the commenters have raised serious problems with each of those non-cost-based standards. The Commission has recently considered and rejected proposals similar to AT&T's 10 percent zone of flexibility or $100 million expense proposals in amending Part 61 of its Rules. *Amendment of Parts 1 and 61 of the Commission's Rules*, CC Docket No. 83–992, FCC 84–353, released Oct. 9, 1984, *recon. denied*, FCC 85–439, released Aug. 20, 1985 (*Part 61 Order*). In that proceeding AT&T proposed to establish a category of "minor tariff filings" which would be allowed to go into effect with little or no regulatory review. AT&T defined "minor tariff filings" as those which would result in an annual revenue change of less than $5 million or which would involve a change of less than 10 percent in the rates in any existing rate structure. In rejecting the proposal, the Commission stated that " 'minor tariff filings' might well be major in terms of their impact on particular customer groups or on relatively small services." *Part 61 Order* at paras. 8–9. The instant proposals suffer from the same defect. Furthermore, as the commenters point out, the cumulative effect of several "minor" filings could well be major.

71. AT&T's experimental tariff proposal is similarly flawed. As DOJ points out, it raises the possibility of selective price cuts to disadvantage regional competitors. Such a competitor would take little comfort from the fact that AT&T's offering might only be "experimental." One of our primary requirements for OCPs is that they be made universally available geographically. *See* para. 96, *infra; Block-of-Time Order* at para. 11. We shall, therefore, continue to evaluate AT&T's experimental proposals on a case-by-case basis.

72. Finally, AT&T's proposal that it be allowed to meet prices of its competitors without cost support is premature and we do not adopt a meeting competition guideline.[41] It may be true, as AT&T alleges, that its incremental costs are not measurably higher than those of its competitors. If that is true however, AT&T will be readily able to meet competitors' prices within the bounds of the net revenue standard adopted in this Order. Thus, any "small" discounts, experimental OCP tariffs or OCPs designed to meet competition will be reviewed under the same standards as all other OCPs. This decision should not be construed, however, as ruling out consideration of filings which, although failing to meet the net revenue test, are supported by competitive necessity. In other words, at some future time AT&T may be able to show that a departure from the net revenue test is warranted by competitive considerations *e.g.*, the avoidable costs are of such a level as to favor the pricing of an OCP in a way which, while not increasing net revenues, maintains the *status quo*. We do not anticipate, however, that this will be a major concern in the interm period during which this Order is in effect.

IV. Other Standards and Guidelines.

A. Procedural Requirements for OCPs

73. AT&T suggests that OCPs which satisfy any of the safe harbor tests discussed above be permitted to become effective on 14 days' notice. AT&T at 39. Additionally, AT&T proposes that challengers of an OCP which meets one of the safe harbor tests be required to demonstrate a likelihood that the offering does not satisfy the Commission's standards and to submit evidence of irreparable injury. *Id.* at 40.

74. AT&T asks, in effect, to be treated as a non-dominant carrier in cases in which a proposed OCP meets one of the zones of flexibility discussed above. We have not adopted the proposed zones of flexibility and, therefore, we need not consider AT&T's corresponding procedural proposals.

B. Resale

75. The Commission tentatively concluded in the *Notice* that it would not allow OCPs to "unreasonably restrict customer selections, resale, sharing, or interconnection." *Notice* at para. 41. The Commission also asked for comment on whether the prohibition of resale restrictions and the requirement that AT&T continue to offer existing services along with new services would be sufficient to prevent unreasonable or unjust discrimination among customers. *Id.* at paras. 44–46.

76. Several commenters argue that resale alone is an insufficient check on unreasonable discrimination and unreasonably high or low prices. MCI at 10–12; MCI Reply at 8–11, CTA at 7; T&S at 2–3, 8; TDX at 20–21; DOJ at 22, 27–28; GTE Reply at 16–17. Resale, the commenters argue, is a valuable tool but, standing alone, does not prohibit a dominant carrier from pricing services below cost. T&S at 2–3; MCI at 10. Resale is not always an effective check on anticompetitive behavior, the commenters contend, because costs are involved in providing resale; rates may be unreasonably low but not provide enough margin to make resale profitable. MCI at 11–12; CTA at 7. The effectiveness of resale is inversely related to the costs of reselling, they argue. DOJ at 27–28; MCI Repay at 8.

77. We conclude that although resale alone cannot be relied upon to prevent anticompetitive pricing of OCPs, resale is a useful supplement to the net revenue guideline. Thus, we adopt our tentative finding and conclude that OCPs may not impose unreasonable restrictions on customers, resale, sharing or interconnection. We also forbid indirect restrictions such as lengthy notice periods before a customer may discontinue service, charges which only resellers would have to pay, excessive ordering and deposit requirements and technical impediments to resale.

C. Multipart Pricing

78. Commenters were asked in the *Notice* to address multipart pricing—pricing with more than one element, such as a flat plus a variable rate element. The illustrative guideline in the *Notice* would require, as a standard of reasonableness, that all customers be charged the same price (variable charge) for the last unit of consumption. *Notice* at paras. 47–49.

79. AT&T argues in its comments that a standard which requires all customers to be charged the same price for the last unit of consumption would be too restrictive and would preclude a variety of discounts. It contends that a multipart tariff is procompetitive and beneficial to all customers if it results in a positive contribution to the revenues of the firm. AT&T suggests that the same standards applied to OCPs generally should be applied to multipart discounts and packages. AT&T at 22–23. DOJ agrees with AT&T that multipart schemes

[41] Note, however, the discussion of meeting competition in paragraphs 45–47, *supra*.

should be treated like other OCPs. DOJ at 28. DOJ also asserts that the Commission proposal to require that all customers be charged the same price for the last unit of consumption is inappropriate and should not be adopted because pricing should be determined on the basis of marginal costs. *Id.* at 28–29. NYNEX also urges the Commission not to adopt the requirement of the same price for the last unit of consumption because different costs may exist. Instead, NYNEX contends, the Commission should rely on the net revenue test. NYNEX at 21–22. MCI and CTA argue that this requirement does not compare rates to costs and does not protect against predation. MCI at 13; CTA at 24–25.

80. MCI argues that economists, such as Robert Willig, have proposed the use of multipart tariffs to allow natural monopolists to recover fixed costs from customers with varying demand characteristics when resale can be effectively prevented. "Adoption of these guidelines by the Commission," MCI argues, "requires an assumption that the telecommunications industry is a natural monopoly." MCI at 14. TDX also refers to the work of Willig and argues that the critical assumptions underlying his theory about multipart tariffs have not been demonstrated to exist in the MTS market. TDX at 5–6.

81. We are unpersuaded by MCI and TDX that multipart tariffs should not be permitted. They have not demonstrated how multipart tariffs that meet the net revenue test would be anticompetitive or otherwise inconsistent with the public interest. The major thrust of this proceeding is to allow carriers flexibility in designing MTS packages to meet customers' varying demand characteristics. Prohibiting multipart pricing would greatly limit that flexibility. We do not adopt the requirement that all customers must be charged the same variable rate for the last unit of consumption because that restriction would not ensure against rates that were too high or too low. Moreover, this proposal would unduly restrict pricing flexibility while contributing nothing to our major concerns regarding predation and burdening other ratepayers. It is imperative that whatever standard we adopt be a discrete, logical one. We believe this objective is served in the first instance by looking at the aggregate net revenue effect of a given OCP subclassification of service and, further, that such a review standard is consistent with section 201(b) of the Act, 47 U.S.C. 201(b). We will, therefore, apply to any proposed multipart OCP tariffs the same standards applied to OCPs generally.

D. Duration Requirements

82. In the *Notice*, the Commission asked for comment on whether proposed OCPs should be subject to minimum duration requirements. For example, the Commission might require AT&T to keep a new offering in effect for three to five years and reqiure AT&T to obtain specific regulatory approval to raise OCP rates. The Commission asked for comment on whether AT&T should be required to commit to maintaining rate cuts for a substantial period. *Notice* at paras. 50–52. The theory behind a duration requirement, known as the "Baumol Rule," is that a firm would have less incentive to cut prices to unremunerative levels if it were required to sustain the losses for a long period. The Commission also asked for comment on whether AT&T might be prohibited in some circumstances from lowering rates in response to competition. *Id.* at para. 52.

83. ICA, Ad Hoc and T&S advocate imposing duration requirements on OCPs. ICA at 5–6; Ad Hoc at 15; T&S at 5–8. ICA and Ad Hoc argue for a minimum effective period of 18 to 36 months and T&S argues for at least one year. ICA at 5; Ad Hoc at 15; T&S at 6. T&S also contends that *American Telephone and Telegraph Co. v. F.C.C.*, 487 F.2d 864 (2d Cir. 1973), which set aside a Commission Order denying special permission to AT&T to file private line tariff revisions, is distinguishable from a minimum duration requirement. T&S argues that the court held in *AT&T v. F.C.C.* that because the Communications Act does not require prior Commission permission to file new rates, the special permission requirement was contrary to the statutory plan. T&S asserts that unlike the invalidated special permission requirement, a duration requirement would not prohibit AT&T from filing new rates but would merely affect the timing of the effectiveness of new rates. Furthermore, T&S argues, unlike the special permission requirement, a duration requirement gives dominant carriers advance notice that their rates will be set for a specific period and will enable dominant carriers to plan accordingly. Additionally, a minimum duration requirement is said to be similar to § 61.59 of the Commission's Rules, 47 CFR 61.59, which prohibits carriers from changing their rates for at least 30 days from the date the rates become effective. T&S at 6–8.

84. MCI and RCI contend that the proposed duration requirement would not be an effective check on predatory pricing unless AT&T was also barred from raising the rates of other services after the OCP became effective. MCI at 15; RCI at 8–9. CTA also argues that a duration requirement will not deter AT&T from charging unreasonably low rates during a time of decreasing costs. "A rate level that is unreasonably low now and for the next two years may then become remunerative with the phase-in of customer line charges, equal access conversion, and anti-bypass tariffs." CTA at 26. Also, CTA states, a duration requirement might be difficult to enforce.

85. AT&T, NYNEX and Pacific assert that the filing carrier should determine the effective period of a proposed tariff because each offering is subject to uncertainty. AT&T at 34–35; NYNEX at 22–23; Pacific at 12–13. AT&T and DOJ contend that the inability to withdraw a price cut would deter a carrier from initiating innovative pricing arrangements. AT&T at 35; AT&T Reply at 29; DOJ at 30–31. DOJ also comments that forbidding price reductions in response to competition would be contrary to the basic notion of competition and would likely be impossible to apply. DOJ at 31.

86. We are not adopting a specific duration requirement or prohibiting price reductions in response to competition. Proposed OCPs will be subject to the net revenue test and subsequent proposals to increase OCP rates or to withdraw an OCP will be considered on their own merits. A case-by-case review of proposed OCP rate increases or withdrawals seems to be the best means of striking a balance between deterring predatory pricing, while encouraging pro-competitive price cuts. As discussed above, we will require periodic OCP financial reports to monitor the status of OCPs and to determine if any Commission action should be taken. See para. 55, *supra*.

E. Rate Elements for Optional MTS Offerings

87. In addition to seeking comment on cost standards for OCPs, the Commission asked for comment on guidelines for the rate structures of optional MTS offerings. We stated in the *Notice* that a dominant carrier's MTS rate elements should generally be unbundled, consistently-defined, consistently-employed, and related to market demand, pricing convenience and cost characteristics. We also stated our belief that consumers will benefit from simple MTS rate structures. Nonetheless, as we stated in the *Notice*, there may be some cases in which some

carrier flexibility to employ overlapping rate elements may be beneficial to customers. The *Notice* also stated our tentative conclusion that the historic MTS rate structure need not be used in OCPs. Commenters were asked in the *Notice* to address proposed guidelines for rate elements pertaining to subscription, minimum monthly and termination charges and distance and geographic deaveraging. *Notice* at paras. 20–30.

1. Subscription, Termination, and Minimum Monthly Charges

88. In the *Notice* we stated that dominant carriers have traditionally had a usage element for MTS and have not had a non-usage based flat rate element. In contrast, we noted, AT&T's Block of Time tariff [42] has two flat charges: A subscription charge (which was waived during the initial promotional period) and a minimum monthly charge. We tentatively concluded in the *Notice* that dominant carriers should have flexibility in applying reasonable, nondiscriminatory initiation and termination charges which recover the carrier's costs of initiating and terminating OCP service. *Notice* at paras. 24–26. We also reached the tentative conclusion that as long as dominant carriers offer MTS without a minimum monthly charge and the OCP meets our other guidelines, they should be permitted to offer OCPs with minimum monthly charges.

89. In this Order we are affirming our tentative conclusions regarding subscription, termination and minimum monthly charges for OCPs. Although RCI and GTE argue that termination charges should be avoided because they deter customers from switching to competing carriers (RCI at 9; GTE Reply at 17), we are not prohibiting termination charges altogether because carriers may be able to demonstrate that some nominal costs are incurred in terminating OCP service to a customer. We emphasize that any proposed termination charges must not unreasonably discourage customers from making economically efficient choices regarding the services of existing or new competitors. We also believe that a minimum period may be a preferable alternative to termination charges. We believe that this policy statement is, as AT&T argues in its comments (AT&T at 22), a better course than an absolute preclusion of termination charges because it may be more economically efficient to recover non-traffic sensitive costs as flat, rather than traffic-sensitive, charges. *See* DOJ at 25–26.

90. We also believe it is sound policy to allow a dominant carrier to offer OCPs with minimum monthly charges as long as it also makes available unbundled basic MTS offerings. The commenters that address this issue support the Commission's tentative finding (DOJ at 26; AT&T at 21; Pacific at 9) and we conclude that the application of our general OCP policies will be a sufficient check on OCPs which include minimum monthly charges.

2. Distance Sensitivity, Geographic Averaging and Nationwide Availability of OCPs

91. In the *Notice* in this proceeding, the Commission observed that dominant carriers' MTS rates have traditionally been distance-sensitive. *Notice* at paras. 21, 28. That is, traditional MTS charges have increased, based on a few mileage bands, with increased distance between the originating and terminating points of a call. Whether the traditional mileage/band pricing of MTS should be required for OCPs raises three issues: (1) Should "postalized" (*i.e.*, non-distance sensitive) OCP rates be permitted? (2) Should rates vary according to the characteristics of the originating and terminating points rather than, or in addition to, according to the distance between those two points? (3) Should the Commission require dominant carriers to offer OCPs to all customers simultaneously, *i.e.*, should simultaneous nationwide availability be a prerequisite?

92. With regard to the first issue, the Commission asked for comment on whether postalized OCP rates should be permitted. *Id.* at para. 23. A postalized rate is one which does not vary with distance. The price of mailing a letter, for example, is a postalized rate because the price does not vary with distance; it is the same whether the letter is mailed across the city or across the country. Similarly, AT&T's Block of Time rates are postalized because customers pay one flat charge regardless of where they call.

93. Although we generally oppose overlapping, inconsistently-used rate elements in different offerings, we stated in the *Notice* that it seemed reasonable to permit a dominant carrier to price some services according to the air mileage between originating and terminating points and other services on a flat or postalized basis. *Id.* We affirm that tentative conclusion in this Order. Thus, dominant carriers may offer OCPs with rates that are postalized or distance-sensitive. As discussed below, this policy with regard to OCPs does not mark a shift from the traditional geographic averaging of basic MTS rates. Giving the filing carrier the discretion to use postalized or distance-sensitive OCP rates where the costs of the OCP do not vary substantially according to distance would not be unreasonable. It must be recognized in this regard that although distance sensitivity characterizes present basic MTS rates, this aspect of the rate structure has not been cost supported but rather relies upon traditional pricing practice. It would appear, therefore, overly restrictive and possibly inefficient to require this pricing technique to be carried forward as a matter of policy. Furthermore, postalized rates are simple and convenient for the carrier and the customer. *Id.* at para. 22.

94. The second issue, geographic averaging, prompted considerable comment regarding the benefits of averaging MTS rates despite the Commission's explicit statement in the *Notice* that "[w]e do not intend for this proceeding to consider the possible arguments for future geographic deaveraging in MTS rates generally." *Id.* at para. 29. In the *Notice* we described the many benefits of geographic averaging and tentatively concluded that even an *optional* MTS offering that geographically deaveraged rates, or could result in geographically deaveraged rates, would warrant investigation. *Id.* at para. 29.

95. The question of geographic deaveraging may be academic in light of AT&T's stated intention "to offer all of its anticipated OCPs on a nationwide basis insofar as that is possible." AT&T at 20 n.*. Nevertheless, we find that any optional MTS offering that that proposes to geographically de-average rates would be unacceptable and not in compliance with these guidelines even if the offering satisfied all other criteria. AT&T must, subject only to technical constraints, offer optional MTS plans on a nationwide basis within a reasonable period of time.

F. Application of Guidelines to BOCs

96. As discussed above in Section I, this Order states the Commission's policies regarding optional MTS offerings made by dominant carriers. The guidelines discussed herein are to be applied to dominant carriers' OCPs in which the issue of anticompetitive pricing is relevant.

97. A number of BOCs contend that they should be granted pricing flexibility. Two arguments are made by these local exchange carriers. First, they

[42] AT&T Communications, Inc., Revisions to Tariff F.C.C. Nos. 1 and 263, Transmittal No. 79 (filed Apr. 23, 1984).

argue that flexibility should be given to local exchange carriers that provide interstate MTS. Bell Atlantic at 1–2; US West at 9. Second, some BOCs argue that the Commission should allow flexibility in access charge pricing and permit non-uniform switched access tariffs. The second argument is beyond the scope of this proceeding and will not be considered here. The first argument, however, is properly before us and has merit.

98. The BOCs provide interstate MTS (1) within certain LATAs (*e.g.*, from Philadelphia, Pa., to Wilmington, Del.); and (2) within the "corridors" (*i.e.*, Philadelphia, Pa., to Camden, N.J., and Newark, N.J., to New York, N.Y.). In these limited instances, the local exchange carrier may be a dominant provider of MTS. We find that the rationale which supports the OCP guidelines also supports application of the guidelines to local exchange carriers when, in these limited circumstances, they operate as dominant providers of interstate MTS. Local exchange carriers may therefore propose OCPs under these guidelines to ensure that these carriers remain on an equal footing with interexchange carriers.[43] We emphasize, however, that we are not in this Order granting such flexibility to access pricing by local exchange carriers.

V. Conclusion; Ordering Clauses

99. We conclude that the policies addressed in this Order will allow dominant carriers needed pricing flexibility while protecting consumers and competition. We believe we have struck a reasonable balance between the dominant carriers' need to respond in an increasingly competitive environment and the need to protect competition and ultimately consumers from predatory or anticompetitive behavior by dominant carriers. We are not abandoning our traditional regulation or reliance on the fully distributed costing methodology for basic MTS. Supplemental or optional MTS offerings, however, present different issues than basic MTS and these supplemental guidelines are designed to address those issues and to reduce uncertainty and confusion regarding the Commission's policies.

100. The policy statements in this Order are a flexible tool; they are not a checklist which, if satisfied, will guarantee that a proposed OCP will become effective. On the other hand, the Commission may also determine that an OCP is not unreasonable, unjust or unreasonably discriminatory, even if it does not satisfy a particular guideline.

101. It is, therefore, ordered that the guidelines and findings of this Order are adopted, pursuant to sections 4(i) and 201–205 of the Communications Act, 47 U.S.C. 154(i), 201–205.

102. It is further ordered that the guidelines set forth in this Order shall become effective on the date of the release of this Order because it is a statement of policy within the meaning of section 553(d)(2) of the Administrative Procedure Act, 5 U.S.C. 553(d)(2).

103. It is further ordered that the Secretary of the Commission shall cause a copy of this Order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Comments Filed in CC Docket No. 84–1235

Ad Hoc Telecommunications Users Committee (Ad Hoc)
American Telephone and Telegraph Company (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporations on behalf of South Central Bell Telephone Co. and Southern Bell Telephone Co. (Bellsouth)
Citizens Utilities Company (Citizens)
Competitive Telecommunications Association, ITT Communications Services, Inc. and Satellite Business Systems (CTA)
GTE Corporation (GTE)
International Communications Association (ICA)
MCI Telecommunications Corporation (MCI)
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West)
New York Telephone Company and New England Telephone and Telegraph Company (NYNEX)
Pacific Bell (Pacific)
Penasco Valley Telephone Cooperative, Inc. and Western New Mexico Telephone Company, Inc. (P&W)
RCI Corporation (RCI)
Roseville Telephone Company (Roseville)
Rural Telephone Coalition (RTC)
Southwestern Bell Telephone Company (SWB)
TDX Systems, Inc. (TDX)
Teltec Saving Communications Company and Satelco Incorporated (T&S)
United States Department of Justice (DOJ)
United States Telephone Association (USTA)
US Telecom, Inc. (US Telecom)

Appendix B—Reply Comments in CC Docket No. 84–1235

Ad Hoc Telecommunications Users Committee
American Telephone and Telegraph Company (and reply to NYNEX Response)
Bell Atlantic Telephone Companies
Competitive Telecommunications Association, ITT Communications Services, Inc. and Satellite Business Systems
GTE Corporation
MCI Telecommunications Corporation
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company
New York Telephone Company and New England Telephone and Telegraph Company (Response to AT&T's Reply Comments)
RCI Corporation
Rural Telephone Coalition
TDX Systems, Inc. (filed late)
US Telecom, Inc. (filed late).

[FR Doc. 85–25279 Filed 10–22–85; 8:45 am]

BILLING CODE 6712–01–M

[43] For the sake of convenience we have frequently referred to "AT&T" as a dominant carrier subject to this Order. Because we are also allowing local exchange carriers to offer OCPs in the two limited circumstances described above, the term "AT&T" should be interpreted to mean "dominant carrier."

Proposed Rules

Federal Register
Vol. 50, No. 205
Wednesday, October 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 85-937]

Multiple-Step Stock Conversions

Dated: October 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed Statement of Policy.

SUMMARY: The Federal Home Loan Bank Board is proposing a formal statement of its policy regarding the applicability of its regulations, including certain parts of its stock conversion regulations, to insured institutions that undertake one or more transactions that are integrally related to an anticipated stock conversion, which would occur subsequent to the institution's loss of eligibility for Federal Savings and Loan Insurance Corporation insurance of accounts. The proposed statement of policy would identify the regulatory provisions that the Board deems applicable to such transactions and the circumstances in which they apply. The Board is proposing to adopt this statement in order to resolve any uncertainty regarding its policy in this area and to provide additional guidance to insured institutions contemplating such transactions.

DATE: Comments must be received by December 23, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G. Street, NW. Washington, D.C. 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Neil Crowley, Attorney, (202) 377-6451, or Julie L. Williams, Associate General Counsel and Director, Corporate and Securities Division, Office of the General Counsel, (202) 377-6459, at the above address.

SUPPLEMENTARY INFORMATION:

Under section 402(j) of the National Housing Act ("NHA"), a mutual thrift institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") may convert to the stock form of ownership only in accordance with the rules and regulations of the Corporation. 12 U.S.C. 1725(j). Similarly, an institution undertaking a stock conversion as part of a transaction authorized by section 5(i) of the Home Owners' Loan Act must do so subject to the regulations of the Board. 12 U.S.C. 1464(i). Pursuant to those provisions, the Federal Home Loan Bank Board ("Board"), as the operating head of the Corporation, has adopted comprehensive regulations establishing the rules and procedures under which a mutual insured institution may convert to stock form. *See* 12 CFR Part 563b. In formulating those regulations the Board has striven to create a stock conversion procedure that would provide insured institutions with an effective means of raising capital to increase their net worth, while also adequately recognizing the interests of the mutual account holders in the insured institution and protecting against windfalls and abusive transactions incident to the conversion process. Over the past several years, the Board has overseen the mutual-to-stock coversion of more than 350 institutions, all of which have retained their FLIC insurance of accounts through the completion of the conversion process. Relatively recently, however, the Board has become aware that some institutions are exploring the possibility of mutual-to-stock conversion through a multiple-step process, part of which would entail relinquishing FSLIC insurance, typically through conversion of the charter to that of a state-chartered institution that is not eligible for FSLIC insurance under section 403(a) of the NHA and 12 CFR 563.29-1. Under section 403(a)(2) of the NHA, the Corporation is authorized to insure the accounts of "building and loan, savings and loan, and homestead associations and cooperative banks organized and operated" under the laws of the state in which they are organized. 12 U.S.C. 1726(a)(2). The intent in using such a method may be for the institution to leave the FSLIC system through such a transaction and obtain deposit insurance from the Federal Deposit Insurance Corporation, which has no procedures to regulate mutual-to-stock conversions. Thereafter, the institution would conduct its mutual-to-stock conversion under the applicable state law conversion procedures, rather than under Part 563b.[1]

Because of its concerns that a multiple-step conversion could be used by an insured institution to circumvent the provisions of Part 563b, thereby eliminating the protections afforded to mutual account holders under part 563b, the Board, by a temporary final rule, amended its stock conversion regulation in April 1984 to create a presumption that a stock conversion undertaken by an institution within two years of the time that it surrenders its FSLIC insurance would be deemed to be part of a single plan of conversion and as such would be subject to Part 563b. The amendments further provided that an institution terminating its FSLIC insurance would be required to establish a liquidation account, in an amount equal to its net worth, for the benefit of its mutual account holders, and that for as long as that account remained outstanding a portion of the stock offered in any subsequent conversion would have to be sold in accordance with Part 563b.

Shortly before the temporary final rule expired on April 28, 1985, the Board reviewed the rule in connection with an administrative proceeding against an insured institution that had initiated a multiple-step stock conversion by proposing to convert its charter to that of a state chartered mutual savings bank. *See In re* First Federal Savings and Loan Association of Philadelphia, Board Resolution No. 85-282 (April 16, 1985). A state-chartered mutual savings bank is not among the types of institutions that are eligible to obtain FSLIC insurance under section 403(a) of the NHA (although continuation of FSLIC insurance may be authorized by 12 CFR 563.29-1). In that decision, the Board reasoned that an institution that had become ineligible for FSLIC insurance under section 403(a)(2) would not longer be an insured institution, as defined in the NHA, and thus would not be subject to regulation by the

[1] Such a transaction is distinguishable from a simultaneous mutual-to-stock conversion and charter conversion, which would be subject to Part 563b.

Corporation pursuant to the NHA with respect to the structure of a subsequent conversion from mutual to stock form. Accordingly, the Board concluded that the temporary final rule regarding the applicability of the stock conversion regulations, which had been promulgated pursuant to section 402(j) of the NHA, did not apply to the scenario involved in that case. The Board emphasized, however, that the temporary final rule would apply to insured institutions that terminate FSLIC insurance pursuant to section 407 of the NHA, and thus retain the benefit of FSLIC insurance coverage for two years following termination. The Board separately concluded that the notice that the institution had sent to its members regarding its proposed charter conversion was defective under the proxy regulations, 12 CFR 569.1–.4 (1985), and that the institution had violated the solicitation of voting rights reporting regulation, 12 CFR 563.18–1(c).

The Board's review of the temporary final rule as part of the administrative proceeding involving First Federal necessarily was limited to the facts of that particular case. Thus, the Board did not discuss generally its policy regarding the applicability of its regulations to insured institutions that undertake a multiple-step stock conversion. In light of the absence of any policy discussion in the administrative proceeding, as well as the expiration of the temporary final rule, some uncertainty apparently has arisen regarding the applicability of the Corporation's regulations to an insured institution during the initial stages of a multiple-step stock conversion that occur prior to the loss of eligibility for FSLIC insurance of accounts. In order that such uncertainty not impede the conversion process of any insured institution undertaking a multiple-step conversion, the Board believes that it would be appropriate to identify in a formal statement of policy those regulatory provisions to which such an insured institution would be subject and the circumstances in which they would apply.

As an initial matter, the Board proposes to reaffirm the conclusion expressed in the administrative proceeding that insured institutions that terminate their FSLIC insurance pursuant to section 407(a) of the NHA, 12 U.S.C. 1730(a), remain subject to regulation by the Corporation during the period of time that FSLIC insurance continues following termination. Thus, it would remain the policy of the Board that an insured institution that terminates insurance pursuant to § 407(a) must comply with the provisions of Part 563b in a subsequent stock conversion that occurs while any of the accounts of the institution remain insurred by the Corporation. With regard to an insured institution that undertakes a charter conversion that renders it ineligible for FSLIC insurance of accounts, the Board would similarly reaffirm its prior decision that following the institution's loss of eligibility for insurance under section 403(a) of the NHA, the Corporation would cease to have regulatory jurisdiction over the structure of a subsequent conversion of the institution from mutual to stock form. Nonetheless, during the period preceding the date of loss of eligiblity for FSLIC insurance of accounts, an institution remains an "insured institution" as defined in section 401(a) of the NHA, 12 U.S.C. 1724(a), and is fully subject to the provisions of the NHA, as well as to the regulations of the Corporation that have been promulgated pursuant to that Act. For example, if an insured institution were to commence a multiple-step stock conversion by conducting one or more transactions prior to the loss of eligiblity for insurance, those transactions would be required to comply with the regulations of the Corporation. Thus, if part of the conversion process requires the insured institution to solicit the votes of its members with respect to a particular transaction, the solicitation would be required to comply with the proxy solicitation regulations, 12 CFR Part 569. In this regard, the Board specifically requests comment on the extent of information about the proposed stock conversion that should be given to the mutual members in order for the solicitation to comply with the proxy-solicitation regulations.

The provisions of Part 569 establish certain standards with respect to the form of proxies, the proxy holders, and the substance of the proxy solicitation, and further provide that no proxy solicitation may contain any statement that is false or misleading regarding any material fact, nor may it omit any material fact. 12 CFR 569.1–.4 (1985). In order, therefore, that a solicitation by an insured institution made in the course of a multiple-step stock conversion not be misleading by its failure to disclose material facts about the subject transaction, the solicitation would be required to describe the proposed transaction in its entirety, including the details of the proposed stock conversion, notwithstanding that the conversion itself would be conducted beyond the jurisdiction of the Board. The proposed policy statement accordingly provides that where a mutual insured institution solicits the votes of its members of a transaction that is an integral part of a stock conversion that is to occur following the loss of eligibility for FSLIC insurance, and where the members will have no opportunity to vote on the conversion subsequent to the initial transaction before them pursuant to a proxy statement that is required to contain all material information about the transaction for which their vote is sought, the solicitation must contain the information specified in the proxy provisions of the Corporation's stock conversion regulations, 12 CFR 563b.5 and 563b.101 (Form PS). These proxy provisions specify the information which, in the context of a contemplated mutual-to-stock conversion, the Board has determined to be material.

In the circumstances of a multiple-step stock conversion where the members will have no vote on the ultimate stock conversion, a member's vote on the initial transaction is, in substance, a vote on the entire series of transactions that comprise the stock conversion. In recognition of that fact, as well as the Board's longstanding policy that the protection of the integrity of the conversion process and of the interests of the mutual account holders in their insured institution during a stock conversion are important regulatory concerns, the Board is proposing to formalize its view that the vote necessary for member approval in those circumstances must be that required for approval of a single-step stock conversion, *i.e.*, a majority of the total votes eligible to be cast at the meeting. The Board specifically requests comment on whether approval of such a preliminary transaction should require a majority either of those votes eligible to be cast at the meeting or of all votes present at the meeting.

The proposed policy statement reflects the existing policy of the Board with respect to multiple-step transactions, as the Board has indicated previously in the preamble accompanying its amendment of certain provisions of the proxy solicitation regulations. *See* Board Resolution No. 85–320 (April 30, 1985). Although not integral to the amendments adopted by that resolution, the Board, in order to offer some guidance regarding its policy on this issue, took that opportunity to express its opinion that insured institutions conducting multiple-step stock conversions must disclose to their members the information required by Form PS. This proposed statement of policy is intended to express the established policy in a more formal

manner and to clarify whatever questions may have arisen in this regard. The Board further requests comment on whether any of the information required by Form PS is not material and whether its disclosure to mutual members should not be required at the time of the vote on the initial stages of a multiple-step stock conversion. In the circumstances of a multiple-step stock conversion, it is the Board's belief such disclosure and voting requirements are necessary in order both to comply with the anti-fraud provisions of the proxy solicitation regulations and to ensure that an insured institution does not abridge the rights of its members.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* The proposed policy statement would confirm that the Board's proxy solicitation rules would apply to small institutions that wished to engage in such multiple-step stock conversions. This could impose a small additional cost in undertaking such a conversion, but would ensure adequate disclosure to the members of the small institution and would not have a disproportionately adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed policy.* As a preliminary matter, the Board does not apprehend other approaches that would provide the intended regulatory result with a lesser impact on small entities.

List of Subjects in 12 CFR Part 571

Savings and loan associations, Insured institutions.

Accordingly, the Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority for Part 571 would continue to read:

Authority: Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1943–48 Comp., p. 1071.

2. Add a new § 571.18, as follows:

§ 571.18 Applicability of conversion regulations to certain multiple-step mutual-to-stock conversions.

(a) Section 402(j) of the National Housing Act ("Act") provides that no institution insured by the Corporation may convert from the mutual to the stock form of ownership except in accordance with the rules and regulations of the Corporation. 12 U.S.C. 1725(j). It is the policy of the Corporation that regulations promulgated pursuant to § 204(j) do not apply to an institution that initiates a stock conversion subsequent to the time that the institution has ceased to be eligible for insurance of accounts under section 403(a) of the Act and § 563.29–1 of this Subchapter.

(b) In recognizing the limits of the authority granted by § 402(j), however, the Board does not thereby disclaim its regulatory authority over an insured institution which, although proposing to surrender its insurance of accounts as an initial step in a stock conversion, has not yet actually done so. To the contrary, such an institution is an "insured institution" as defined by the Act and as such remains fully subject to regulation by the Corporation under that Act. Thus, it is the policy of the Corporation that in those instances in which a mutual insured institution solicits its members for their votes on one or more transactions that are integral steps in the conversion of the institution to the stock form of ownership, which would occur subsequent to the institution's loss of eligibility for insurance, and the mutual institution's members will have no other opportunity to vote on the mutual to stock conversion pursuant to a proxy statement that is required to contain all material information about the transaction for which their vote is sought , the solicitation must describe the proposed series of transactions in its entirety in order to comply with the anti-fraud provisions fo the Corporation's proxy regulations as set forth in Part 569.4 of this Subchapter. Moreover, because a member's vote under such circumstances is, in essence, a vote on the stock conversion, it is the Corporation's policy that the information specified by the proxy provisions of the stock-conversion regulations, at §§ 563b.5 and 563b.101 (Form PS), constitutes the minimal level of disclosure that must be made in order for the solicitation to comply with the anti-fraud provisions of § 569.4. In a similar manner, if the transaction for which approval of the mutual members is solicited is the only transaction during the multiple-step stock conversion for which the informed consent of the members will be sought, it is the policy of the Corporation that the vote required for approval must be the same as that which is required for approval in the case of a single-step stock conversion under § 563b.6, *i.e.*, the approval of at least a majority of the total outstanding votes eligible to be cast at the special meeting.

(c) Section 407(a) of the Act permits an insured institution to terminate its insurance of accounts by providing written notice to the Corporation specifying the date of termination. 12 U.S.C. 1730(a). Subsequent to termination FSLIC insurance continues for a period of two years, during which time the Corporation has the right to examine the institution. 12 U.S.C. 1730(d). The Corporation also may collect a final premium for the continuation of insurance. It is the policy of the Corporation that an institution terminating its insurance of accounts pursuant to § 407(a) remains an "insured institution," as defined in section 401(a) of the Act, during the period that any of its accounts are insured by the Corporation and as such remains subject to the rules and regulations of the Corporation. The right of examination during that period necessarily implies that a terminating institution must operate in compliance with the Corporation's regulations. *See* 12 U.S.C. 1724(a). Accordingly, it is the policy of the Corporation that an institution terminating insurance of accounts pursuant to § 407(a) must abide by the provisions of Part 563b if it undertakes a mutual-to-stock conversion, whether in one or more steps, during the two-year period following the effective date of its termination of insurance while any of its accounts are insured by the Corporation.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–25239 Filed 10–22–85; 8:45 am]

BILLING CODE 6720–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-22532; File No. S7-46-85]

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing amendments to Rule 15c3-1 under the Securities Exchange Act of 1934 ("Act"). The amendments will lower the haircuts on hedged positions in nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations ("corporate debt securities") and expand the types of instruments that may be used to create a hedged position for corporate debt securities for purposes of the net capital rule. The amendments will also restructure the criteria for determining whether the remaining maturities of two offsetting debt positions are close enough to consider the combined position to be hedged and thereby subject to lower haircuts.

DATE: Comments to be received by December 20, 1985.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. References should be made to File No. S7-46-85. Copies of the submission and of all written comments will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Julio A. Mojica, (202) 272-2372, or Michael P. Jamroz, (202) 272-2398, Division of Market Regulation, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A broker-dealer arrives at its net capital by deducting from its net worth as computed under generally accepted accounting principles the value of assets not readily convertible into cash, and certain percentages of the market value of securities carried in its accounts. These percentage deductions, or "haircuts", take into account elements of market and credit risk that the borker-dealer is exposed to when holding a particular position. When determining what the haircut for a given debt security should be, the Commission considers factors such as the nature of the issuer, the time to maturity of the security and for securities of nongovernmental issuers, the ratings of nationally recognized statistical rating services. Haircuts for debt securities are primarily based on the historical market fluctuations of each type of instrument.

The Commission adopted the current corporate debt securities haircut provision in 1982.[1] Two levels of haircuts were established, a higher range for corporate debt securities positions that were not hedged and a lower range for those positions that were hedged by Government securities of similar remaining maturities. When those amendments were published for comment, commentators suggested that the Commission further refine the amendments by permitting broker-dealers to hedge corporate debt securities with other corporate debt securities and Government securities futures. The commentators, however, did not furnish the Commission with the data necessary to substantiate their claim that the aforementioned strategies should be recognized by the Commission. In a subsequent proposal the SIA recommended, among other things, that those strategies be recognized under the net capital rule and submitted the relevant data to support this recommendation.

In addition to expanding hedging strategies available under the net capital rule, the SIA also proposed other amendments to the net capital rule's treatment of corporate debt securities positions. The SIA recommended further reductions to the haircuts applicable to hedged corporate debt securities positions and modifications to the criteria for determining whether the maturities of two offsetting debt positions are close enough to consider the combined position as hedged be restructured.

The SIA submitted data that, for the most part, corroborates their recommendations.[2] The data includes analyses of price spreads of bonds of various characteristics. The bonds used in the data include corporate instruments of various ratings, interest rates and maturities, U.S. government securities and futures on U.S. government securities. The spreads for bonds of similiar maturities appeared to remain relatively constant over time and seemed to indicate lower haircuts for hedged positions in corporate debt securities are warranted. The Commission believes the proposed amendments will more accurately reflect the risk associated with these types of hedged positions and would lower the restrictions on use of capital by brokers and dealers with no diminution of investor protection.

II. Discussion of the Proposed Amendments

Currently, subparagraph (c)(2)(vi)(F)(1) of Rule 15c3-1 (17 CFR 240.15c3-1(c)(2)(vi)(F)(1)) prescribes the haircuts that the broker-dealer incurs with respect to its unhedged corporate debt securities positions. Those haircuts range from two to nine percent of the market value of the greater of the long or short position in each maturity category ("haircut categories"). The current rule includes six haircut categories for unhedged positions. The first five haircut categories cover one year each and include bonds that have less than five years to maturity. The sixth haircut category covers coroprate debt securities that have over five years remaining to maturity.

Subparagraph (c)(2)(vi)(F)(2) of Rule 15c3-1 (17 CFR 240.15c3-1 (c)(2)(vi)(F)(2)) prescribes the haircuts for corporate debt securities positions that are considered to be hedged. Currently, the haircut categories are the same for the hedged bond haircut schedule as they are for the unhedged haircut schedule, but the haircuts are one half of the haircuts required for unhedged corporate debt securities positions.

The proposed amendment would change all haircut categories within the corporate debt securities section of the net capital rule. The haircut categories for the unhedged haircut schedule would be expanded to nine categories.[3] Although haircuts for unhedged corporate debt security positions of four years or less would be unchanged, the additional categories refine the treatment of bonds with more than five years to maturity, reducing the haircuts

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[1] Securities Exchange Act Release No. 18737 (May 13, 1982), 47 FR 21579 (May 20, 1982).

[2] The SIA's data selected a group of debt securities of varying maturities and ratings. The data indicated that in 95% of the cases, the monthly spread between the corporate securities composing the hedge was less than the SIA's proposed haircut. The data has been included in File No. S7-46-85.

[3] A graphic comparison of the current haircut categories and those proposed for comment is provided in the appendix to this release.

for bonds of 5 to 25 years to maturity. Under the current rule, all unhedged corporate debt securities with more than five years to maturity are treated the same. Under the proposed amendments, the fourth category would include bonds with 3 to 5 years maturity and four additional categories of five years each would be created with a last category including bonds with twenty-five years or more to maturity. The haircuts for all but the latter of these categories would be less that the present greater than five year category. The Commission preliminarily believes the proposed haircut categories reflect more closely the change in price volatility over the life of the corporate debt security. With this change, the proposed haircut categories will correspond more closely to the haircut categories that presently exist for government securities in subparagraph (c)(2)(vi) (A) (*I*) of the rule.

The proposed amendments also include changes to the haircut categories for hedged corporate debt securities positions.[4] The proposed amendments would create four haircut categories for those positions, three categories of five years each and a fourth that would include bonds with over fifteen years remaining to maturity. The Commission believes that, in light of the fact that longer maturity bonds are more activity traded, a shift in focus from the shorter to the longer maturities is justified. The greater differentiation of 5 to 25 year bonds better takes into account the change in volatility over the life of the bond and would parallel the categories proposed for determining whether a given position is hedged ("hedging categories").

Subparagraph (c)(2)(vi)(F(*2*) sets forth criteria that determines whether a given corporate debt securities position should be considered as hedged for purposes of the net capital rule. Under the current rule, generally, a corporate debt security is deemed to be hedged with a offsetting U.S. Government security if the two securities "* * * have maturity dates within—3 months, if the nonconvertible debt securities has a maturity date of less than 15 months; 6 months, if the nonconvertible debt security has a maturity date of greater than 15 months but less than 2 years; 1 year, if the nonconvertible debt security has a maturity date of greater than 2 years but less than 5 years; and 5 years, if the nonconvertible debt security has a maturity for 5 years or more."

Under the proposed amendments, the four hedging categories existing in the current rule would be expanded.[5] The first category, which currently covers corporate debt securities with remaining maturities under fifteen months, would be expanded to include bonds with less than five years to maturity. The proposed amendments would allow offsetting bond positions within the first hedging category that have remaining maturities within six months of each other to be treated as hedged. The second category would be extended to cover bonds with between five and ten years remaining to maturity. To be treated as hedged under the proposed amendments, bonds within the second hedging category would be required to have remaining maturities within nine months of each other. The third category would be expanded to include bonds between ten and fifteen years to maturity. Offsetting debt securities within the third hedging category would, under the proposed amendments, be required to have remaining maturities that are within two years of each other in order to be treated as hedged. The fourth hedging category would cover corporate debt securities with over fifteen years remaining to maturity. Under the proposed amendments, offsetting positions within the fourth hedging category would be required to have remaining maturities within five years of each other before the hedged corporate debt securities haircuts are available.

Some positions that are currently treated as hedged would no longer be hedged positions under the proposed amendments. Under the current rule for example, corporate debt securities with five years to maturity could be matched with government securities with only five months remaining to maturity. The proposed hedging criteria, as recommended by the SIA, would restrict hedged positions to those offsetting debt securities that have relatively similar maturities.

The proposed amendments would also alter the haircuts on both hedged and unhedged corporate debt securities positions. The changes to the unhedged haircuts were made to correspond to the more differentiated treatment of longer term bonds in the new haircut categories. Rather than imposing a 9% haircut on all corporate debt securities with 5 years or more to maturity, the proposal would provide for graduated haircuts ranging from 7% (for 5 to 10 year bonds) to 9% (for bonds with more than 25 years to maturity). The Commission preliminarily believes that these haircut levels more accurately correspond to the relative volativity of these securities.

The changes proposed to the hedged corporate debt security haircuts will, in most cases, result in significantly reduced haircuts for those positions. For example, hedged corporate debt positions with remaining maturities of five years or over, currently subject to a 4.5% haircut, would be subject to haircuts of 2.5%, 2.75% and 3.0%, depending on the remaining maturities of the bonds included in those positions.

Besides lowering the haircuts for hedged corporate debt securities positions, the proposed amendments also expands the types of instruments that can be used to create a hedged position for purposes of the net capital rule. The proposed amendments will allow positions that include offsetting corporate debt securities with similar remaining maturies to be treated as hedged. Because of the additional credit risk, those positions will incur a haircut that equals 120% of the haircuts afforded hedged corporate debt securities positions that include a U.S. Government security. The proposed amendments will further allow U.S. Government security futures to be substituted for U.S. Government securities for purposes of creating hedged positions.

Finally, the Commission requests comment and relevant data regarding what haircut should be applied for positions in highly rated corporate debt securities bearing a variable, rather than fixed interest rate. While it is apparent that the market risk for frequently adjusted variable rate corporate debt securities is lower than fixed interest rate bonds, the current haircut for variable rate corporate instruments is higher than the haircut afforded fixed income corporate debt securities.

III. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly section 15(c)(3) thereof, 15 USC 78*o*(c)(3), the Commission proposes to amend § 240.15c3–1 in Chapter II of Title 17 in the manner set forth below.

IV. Regulatory Flexibility Act Certification

Section 603(a) [6] of the Administration Procedure Act,[7] as amended by the

[4] The appendix to this release includes graphic comparisons of the current haircut categories for hedged corporate debt securities positions and those proposed for comment.

[5] A graphic comparison of the hedging categories existing under the current rule and those proposed for comment is included in the appendix to this release.

[6] 5 U.S.C. 603(a).

[7] 5 U.S.C. 551, et seq.

Regulatory Flexibility Act,[8] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules or proposed rule amendments to determine the impact of such rulemaking on "small entities." [9] Section 605(b) of the Regulatory Flexibility Act, however, specifically exempts from the requirement any proposed rule, or proposed rule amendment for which the Chairman of the Commission certifies that, if adopted, would not have a "significant economic impact on a substantial number of small entities."

The Commission believes that the proposed rule amendments will not impose any significant costs on these entities. This is because small broker-dealers generally do not have significant proprietary positions in corporate debt securities. Accordingly, the Chairman of the Commission has certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The certification is attached to this release.

List of Subject in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Text of the Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

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[8] Pub. L. No. 96-354 (September 19, 1980), 94 Stat. 1164, reprinted in [1980] U.S. Code Cong. & Ad. News 1169.

[9] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity" the statute permits agencies to formulate their own definitions, the Commission published final definitions of terms "small business" and "small organization" in Securities Act Release No. 6380 (February 4, 1982) [47 FR 5215]. Section 240.0-10(b) defines a small broker-dealer for purposes of the Regulatory Flexibility Act as follows:

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act [5 U.S.C. 601 et seq] and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization" shall:

* * * * *

(c) When used with reference to a broker or dealer, mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *.

Section 240.15c3-1 also issued under Secs. 15(c)(3) and 17(a), 15 U.S.C. 78o(c)(3) and 78q(a).

2. Section 240.15c3-1 is amended by revising paragraph (c)(2)(vi)(F) as follows:

§ 240.15c3-1. Net capital requirements for brokers and dealers.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(F)(*1*) *Nonconvertible debt securities.* In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—2.0%

(*ii*) 1 year but less than 2 years to maturity—3.0%

(*iii*) 2 years but less than 3 years to maturity—5.0%

(*iv*) 3 years but less than 5 years to maturity—6.0%

(*v*) 5 years but less than 10 years to maturity—7.0%

(*vi*) 10 years but less than 15 years to maturity—7.5%

(*vii*) 15 years but less than 20 years to maturity—8.0%

(*viii*) 20 years but less than 25 years to maturity—8.5%

(*ix*) 25 years or more to maturity—9.0%

(*2*) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity rate and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations if such securities have maturity dates:

(i) Less than five years and within 6 months of each other;

(ii) Between 5 years and 10 years and within 9 months of each other;

(iii) Between 10 years and 15 years and within 2 years of each other; or

(iv) 15 years or more and within 5 years of each other.

(*3*) With respect to those hedged positions that include a long or short position in securities issued by the United States or any agency thereof, the electing broker or dealer shall also exclude the hedging short or long securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of Rule 15c3-1 (240.15c3-1(c)(2)(vi)(A)), but shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(i) Less than 5 years to maturity—1½%

(ii) 5 years but less than 10 years to maturity—2½%

(iii) 10 years but less than 15 years to maturity—2¾%

(iv) 15 years or more to maturity—3%.

(*4*) With respect to those hedged positions that include offsetting long and short positions in nonconvertible debt securities, the electing broker or dealer shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(i) Less than 5 years to maturity—1¾%

(ii) 5 years but less than 10 years to maturity—3%

(iii) 10 years but less than 15 years to maturity—3¼%

(iv) 15 years or more to maturity—3½%.

(*5*) In computing deductions under paragraph (c)(2)(vi)(F)(*3*) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(F(*3*) of this section, long or short positions in securities issued by the Untied States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account. The provisions of Appendix B to Rule 15c3-1 (17 CFR

240.15c3–1b) will in any event apply to the positions in futures contracts.

* * * * *

By the Commission.

John Wheeler,

Secretary.

October 15, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, herey certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 15c3–1 set forth in Securities Exchange Act Release No. 34–22532, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would not significantly affect small entities since they do not generally hold significant positions in the type of securities to which the amendments relate.

Dated: October 15, 1985.

John S.R. Shad,

Chairman.

Appendix

Comparison of Hedged Corporate Debt Security Haircut Schedules

[Corporate debt securities hedged with government securities or futures]

Haircuts per current rule		Haircuts proposed for comment	
Maturity	Haircut (percent)	Maturity	Haircut [1] (percent)
(i) Less than one year to maturity	1.0	(i) Less than 5 years to maturity	1.5
(ii) 1 year but less than 2 years to maturity	1.5	(ii) 5 year but less than 10 years to maturity	2.5
(iii) 2 years but less than 3 years to maturity	2.5	(iii) 10 year but less than 15 years to maturity	2.75
(iv) 3 years but less than 4 years to maturity	3.0	(iv) 15 years or more to maturity	3.0
(v) 4 years but less than 5 years to maturity	3.5		
(vi) 5 years or more to maturity	4.5		

[1] Hedged corporate debt securities haircuts are computed on the "market value of the hedged long or short position." If, for example, a broker-dealer was long $4 million of U.S. Treasury obligations and short $5 million corporate debt securities of similar maturities, the haircut would be computed by multiplying $4 million by the appropriate percentage on the hedged haircut schedule and $1 million by the appropriate percentage on the unhedged haircut schedule.

Comparison of Hedged Corporate Debt Security Haircut Schedules

[Corporate debt securities hedged with other corporate debt securities]

Haircuts per current rule		Haircuts proposed for comment	
Maturity	Haircut [1] (percent)	Maturity	Haircut (percent)
(i) Less than one year to maturity	2.0	(i) Less than 5 years to maturity	1.75
(ii) 1 year but less than 2 years to maturity	3.0	(ii) 5 years but less than 10 years to maturity	3.0
(iii) 2 years but less than 3 years to maturity	5.0	(iii) 10 years but less than 15 years to maturity	3.25
(iv) 3 years but less than 4 years to maturity	6.0	(iv) 15 years or more to maturity	3.5
(v) 4 years but less than 5 years to maturity	7.0		
(vi) 5 years or more to maturity	9.0		

[1] Under the current rule, offsetting positions in corporate debt securities are not afforded the reduced haircuts applied to positions that are defined as hedged. Hence, the unhedged haircut schedules is currently used for those positions. Under the schedule as proposed for comment, these positions would be afforded a hedged treatment that would be approximately 120% of the haircut that would be applied to corporate debt securities that are offset by U.S. Government obligations of similar remaining maturities.

Comparison of Unhedged Corporate Debt Security Haircut Schedules [1]

Haircuts per current rule		Haircuts proposed for comment	
Maturity	Haircut (percent)	Maturity	Haircut (percent)
(i) Less than one year to maturity	2.0	(i) Less than 1 year to maturity	2.0
(ii) 1 year but less than 2 years to maturity	3.0	(ii) 1 year but less than 2 years to maturity	3.0
(iii) 2 years but less than 3 years to maturity	5.0	(iii) 2 years but less than 3 years to maturity	5.0
(iv) 3 years but less than 4 years to maturity	6.0	(iv) 3 years but less than 5 years to maturity	6.0
(v) 4 years but less than 5 years to maturity	7.0	(v) 5 years but less than 10 years to maturity	7.0
(vi) 5 years or more to maturity	9.0	(vi) 10 years but less than 15 years to maturity	7.5
		(vii) 15 years but less than 20 years to maturity	8.0
		(viii) 20 years but less than 25 years to maturity	8.5
		(ix) 25 years or more to maturity	9.0

[1] Unhedged corporate debt securities haircuts are computed on the "greater of the long or short position in each category." If, for example, a broker-dealer was long $5 million IBM with 6 years remaining to maturity and short $4 million GM with 8 years left to maturity the haircut under the proposed rules would be 7 percent of $5 million or 350,000.

Comparison of Hedging Criteria

Hedging categories per current rule		Hedging categories proposed for comment	
Maturity of corporate debt security	Maturity of offsetting debt security	Maturity of corporate debt security	Maturity of offsetting debt security
(i) Less than 15 months to maturity	Within 3 months of corporate debt security	(i) Less than 5 year to maturity	Within 6 months of corporate debt security.
(ii) 15 months but less than 2 years to maturity	Within 6 months of corporate debt security	(ii) 5 years, but less than 10 years to maturity	Within 9 months of corporate debt security.
(iii) 2 years, but less than 5 years to maturity	Within 1 years of corporate debt security	(iii) 10 years but less than 15 years to maturity	Within 2 years of corporate debt security.
(iv) 5 years or more to maturity	Within 5 years of corporate debt security	(iv) 15 years or more to maturity	Within 5 years of corporate debt security.

[FR Doc. 85–25222 Filed 10–22–85; 8:45 am]

BILLING CODE 8010–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 85-6]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering the deletion of certain information from the jukebox certificate. The proposed change would facilitate the private administration of an agreement reached between the performing rights societies and the Amusement & Music Operators Association regarding civil enforcement of the jukebox compulsory license of 17 U.S.C. 116.

DATE: All comments should be received on or before November 22, 1985.

ADDRESSES: Interested persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department D.S., Washington, D.C. 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the performance of nondramatic musical works.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Section 116 establishes general rules govering the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and certificates to be affixed to licensed phonorecord players.

The administration and civil enforcement of the compulsory licensing system has caused friction between copyright owners and jukebox operators.[1] The royalty fee initially established in the 1976 Copyright Act was a yearly $8 per coin-operated phonorecord player. In 1981, the Copyright Royalty Tribunal, under its statutory authority, raised the royalty fee. 46 FR 884 (1981). In 1982 and 1983 the fee became $25 per jukebox and, thereafter, $50 per jukebox, subject to a cost of living adjustment on January 1, 1987. Jukebox operators argued this increase was too high, but the rate adjustment was upheld by the courts. *Amusement and Music Operator's Ass'n.* v. *Copyright Royalty Tribunal* 676 F.2d. 144 (7th Cir. 1982), *cert. denied*, 459 U.S. 907 (1982). The Copyright Office implemented the rate adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982).

The AMOA then sought legislative reform of the jukebox compulsory license, particularly with respect to the copyright royalties payable. Several bills were introduced in the 98th Congress (e.g., S. 1734, H.R. 3858, and H.R. 4010), which would have established a one-time royalty fee per jukebox for its entire useful life, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and argued that voluntary compliance with the compulsory licensing scheme by operators was low. While significant penalties in the copyright law existed for performance by coin-operated phonorecord players of musical compositions without a license, enforcement of those remedies was expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners lost a significant portion of the royalties to which they were entitled under the existing law.

In order to reach a mutually acceptable solution, Congressional leaders urged the interested parties to enter into private negotiations.[2] Following this advice, the performing rights societies and AMOA succeeded in reaching an agreement to be in effect until 1990, which resolves several points of controversy.

One part of the agreement would allow jukebox operators to transfer certificates from jukeboxes not in service to those which are publicly performing musical compositions. The parties to the agreement believe such a policy is both equitable and consistent with the statute.

In order to facilitate the private administration of this agreement two minor changes in Copyright Office regulations are requested. Presently, § 201.16(c)(1) requires the certificate to contain the name of the manufacturer of the coin-operated phonorecord player and the player's serial number. Under the proposed regulation, this information would be deleted from the certificate. In addition, § 201.16(c)(2) would be modified to reflect the fact that the certificate no longer consists of two parts.

Under section 116 of the copyright law, the Copyright Office is authorized to determine the content of the certificate. The resolution of disputes through private negotiation is clearly a laudable goal. Since all interested parties appear to agree that the change would facilitate a more equitable administration of the compulstory license, the Copyright Office proposes to make the necessary changes in its regulations.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to the Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[3]

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[1] In general, the licensing of performance rights of musical compositions are handled by the performing rights societies. Section 116(e) of the copyright law identifies the performing rights societies as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC, Inc. In copyright matters, jukebox operators have been represented by their trade association, Amusement & Music Operators Assn (AMOA).

[2] Billboard, May 25, 1985, at 1.

[3] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits] [17 U.S.C. 706(b)] The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses because the proposed regulation does not change the application process by merely modifies the certificates issued by the Copyright Office.

List of Subjects in 37 CFR Part 201

Copyright, jukeboxes.

Proposed Regulations

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.16 is also issued under 17 U.S.C. 116.

2. Section 201.16(c)(1) and (c)(2) is revised to read as follows:

§ 201.16 Recordation and certification of coin-operated phonorecord players.

* * * * *

(c) *Certificate.* (1)(a) After receipt of the prescribed form and fee, the Copyright Office will issue a certificate containing the information set forth in paragraphs (b)(1)(i) and (ii) of this section, together with a unique licensing number, the date of issuance of the certificate and the date of expiration of the license. The date of expiration of the license will be December 31st of the year in which the certificate is issued. Certificates issued upon payment of a half-year fee will be valid only after July 1 of the year in which they are issued and will be so identified.

(2) The certificate may be affixed in the record selection (title strip) panel of a player or in another position on the player where it can be readily examined by the public, but in any case it must be clearly visible.

* * * * *

Dated: October 16, 1985.

Ralph Oman,

Register of Copyrights.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-25273 Filed 10-22-85; 8:45 am]

BILLING CODE 1410-07-M

POSTAL SERVICE

39 CFR Part 10

International Mail Manual; Proposed Express Mail International Service to Cyprus

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to an agreement with the postal administration of Cyprus, the Postal Service intends to begin Express Mail International Service with Cyprus at postal rates indicated in the tables below. The proposed service is scheduled to begin on December 27, 1985.

DATE: Comments must be received on or before November 27, 1985.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5350.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 268-2673.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1. Additions to the manual concerning the proposed new services, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking [5 U.S.C. 553] do not apply [39 U.S.C. 410 (a)], the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed Express Mail International Service to Cyprus at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10.

Postal Service, Foreign relations.

PART 10—[Amended]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

CYPRUS—EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service [1]		On demand service [2]	
Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	35.90	2	27.90
3	40.80	3	32.80
4	45.70	4	37.70
5	50.60	5	42.60
6	55.50	6	47.50
7	60.40	7	52.40
8	65.30	8	57.30
9	70.20	9	62.20
10	75.10	10	67.10
11	80.00	11	72.00
12	84.90	12	76.90
13	89.80	13	81.80
14	94.70	14	86.70
15	99.60	15	91.60
16	104.50	16	96.50
17	109.40	17	101.40
18	114.30	18	106.30
19	119.20	19	111.20
20	124.10	20	116.10
21	129.00	21	121.00
22	133.90	22	125.90
23	138.80	23	130.80
24	143.70	24	135.70
25	148.60	25	140.60
26	153.50	26	145.50
27	158.40	27	150.40
28	163.30	28	155.30
29	168.20	29	160.20
30	173.10	30	165.10
31	178.00	31	170.00
32	182.90	32	174.90
33	187.80	33	179.80
34	192.70	34	184.70
35	197.60	35	189.60
36	202.50	36	194.50
37	207.40	37	199.40
38	212.30	38	204.30
39	217.20	39	209.20
40	222.10	40	214.10
41	227.00	41	219.00
42	231.90	42	223.90
43	236.80	43	228.80
44	241.70	44	233.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-25264 Filed 10-22-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84014; FRL-2905-2]

Health and Safety Data Reporting; Submission of Lists and Copies

Correction

In FR Doc. 85-23259 beginning on page 39715 in the issue of Monday, September 30, 1985 make the following corrections:

§ 716.17(a)(1) [Corrected]

1. On page 39723 in the first line "Methyl" is corrected to read "Methyl".

2. In the forty-eighth line "2-Pnenoxyethanol" is corrected to read "2-Phenoxyethanol".

§ 716.17(a)(2) [Corrected]

3. On page 39724, the twenty-fourth line is corrected to read

"Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7,-hexachloro-...3389-71-7 1/13/94".

4. The twenty-fifth line is corrected to read

"1,1-Biphenyl.....92-52-4 4/29/93".

5. The twenty-sixth line is corrected to read

"1,3-Butadiene, 1,1,2,3,4,4-hexachloro-...87-68-3. 10/04/92".

§ 716.17(b) [Corrected]

6. On page 39727 the twenty-second line is corrected to read

"Napthalene, heptachloro-...32241-8-0 10/04/92".

§ 716.17(c) [Corrected]

7. On page 39729 the fourth line is corrected to read

"1,3,5-trimethylbenzene,..108-67-8 2/13/94".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3040, 3100, 3130, and 3200

Federal Onshore Oil and Gas Lease Bonding Needs and Issues; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting: Federal Onshore Oil and Gas Lease Bonding Needs and Issues.

SUMMARY: The Bureau of Land Management and the Minerals Management Service will hold a public meeting on Federal onshore oil and gas bonding issues and needs with respect to comments received in response to the proposed rulemaking dated May 1, 1985 (50 FR 18614). This proposed rulemaking was initiated to facilitate a simplification and consolidation of the bonding requirements to cover current surface restoration costs and increased royalty obligations.

DATES: The comment period is now reopened and will continue through November 27, 1985. The public meeting will be held November 20, 1985 at 9:00 AM.

ADDRESSES: Comments may be made at the meeting or sent in writing to the Director (140), Department of the Interior, Bureau of Land Management, 18th & C Streets, N.W., Washington, D.C. 20240. Public comments will be considered in preparing the final rulemaking. The public meeting will be held at the Sheraton-Denver Airport Hotel, 3535 Quebec Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mona Schermerhorn (202) 653-2190.

Dated: October 17, 1985.

Richard F. Burford,

Director.

[FR Doc. 85-25251 Filed 10-22-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[Gen Docket No. 85-303; FCC 85-549]

Amendment of Rules To Exempt Medical Ultrasonic Diagonistic and Monitoring Equipment From Technical Standards

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The subject Notice proposes to exempt medical ultrasonic diagnostic and monitoring equipment from technical standards designed to control radio and TV interference. The standards are contained in Part 18 of the FCC Rules. This action is proposed because other types of medical equipment have already been exempted from the Commission's requirements and manufacturers have argued that the equipment in question is of no greater interference threat. The intended effect of this action is to relieve manufacturers from the burden of requirements that do not appear necessary to control interference from such equipment.

DATES: Comments requested by November 25, 1985; Reply comments requested by December 10, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Office of Science and Technology, Technical Standards Branch, Washington, D.C. 20554. (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Sections in 47 CFR Part 18

Medical devices, Scientific equipment, Reporting requirements.

Notice of Proposed Rule Making

In the matter of amendment of Part 18 of the FCC Rules to exempt medical ultrasonic diagnostic and monitoring equipment from technical standards; Gen. Docket No. 85-303; FCC 85-549.

Adopted: October 9, 1985.

Released: October 17, 1985.

By the Commission.

Introduction

1. On April 28, 1983, Hewlett Packard Company(HP) submitted a petition (RM-4445) seeking the establishment of an exemption from the radio emissions standards in Part 18 of the FCC Rules for certain types of medical ultrasonic equipment. the petition was denied by Commission *Order*, FCC 84-251, adopted on May 31, 1984, released June 7, 1984, on the basis that, considering the information available at that time, it appeared the risk of interference associated with an exemption would be too great. Since that time, medical equipment manufacturers have submitted additional information and tests of representative equipment samples have been conducted at the Commission's laboratory which indicate that the risk of interference may indeed be considered acceptable. Accordingly, for the reasons given in the ensuing discussion, we are proposing to exempt medical ultrasonic diagnostic and monitoring equipment from the Part 18 technical standards.

Backgound

2. Part 18 sets forth requirements designed to control radio and TV interference that can be caused by industrial, scientific, and medical (ISM) equipment—equipment that generates radio frequency energy and applies it to a substance to affect its physicial characteristics, exclusive of equipment used for communications purposes. Ultrasonic equipment generates radio frequency energy and applies it to a transducer to produce mechanical vibrations that, in turn, generate sound waves above the range of human hearing. Hence, ultrasonic equipment, except those types used for communication purposes, falls under the rules in Part 18. Ultrasound has long been used in the medical field for therapeutic purposes and, over the last decade or so, developments in the field of digital electronics and signal processing techniques have led to new types of medical equipment which use ultrasonic energy for a host of diagnostic

and patient monitoring purposes. Applications for such equipment include fetal heart monitoring, blood flow measurements, and diagnostic imaging.

3. Part 18 sets forth special technical standards for ultrasonic equipment and requires that the equipment meet those standards prior to marketing.[1] In petitioning for an exemption from Part 18 for medical ultrasonic diagnostic and monitoring equipment, Hewlett-Packard argued that such equipment presented no more of an interference risk than other non-ultrasonic medical equipment which the Commission had already exempted from Part 15, Subpart J, which sets forth standards designed to control interference caused by equipment that employs digital electronics, referred to as "computing devices." By Report and Order in General Docket 81–461, adopted July 1, 1982, released July 9, 1982, FR 31266, the Commission established an exemption from Part 15, Subpart J, for specialized medical computing devices generally used at the direction of or under the supervision of a licensed health care practitioner. Reference § 15.801(c)(5).

4. As pointed out in Gen Docket 81–461, a number of factors contributed to the Commission's decision to exempt medical equipment from the computing device rules, including the following: there had been no known reports of interference caused by medical equipment; there would be extreme difficulties and high costs in performing radiated emissions measurements on an open field test site for certain types of medical equipment, such as CAT scanners and X-Ray machines; because medical equipment must be capable of operating in a high noise environment, shielding is generally employed that, in turn, tends to reduce the levels of emissions; such equipment is already regulated by other Federal Government agencies; and, the Food and Drug Administration has, in place, a mechnism for reporting any problems that develop with medical equipment. HP argued that these same factors similarly apply to medical ultransonic diagnostic and monitoring equipment. HP claimed that the vast majority of manufacturers of such equipment was unaware that Part 18 applied to diagnostic or monitoring equipment; consequently, most had not applied to the Commission for equipment authorization.

5. The Commission cited several reasons for its denial of the HP petition. Although no negative comments were filed against the petition, there was concern that such equipment posed a greater risk of interference than equipment that simply employs digital electronic circuitry.[2] This stemmed from the fact that the equipment appeared to use higher levels of radio frequency energy to drive the ultrasonic transducer than is generally employed by equipment that only utilizes digital electronics. (Several watts are sometimes applied to an ultrasonic transducer vs. typically a few milliwatts employed by a digital electronic circuit). Further, medical diagnostic equipment did not have a good record of compliance with the Part 18 technical standards, with 8 out of 20 pieces of equipment submitted for equipment approval up to that time having failed to meet the pertinent standards. Finally, in contrast to the measurement problems posed by equipment such as CAT scanners and X-ray machines, it did not appear that tests for medical ultrasonic equipment would be particularly difficult; neither the equipment size (most units are designed to either sit atop a table or to be mounted in a small rollaway cart) nor special operating requirements, preclude measurements of radiated emissions on an open field test site. Although the petition for an exemption was denied, the Commission stated that an open meeting with the commission staff would be held to discuss possible relaxation of the Part 18 technical standards and simplification of the measurement procedures for such equipment.

Results of Open Meeting Between Industry and FCC Staff

6. On August 21, 1984, an open meeting was held between members of the staff of the Office of Science and Technology and those parties affected by the regulations pertaining to medical ultrasonic equipment. The attendees included representatives of the American Radio Relay League (on behalf of amateur radio operators), the Association of Maximum Service Telecasters (on behalf of UHF TV broadcasters), the American College of Radiology, and about a dozen manufacturers of medical ultrasonic equipment. At that meeting, the manufacturers reaffirmed HP's earlier position that such equipment posed no greater interference threat than medical computing devices and should therefore be exempt. Further, the manufacturers asserted that many more types of medical ultrasonic equipment existed than just those the Commission had encountered in its type approval testing and the magnitude of the effort required to test some machines would indeed be great. It was agreed that manufacturers, under the auspices of the Health Industry Manufacturers Association (HIMA) and the National Electrical Manufacturers Association (NEMA), would provide further information on the various types of medical ultrasonic diagnostic and monitoring equipment and their technical characteristics. In addition, the manufacturers agreed to furnish a list of their products from which the Commission could select units to measure the levels of emissions and evaluate the interference potential. The information and list were submitted jointly by HIMA and MEMA on December 21, 1984.

Results of Commission Laboratory Investigation

7. Eight pieces of medical ultrasonic equipment were selected for tests at the Commission's Laboratory in Columbia, Maryland. The results of the tests are being made available in the FCC Laboratory Report in Project No. 2226–6 entitled "Investigation of the Interference Potential of Medical Ultrasonic Diagnostic Equipment," a copy of which has been inserted in the record for this proceeding. The primary focus of the tests was to determine whether the ultrasonic generator in the equipment produced significantly higher emissions than the digital electronics contained in that equipment, otherwise exempt. Additionally, the emission levels were compared against the levels permitted for computing devices under Part 15, Subpart J, and the limits for ultrasonic equipment in Part 18, Subpart C, as frames of reference for evaluating the interference potential. Greater weight was given to comparison with the limits for computing devices because

[1] Most ultrasonic equipment is subject to verification of compliance with the pertinent technical standards in Part 18, Subpart C. See § 18.203 for details on the applicable equipment authorization requirements. The verification procedure is specified in Part 2, Subpart J. Basically, verification is a procedure whereby the manufacturer performs measurements to determine compliance with the technical standards and retains a record of the results in its files. Information is not routinely required to be submitted to the Commission.

[2] As with digital electronics, the emissions that result from an ultrasonic generator can extend over a broad range of frequencies. The fundamental frequency of an ultrasonic generator can range anywhere between 40 kHz and 15 MHz, and signficant harmonics may be observed as high as 100 MHz, or higher in some cases. Thus, emissions may occur in the frequency bands utilized by a number of radio services, including AM broadcast, TV, and several amateur frequency bands. However, the mere fact that emissions are present does not in and of itself mean that there is a signficant risk of interference. Other factors, such as strength of the emissions and proximity to receivers must be taken into account.

they are better supported technically and reflect more recent study.[3]

8. There were a number of notable results from the laboratory tests. The ultrasonic section of the equipment produced additional radio noise to that generated by the digital electronics contained in the equipment; however, the levels of emissions associated with the ultrasonic section did not stand about as characteristically more severe than emissions produced by the digital electronics.[4] Only 4 out of 8 units met the limits for computing devices in Part 15, Subpart J; however, analysis of the test data reveals that this is not as serious as it may seem. Seven of the units met the power line conducted emissions limits for computing devices, and the data on the eighth unit was inconclusive.[5] As to the limits for radiated emissions, four of the units had no measurable emissions whatsoever at the distance at which the computing device limits are specified (30 meters). The other four units exhibited radiated emissions higher than that permitted for computing devices. Specifically, the worst emissions from each unit exceeded the limits by 1.3 dB at 44.3 MHz, 6 dB at 60.8 MHz, 9.4 dB at 33.3 MHz, and 12.5 dB at 30 MHz. It would not be unusual to encounter signals of those levels in routine measurements of ordinary computer equipment or other equipment that contains digital electronics. Only 2 out of 8 units met the limits for ultrasonic equipment in Part 18, Subpart C; however, as explained earlier, this was not given as much weight as was the comparison to the computing device limits.

[3] The technical standards and measurement procedures for computing devices, set forth in Part 15, differ significantly from those for ultrasonic equipment, set forth in Part 18. The standards for ultrasonic equipment are generally more stringent than the standards for computing devices intended for use in commercial or business environments (Class A computing device standards). However, the dichotomy in limits is due in large part to different approaches to the establishment of limits and not because there is some fundamental technical reason why the limits should be different. The limits for ultrasonic equipment were developed some 30 years ago and were based on engineering judgments of the potential interference effects on communications systems at that time. The computing device limits were developed in the late 1970's and are based on detailed technical analyses and measurements of interference effects on more contemporary communications systems. We plan to rectify the differences between the limits in Parts 15 and 18 at some point in the future.

[4] There was no apparent pattern to the relationship between the levels of emissions attributable to the ultrasonic generator vs. the digital electronics. In any given machine, the emissions due to the ultrasonic generator may be higher or lower than those due to the digital electronics. The statement that the emissions due to the ultrasonic generator are not significantly greater than from the digital electronics is based upon evaluation of the entire group of equipment.

[5] As discussed in the laboratory report, the power line conducted measurements for one unit raised a question as to whether it complies with the standards for computing devices. The question could not be investigated further because the equipment had to be returned to the manufacturer. Thus, it could not be stated conclusively whether this unit met the line conducted emissions limit for computing devices.

Discussion

9. We recognize that medical equipment is highly regulated and that the costs of medical care are of great concern to society. Because of this, we must consider carefully the impact of FCC regulations on medical equipment and whether there is a demonstrated need for those rules. Through the cooperative efforts of the staff and the medical industry, sufficient information has been developed to show that an exemption from the Part 18 rules for medical ultrasonic diagnostic and monitoring equipment may be warranted.

10. Based on our laboratory tests, it appears that the levels of emissions generated by medical ultrasonic diagnostic and monitoring equipment are indeed about the same as that generated by medical equipment that simply employs digital electronics and has been exempted from Part 15. While we earlier expressed reservations about the degree to which the underlying arguments favoring Part 15 exemption for medical equipment applied to the equipment in question here, those concerns stemmed largely from the question of whether medical ultrasonic diagnostic equipment was unique from the standpoint of emissions characteristics. The equipment has been shown not to be unique and our previous concerns are greatly mitigated.

11. There are several factors that lead to the conclusion that the risk of interference would be minimal if the equipment in question were made exempt from Part 18. Our test results seem to indicate that a substantial portion of the products in question will meet our standards governing radio noise from digital electronic equipment even without a mandatory requirement. Further, it appears that those units that do not meet the limits will tend to exceed them by only a small margin. In any event, we expect that this will be counterbalanced by the fact that most medical equipment of this type will be used in the controlled environment of hospitals and clinics, which are usually separated from TV and other receivers by much more than the 30 meter protection distance assumed in establishing our computing device rules for equipment used in a business environment. We note that that there are no known reports of interference caused by the subject equipment.

12. We recognize that there may be some risks of interference associated with an exemption; however, we believe the risks are minimal and are far outweighted by the benefits to be derived. Therefore, we are proposing to exempt medical ultrasonic diagnostic and monitoring equipment from the Part 18 technical requirements. The specific text of the proposed rule change is shown in the Appendix. Such equipment will only remain subject to the general requirement that harmful interference must be corrected if it occurs. We are not proposing to exempt medical ultrasonic equipment used for therapeutic purposes. Substantially higher power can be and is used for therapeutic purposes.

13. Had we not found there to be adequate basis for an exemption, we would have, at minimum, proposed that the Part 18 technical standards for this equipment be relaxed to be the same as permitted for computing devices (Class A for equipment intended for use in a commercial environment and Class B for equipment intended for use in a residential environment). The computing device limits have proven satisfactory for controlling interference and there is no apparent reason to perpetuate more severe limits in Part 18 for medical ultrasonic diagnostic and monitoring equipment. In the event that information is submitted showing that the proposed exemption is inappropriate, we may consider adopting alternative limits as noted herein. It should be noted that the Part 18 rules were recently revised, relaxing the equipment authorization requirement for ultrasonic equipment to verification, the Commission's least burdensome equipment authorization procedure. See the *Third Report and Order* in General Docket 20718, adopted August 5, 1985, published in the **Federal Register** on September 5, 1985, at 50 FR 36061.

Procedural Matters

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. the Commission issues the following initial regulatory flexibility analysis:

I. Reason for Action

This notice proposes to exempt medical ultrasonic diagnostic and monitoring equipment from technical standards in Part 18 of the Rules that are designed to control radio and TV interference. The proposal responds to

requests from manufacturers of such equipment.

II. The Objective

The objective of the proposed rule change is to provide relief from regulations that may not be necessary to control interference from the subject type of equipment.

III. Legal Basis

The action proposed is in furtherance of sections 4(i), 302(a), 303(g) and 303(r) of the Communications Act of 1934, as amended, which permit the Commission to make reasonable regulations governing the interference potential of RF equipment and to promote the larger and more effective use of radio in the public interest.

IV. Entities Affected; Nature of Economic Impact; Significant Alternatives

This action would affect manufacturers of medical ultrasonic diagnostic and monitoring equipment. The proposed exemption, if ultimately adopted, would relieve manufacturers of the costs of compliance with specific radio emissions limits. An alternative to an exemption, would be a relaxation of the current technical standards.

V. Recording, Record-Keeping and Other Compliance Requirements

The equipment in question is currently required to be verified by the manufacturer as complying with FCC technical standards, with a copy of the verification to be retained in the manufacturer's records. Under this proposal, verification would no longer be required and there would be no record-keeping or other compliance requirements.

15. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time that a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules 47 CFR 1.1231.

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

17. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 25, 1985, and reply comments on or before December 10, 1985. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. For further information on this proceeding, contact the Office of Science & Technology, tel: (202) 653-8247.

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

1. The authority citation for Part 18, including the proposed new § 18.104, continues to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat. 1066, 1082, 1083, as amended; sec. 303, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307.

2. 47 CFR Part 18 is proposed to be amended by adding a new rule section to read as follows:

§ 18.104 Exemptions.

Medical ultrasonic diagnostic and monitoring equipment is exempt from the technical and administrative requirements of this Part. Although exempt, such equipment remains subject to the general operating conditions of § 18.111 and provisions of § 18.113 through 18.117 regarding elimination of harmful interference. Although not mandatory, it is strongly recommended the manufacturers endeavor to have such devices meet the technical standards herein.

Note.—Medical ultrasonic equipment used for therapeutic purposes is not covered by this exemption.

[FR Doc. 85-25278 Filed 10-22-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-10; Notice 2]

Federal Motor Vehicle Safety Standards; Extension of Public Comment Time

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; extension of period for public comment.

SUMMARY: On September 3, 1985, NHTSA published a notice proposing an amendment to Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, that would delete paragraph S4.1.1.20, which specifies that certain vehicle lighting equipment be tested with a bulb whose filament is positioned within ±0.010 inch of the normal design position specified in SAE Standard J573d. In response to a request from Motor Vehicle Manufacturers Association, the comment closing date is changed from October 18, 1985 to November 18, 1985.

DATES: Comments on the notice of proposed rulemaking must be received on or before November 18, 1985.

ADDRESS: Comments should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ken Rutland, Office of Vehicle Safety Standards, Room 5320, National

Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 426-2720.

SUPPLEMENTARY INFORMATION: On September 3, 1985 (50 FR 35583) NHTSA published a notice proposing an amendment to Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, that would delete paragraph S4.1.1.20, which specifies that certain motor vehicle lighting equipment be tested with a bulb whose filament is positioned within ±0.010 inch of the nominal design position specified in SAE Standard J573d. The reasons for the proposal are the difficulty that manufacturers have in obtaining bulbs of this calibration, and the fact that the test bulb may not be representative of the bulb with which the lamp is sold. Deletion of the requirement would allow a manufacturer to test with a production bulb of ±0.040 inch tolerance.

The Motor Vehicle Manufacturers Association filed a timely petition with the agency seeking a 30-day extension of the comment closing date. The request noted that broadening the tolerance would "significantly affect lamp manufacturers", and that if they were to make informed comments on the proposal, each must evaluate the effect not only on current production lamps, but on future designs as well. MVMA said this will require extensive testing and subsequent evaluation. The petitioner cites as an additional reason for its request the agency's tardy filing in the docket of relevant material.

The agency believes that a month's extension will result in test data of great relevance to the rulemaking proceeding, which would not otherwise be available, and that an extension will be in the public interest. Accordingly the comment closing date is changed from October 18, 1985, to November 18, 1985.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated at suggestions for future rulemaking.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 17, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-25266 Filed 10-18-85; 2:40 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 205
Wednesday, October 23, 1985

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

Forms Under Review by Office of Management and Budget

October 18, 1985.

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, DC 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, DC 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

- Agricultural Marketing Service
- Tomatoes Grown in Florida (Marketing Order No. 966)
- Administrative Committee Forms
- Recordkeeping; On occasion; Weekly; Monthly; Annually; Daily
- Businesses or other for-profit; 174 responses; 18 hours; not applicable under 3504(h)

Charles W. Porter, (202) 447–2615

- Agricultural Stabilization Conservation Service
- Report of Acreage
- ASCS 578
- Annually
- Farms; 2,000,000 responses; 1,500,000 hours; not applicable under 3504(h)
- Thomas R. Burgess, (202) 447–3471
- Office of International Cooperation and Development
- Automated Skills Inventory System (ASIST)
- OICD–73
- On occasion
- Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,500 responses; 1,500 hours; not applicable under 3504(h)
- Charles H. Cook, (202) 475–5246

Reinstatement

- Farmers Home Administration
- Requests for Statement of Debts and Collateral
- FmHA 440–32
- On occasion
- Businesses or other for-profit; Small businesses or organizations; 375,000 responses; 62,625 hours; not applicable under 3504(h)

Mark Falcone, (202) 475–4019

Revision

- Agricultural Marketing Service
- Melons Grown in South Texas, Marketing Order No. 979
- Recordkeeping; On occasion; Biennially
- Farms; Businesses or other for-profit; 157 responses; 16 hours, not applicable under 3504(h)

Charles W. Porter, (202) 447–2615

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85–25285 Filed 10–22–85; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on November 15, 1985, at the U.S. Commission on Civil Rights, Midwestern Regional Office Conference Room #3280, 230 South Dearborn, Chicago, Illinois. The purpose of the meeting is to discuss civil rights issues in Illinois.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7171, (TDD 312/886–2188).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–25255 Filed 10–22–85; 8:45 am]

BILLING CODE 6335–01–M

Kentucky Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 4, 1985, at the Radisson Plaza Hotel, Vine and Broadway, Board Room, Lexington, Kentucky. The purpose of the meeting is to review draft of briefing memorandum on public housing desegregation in Louisville and Lexington and plan followup activity to the community fora on public housing desegregation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter G. Peeples or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391, (TDD 404/221–4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25259 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Maryland Advisory Committee to the Commission originally scheduled for October 21, 1985, at the Omni International Hotel, 101 West Fayette Street, Baltimore, Maryland, at 1:30 p.m. to 3:30 p.m., has a new meeting date.

The meeting place, convening and adjourning times will remain the same. The meeting date will change to November 21, 1985.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25260 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the of the Nevada Advisory Committee Employment Subcommittee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on October 24, 1985, at the Alexis Park Hotel, 375 E. Harmon, Las Vegas, Nevada. The purpose of the meeting is to discuss the Casino employment project.

Persons desiring additional information, or planning a presentation to the Committee, should contract Committee Chairperson, Elizabeth Nozero, or Philip Montez, Director of the Western Regional Office at (213) 688-3437, (TDD 213/894-0503).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25256 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on November 2, 1985, at the Maxim Hotel and Casino, 160 East Flamingo Road, Las Vegas, Nevada. The purpose of the meeting is to discuss the Casino employment project and engage in program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Nozero, or Philip Montez, Director of the Western Regional Office at (213) 688-3437 (TDD 213/894-50508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25257 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on November 16, 1985, at the State Office Building, 65 South Front Street (Lobby), Hearing Room #1, Columbus, Ohio. The purpose of the meeting is to discuss proposed new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Prock, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25258 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a community forum of the Texas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on November 8, 1985, and convene at 9:00 a.m. and adjourn at 1:00 p.m. on November 9, 1985, at the Fort Brown Motor Hotel, 1900 E. Elizabeth Street, the Fortress Room, Brownsville, Texas. The purpose of the forum is to gather information on civil rights issues pertaining to immigration, with special emphasis on problems encountered in detention procedures and the operation of detention facilities.

Persons desiring additional information, of planning a presentation to the Committee, should contact Committee Chairperson, Adolpho Canales, or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-25261 Filed 10-22-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 314]

Resolution and Order Approving the Application of the Port Authority of New York and New Jersey for a Special-Purpose Subzone for a General Motors Plant in Linden, NJ

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has

adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, filed with the Foreign-Trade Zones Board (the Board) on January 11, 1985, requesting special-purpose subzone status for the automobile manufacturing plant of General Motor Corporation in Linden, New Jersey, within the New York Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Linden, New Jersey, Within the New York Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone No. 49, has made application (filed January 11, 1985, Docket No. 1–85, 50 FR 3945) in due and proper form to the Board for authority to establish a special-purpose subzone at the vehicle manufacturing plant of General Motors Corporation in Linden, New Jersey, within the New York Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed January 11, 1985, the Board hereby authorizes the establishment of a subzone at the General Motors plant in Linden, New Jersey, designated on the records of the Board as Foreign-Trade Subzone No. 49B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 9th day of October 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–25287 Filed 10–22–85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 313]

Resolution and Order Approving the Application of the Greater Kansas City Foreign-Trade Zone, Inc., for a Special-Purpose Subzone for a General Motors Plant in Kansas City, KS

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 17, filed with the Foreign-Trade Zones Board (the Board) on October 29, 1984, requesting special-purpose subzone status for the automobile manufacturing plant of General Motors Corporation in Kansas City, Kansas, within the Kansas City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Kansas City, Kansas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 17, has made application (filed October 29, 1984, Docket No. 47–84, 49 FR 44660) in due and proper form to the Board for authority to establish a special-purpose subzone at the General Motors Corporation auto manufacturing plant in Kansas City, Kansas, within the Kansas City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 29, 1984, the Board hereby authorizes the establishment of a subzone at the General Motors Kansas City, Kansas plant, designated on the records of the Board as Foreign-Trade Subzone No. 17A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 9th day of October 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-25286 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-403-401]

Carbon Steel Structural Shapes from Norway; Final Determination of Sales at Less than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that carbon steel structural shapes from Norway are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend the liquidation of all entries of carbon steel structural shapes (structural shapes) from Norway that are entered, or withdrawn from warehouse, for consumption, on or after June 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 13.7 percent *ad valorem.*

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constituiton Avenue, NW, Washington, D.C. 20230; telephone: (202) 377-3534.

Final Determination

Based upon our investigation, we have determined that carbon steel structural shapes from Norway are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 USC 1673d(a)) (the Act).

We made fair value comparisons for all sales of merchandise to the United States during the period of investigation. Comparisons were based on the United States price and foreign market value. The weighted-average margin for structural shapes in 13.7 percent *ad valorem.* We also found that critical circumstances do not exist with respect to imports of structural shapes from Norway.

Case History

On December 20, 1984, we received a petition from Chaparral Steel Company on behalf of the U.S. industry producing structural shapes. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of structural shapes from Norway are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also alleged that critical circumstances exist with respect to imports of structural shapes form Norway.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on January 9, 1985 (50 FR 2317). On February 4, 1985, the ITC determined that there is a reasonabale indication that imports of structural shapes are materially injuring or threatening material injury to a United States industry (50 FR 6070).

On February 14, 1985, a questionnaire was sent to Norsk Jernverk A.S. (Norsk), a Norwegian producer of structurals. We received its response on April 1, 1985. On May 7, 1985, we received a supplemental response from Norsk.

On June 11, 1985, counsel for the respondent requested the Department to extend the final determination until not later than September 11, 1985. On June 28, 1985, we granted the request (50 FR 26815).

On June 19, 1985, cousel for the petitioner requested the Department to initiate a cost of production investigation. On June 29, 1985, the Department sent a questionnaire on cost of production to Norsk. We received its response on July 19, 1985.

On July 10, 1985, counsel for the respondent requested the Department to further extend the final determination until not later than October 16, 1985. On August 14, 1985 we granted the request (50 FR 32758).

On August 2, 1985, a hearing was held.

We verified all responses in August, 1985.

Scope of Investigation

The products under investigation are "carbon steel structural shapes," which cover hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedules 6 Part 2, Subpart B of the *Tariff Schedules of the United States Annotated* ("TSUSA"), for blooms billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any other tubular

products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the F.A.S. packed price to United States purchasers. We made a deduction from U.S. price for Norwegian loading, dock charges and inland freight.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices. The petitioner alleged that sales in the home market were at prices below the cost of producing structural shapes. We examined production cost data submitted by Norsk which included all appropriate costs for materials, labor and general expenses. Based on our cost of production analysis, we found a sufficient number of sales above the cost of production to provide a viable home market for the dimensional categories of structural shapes subject to this investigation.

The home market prices were based on delivered, packed prices to unrelated home market purchasers. We made deductions, where appropriate, for inland freight, insurance, and rebates. We also made deductions, where appropriate, for differences in quantities sold in accordance with § 353.14 of the Commerce Regulations. Adjustments were also made for differences in credit expenses between the two markets in accordance with section 353.15 of the Commerce Regulations. Since structural shapes sold in both the United States and the home market were sold in identical packed conditions, no adjustments were made for packing. We made adjustments to foreign market values for physical differences in merchandise, as identified by Department of Commerce industry experts in accordance with § 353.16 of the Commerce Regulations.

Norsk claimed an adjustment to account for the differences in selling costs incurred in the Norwegian and United States markets. We disallowed this adjustment because Norsk was not able to demonstrate that these expenses were directly related to the sales under consideration as required by section 353.15(a) of the Commerce Regulations.

In calculating foreign market value, we made currency conversions from Norwegian krone to United States dollars in accordance with § 353.56(a)(1) of the Commerce Regulations, using the certified quarterly exchange rates.

Negative Determination of Critical Circumstances

The petitioner has alleged that imports of structural shapes from Norway present critical circumstances. Under § 735(a)(3) of the Act, critical circumstances exist when the Department finds that: (1)(a) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or (b) the person by whom, or for whose account, the merchandise was known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short time period, we considered the following factors: (1) Whether imports have surged recently, (2) recent trends in import penetration levels, (3) whether the recent imports are significantly above the average calculated over the last three years, and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

We have reviewed recent import statistics and have determined that there have not been massive imports of structurals from Norway over a relatively short period. Since we did not find massive imports over a relatively short period, we did not need to consider whether there is a history of dumping of structurals from Norway or whether the importers knew or should have known that the merchandise was being sold for less than fair value.

For the reason described above, we determine that "critical circumstances" do not exist with respect to structural shapes from Norway.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by the respondent by using standard verification procedures, including examination of relevant sales and accounting records of the company.

Petitioner's Comments

Comment 1

Since payment terms were not verified, petitioner argues that in making adjustments for differences in credit in the home and U.S. markets, the foreign market value should be increased with respect to the cost of credit on U.S. sales and no adjustment should be made for home market cost of credit.

DOC Position

We adjusted the foreign market value for differences in terms of credit pursuant to § 353.15 of the Commerce Regulations using verified information relative to the periods of payment in both markets.

Comment 2

Petitioner requests that the full amount of loading, dock charges and inland freight be deducted from the U.S. sales price and that these same adjustments not be deducted from the home market sales price because they were not verified.

DOC Position

We agree. In their responses, respondent did not provide response information requested with respect to loading, dock charges and inland freight in either market. At verification, Norsk attempted to provide the Department with the information requested regarding these charges, but Norsk was not able to support the claimed charges. In accordance with section 776(b), we are using best information available to calculate loading, dock charges and inland freight. Therefore, we have deducted these charges from U.S. price and have not made any deduction for these charges from the home market prices.

Comment 3

Petitioner argues respondent's bonus expense should be disallowed because it does not bear a direct relation to the sales during the period of investigation. Furthermore, petitioner suggests, that even if allowable, the bonus expense is overstated because such an adjustment should be based on a percentage of the net sales price, not the gross sales price. Permitting a percentage adjustment based on the gross sales price would result in double counting of other expenses (i.e. functional discount, freight and insurance). Therefore, the adjustment should be made on the basis

of the net sales price, exclusive of all other expenses.

DOC Position

The Department verified that the bonus expense was directly related to sales during the period of investigation. We agree with petitioner's comment that the bonus must be based on net sales price. In order to apply this bonus to all sales, the Department weight-averaged the actual bonuses granted during the period of investigation and applied it to the net sales price.

Comment 4

The Department should not allow the respondent's claimed circumstance of sale adjustment for selling expenses because respondent demonstrates no basis for determining the amount requested.

DOC Position

We agree. Because the data provided by Norsk was not verifiable, no deduction for selling expenses was applied to the foreign market value.

Comment 5

Petitioner requests that the Department use the best information available for billet cost because respondent failed to provide the extensive information required by the Department's questionnaire, thus, preventing the Department from assessing whether the transfer price reflects a valid market price.

DOC Position

There was no need to assess whether the transfer price reflects a valid market price, since the company has an integrated operation. All costs incurred for the production of billets were verified to actual cost of the inputs.

Comment 6

Petitioner contends that yield loss information was omitted from the response and was not taken into account in arriving at product costs.

DOC Position

This information was not omitted. Losses were verified, accounted for by product and by process, and reflected in the product costs used for the final determination.

Comment 7

Petitioner alleges respondent failed to demonstrate the basis for the transfer price of scrap, and, therefore, the scrap credit should be disallowed.

DOC Position

The Department verified scrap, by weight and value, and determined that the scrap credits claimed are justified. The credit the respondent used for its scrap was less per ton than the market price for the same type of scrap.

Comment 8

Petitioner alleges that the labor cost calculation is totally unsupported and does not include administrative and other support personnel.

DOC Position

All labor costs, including fringe benefits and indirect costs such as supervisory personnel, were verified and are included in the product costs.

Comment 9

Petitioner alleges that certain expenses, such as utility expenses (electricity and water), fuel oil, maintenance, energy costs, rent, property taxes and plant security were not included in the overhead.

DOC Position

During verification the Department reviewed items in the overhead expenses and concluded that the above-mentioned expenses were included.

Comment 10

Petitioner alleges that interest expenses were not included in the costs of production.

DOC Position

Petitioner is correct, and as detailed in the verification report, the interest expense associated with production was determined, verified and reflected in the product costs used for the final determination. Interest costs associated with capital expansion were not included in the costs since such interest is not related to the product under investigation. The petitioner's letter of October 7, 1985, concurs with the Department's treatment of this expense.

Comment 11

Petitioner states that "write-down of fixed assets" should be divided by production in 1984 to obtain the per unit costs.

DOC Position

The write-down of assets is not a current cost, but an "extraordinary" charge which is unrelated to assets used for the production of the product under investigation. Therefore, the write-down had no effect on current manufacturing costs for the products under investigation.

Comment 12

Petitioner states that the imputed financial expense associated with "restructuring grants" must be factored into the cost of production.

DOC Position

The "restructing grants" had no effect on the cost of production of the product under investigation. The Department used the actual costs of production identified with the product for the final determination.

Comment 13

Respondent recently restructured its structural shapes facility into four separate divisions. Petitioner argues that costs incurred by each separate, but integral division, must be taken into consideration by the Department in calculating respondent's fully allocated costs of producing the merchandise subject to the current investigation.

DOC Position

The Department concurs, and all organizational units, production and servicing, have been verified and appropriately accounted for in the product costs.

Comment 14

Petitioner alleges that respondent incorrectly omitted the costs resulting from rejects and second quality merchandise.

DOC Position

Costs of these items were included in yield losses; i.e., since only "good" output is considered in unit costs, the expense of rejects and seconds is reflected in the loss from input-to-good output at each processing state. Therefore, the final product costs, when adjusted for yield losses, reflects the expense of rejects and second quality merchandise.

Comment 15

Petitioner states that costs attributed to the home market product should be adjusted upward to account for the higher costs required to produce the U.S. product.

DOC Position

To determine if home market sales are below the cost of production, the Department calculates the cost of production for the home market merchandise. Costs of production for the product sold in the U.S. market are not relevant.

Comment 16

Petitioner states that year-end accruals omitted from the response should be allocated over the six-month period of investigation rather than annual production.

DOC Position

The accruals are an adjustment for the annual fiscal period; therefore, these costs are appropriately considered an adjustment for the annual period.

Comment 17

Petitioner states that since the U.S. selling expenses could not be verified, the cost of production must be adjusted upward to reflect the actual amount of the selling expenses incurred for such sales.

DOC Position

As indicated in the verification report, in its usual accounting procedures the respondent does not segregate selling expenses by market. For the response, estimates were made that could not be verified to exact amounts. Accordingly, an amount based on the financial ratio derived from the audited financial statements comparing selling expenses to cost of goods sold was used in the Department's calculation as a substitute for home market selling expenses. U.S. selling expenses would not be used for the cost of production of the home market merchandise.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of structural shapes from Norway that are entered, or withdrawn from warehouse, for consumption, on or after May 28, 1985. The United States Customs Service shall require a cash deposit or bond equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Norsk	13.7
All others	13.7

ITC Determination

In accordance with section 733(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information, relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on carbon steel structural shapes from Norway entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673d(d)).

October 16, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-25288 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-507-502]

Pistachios From Iran; Initiation of Antidumpting Duty Investigation In-Shell

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether pistachios from Iran are being, or are likely to be, sold in the United States at less than a fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are materially injuring, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 10, 1985, and we will make ours on or before March 5, 1986.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: David Johnston; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telehpone: (202) 377-2239.

SUPPLEMENTARY INFORMATION:

The Petition

On September 26, 1985, we received a petition in proper form filed by the California Pistachio Commission, Blackwell Land Company, California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California and T.M. Duche Nut Company, Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Iran are being, or are likely to be, sold in the Uinted States at less than fair value within the meaning of Section 732 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

Petitioners base foreign market value on a market research study which analyzes pricing information obtained from various government sources and special publications containing Iranian export data. U.S. price is based on the U.S. Department of Commerce Census Bureau's import statistics and from pricing data obtained from the aforementioned Iranian marketing research study. Using this comparison, petitioners allege dumping margins ranging from 222.87 to 356.3 percent. Petitioners also alleged that critical circumstances exist.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumpting duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on in-shell pistachois from Iran and have found that it meets the requirments of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumpting duty investigation to determine whether in-shell pistachois from Iran are bieng, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been

removed, leaving the inner hard shells and the edible meat, currently specifically provided for under item number 145.26 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and provide it with the information we used to arrive at ths determination. We will nofity the ITC and make available to it all nonprivileged and nonconfidential information and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 10, 1985, whether there is a reasonable indication that imports of in-shell pistachios from Iran are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-2589 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-401]

Certain Welded Circular Carbon Steel Pipes and Tubes From Venezuela; Termination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: On October 16, 1985, the Subcommittee of the Committee on Pipe and Tube Import and its member companies who produce standard pipe withdrew their antidumping duty petition, filed on December 18, 1985, on certain welded circular carbon steel pipes and tubes (standard pipe) from Venezuela. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 377-1778.

SUPPLEMENTARY INFORMATION:

Case History

On December 18, 1984, we received a petition from the Subcommittee of the Committee on Pipe and Tube Imports and its member companies who produce standard pipe, on behalf of the U.S. industry producing standard pipe.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and announced the initiation of our investigation on January 7, 1985 (50 FR 1614). On February 1, 1985, the ITC found that there is a reasonable indication that imports of standard pipe from Venezuela materially injure, or threaten material injury to, a United States industry. On May 28, 1985, we made a preliminary determination that standard pipe from Venezuela was being, or was likely to be, sold in the United States at less than fair value. At the request of the respondent, we postponed our final determination in this investigation until not later than October 16, 1985.

Scope of Investigation

The product under investigation is small diameter circular welded carbon steel pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925.

Withdrawal of Petition

On October 16, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Letters were also received from two U.S. manufacturers, U.S. Steel Corporation and LTV Corporation, requesting that we terminate the investigation. Under section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Venezuela to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 16, 1985.

[FR Doc. 85-25290 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Cold Drawn Wire Anti-Friction Bearing Steel; Request for Comments

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 4 of the U.S.-EC Arrangement on Complementary Products with respect to cold drawn wire known as anti-friction bearing steel.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 4 of the U.S.-EC Arrangement on Complementary Products provides that if the U.S. ". . .determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . ."

We have received a short supply request for cold drawn steel wire, quality SAE 52100, (referred to as anti-friction bearing steel) in sizes ranging from .071 inches to .493 inches in diameter.

Parties interested in commenting on these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also include with it a submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Acting Deputy Assistance Secretary for Import Administration.

October 17, 1985.

[FR Doc. 85-25272 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-501]

Initiation of Countervailing Duty Investigation; In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether growers, processor and exporters in Iran of pistachios, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before December 20, 1985.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigation Trade Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3174 or (202) 377-2438.

SUPPLEMENTARY INFORMATION: .

The Petition

On September 26, 1985, we received a petition in proper form filed by the California Pistachio Commission, Blackwell Land Company, California Pistachio Orchards, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California and T.M. Duche Nut Company, Inc. on behalf of growers and processsors in the U.S. pistachio nuts industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processors and exporters in Iran of pistachios receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably to the petitioner supporting the allegations. We have examined the petition on in-shell pistachios from Iran and have found that it meets the requirements of section 702(b) of the Act. We are initiating a countervailing duty investigation to determine whether the growers and exporters in Iran of pistachios (as described in the "Scope of Investigation" section of this notice) receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before December 20, 1985.

Scope of Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hull has been removed, leaving the inner hard shells and the edible meat, currently specifically provided for under item 145.26 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Allegations of Bounties or Grants

The petition alleges that grower, processors and exporters in Iran of pistachios receive benefits under the following programs which constitute bounties or grants. We are initiating an investigation on the following allegations:

- Preferential Exchange Rate
- Foreign Exchange Retention Scheme
- Price Supports and/or Guaranteed Purchase of all Production
- Technical Support
- Provision of Water and Irrigation
- Preferential Provision Fertilizer and Machinery
- Preferential Credit
- Tax Exemptions

We are not initiating an investigation on the following allegations:

- Investment in Rural Development

Infrastructure Petitioners allege that pistachio growers in Iran may benefit from government investment in rural development projects. According to information supplied in the petition, these include improvements in such basis infrastructure as telephone systems, roads and airstrips, and provision of electricity, water, schools and medical centers. Petitioners do not cite any information or make any specific allegation that these or any other projects undertaken by the government to improve rural infrastructure are intended to benefit any specific industrial products or crops or a specific region. We have consistently held that government activities such as provision of roads, schools, etc., constitute a bounty or grant only when they are limited to a specific enterprise or industry, or group of enterprises or industries.

Because there is no information in the petition that this is the case for any rural infrastructure development projects undertaken by the government, we will not initiate an investigation into this allegation. We will examine any programs or provision of benefits which may provide a bounty or grant to pistachio growers through our investigation of the other allegations made in the petition.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 16, 1985.

[FR Doc. 85-25291 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held November 7, 1985, 9:00 a.m. to 3:30 p.m., Herbert C. Hoover Building,

Room 3407, 14th and Constitution Avenue, NW., Washington, D.C.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administrative Amendments Act of 1985 that deal with United States policies of encouraging trade will all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00–11:30. Introduction of New Members and Objectives of Subcommittee, Briefing on Export Administration Reorganization, and the Automation of the Export Licensing Process.

Executive Session: 1:30–3:00. Discussion of Matters properly classified under Executive Order 12356 dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1985. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Deborah Kappler, (202) 377–1455.

Dated: October 18, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85–25293 Filed 10–22–85; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held November 12, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to telecommunications equipment or technology.

Agenda: General Session:

1. Welcoming remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of presentations made during the past three open meetings.
4. Presentation by Magnavox representatives on GPS satellites.

Executive Session:

5. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, (202) 377–2583.

Dated: October 18, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–25294 Filed 10–22–85; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Apparel Products Produced or Manufactured in India

October 18, 1985.

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 October 24, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50236) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including cotton playsuits in Category 337, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Pending completion of a data reconciliation involving this category, special carryforward in the amount of 10,290 dozen is being applied to the restraint limit for Category 337, increasing it from 79,281 dozen to 89,571 dozen for 1985. The 1986 limit for Category 337 will be adjusted to account for carryforward used in the current year, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3, of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 18, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in India and exported during 1985.[1]

[1] The restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of December 21, 1982, as amended, between the Governments of the United States and India which provide, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Effective on October 24, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include an adjusted restraint limit for Category 337 of 89,571 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25267 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limit for Certain Cotton Apparel Products Produced or Manufactured in India

October 18, 1985.

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 October 24, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50236) established limits for certain specific categories of cotton, wool and man-made fiber textile products, including women's, girls', and infants' cotton blouses and shirts in Category 341, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. Pending completion of a data reconciliation involving this category, special carryforward in the amount of 125,000 dozen is being applied to the restraint limit for Category 341, increasing it from 2,478,975 dozen to 2,603,975 dozen for 1985. The 1986 limit for Category 341 will be adjusted to account for carryforward used in the current year, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 18, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning cotton, wool and man-made fiber textile products, produced or manufactured in India and exported during 1985.[1]

Effective on October 24, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include an adjusted restraint limit for Category 341 of 2,603,975 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25268 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Apparel Products Produced or Manufactured in the Republic of the Philippines; Correction

October 18, 1985.

On September 5, 1985 a notice was published in the **Federal Register** (50 FR 36134), which adjusted the 1985 restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of the Philippines.

Paragraph two of the notice document should be amended to include reference to Category 659T in line 19. The final sentence of paragraph two should also be amended to include Category 659T. An adjusted twelve-month restraint limit of 3,962,121 dozens should also be included for Category 659T in paragraph two of the letter to the Commissioner of Customs which followed that notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25269 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 18, 1985.

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 Octoer 24, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of July 27, and August 9, 1983 between the Governments of the United States and Thailand provides, among other things, for designated percentage increases in certain categories (swing), for the carryover of shortfalls in certain categories from the previous agreement year (carryover), and for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year or restored, if deducted but not used (carryforward). At the request of the Government of Thailand, increases for swing, carryover and carryforward are being applied, variously, to the restraint limits previously established for cotton and man-made fiber textiles and textile products in Categories 313, 314, 315, 319, 320, 604, 605pt. (only T.S.U.S.A. number 310.9140) and 613, produced or manufactured in Thailand and exported during the agreement year which began on January 1, 1985. (See 49 FR 50241). The adjusted limit for Category 319 includes a deduction to account for swing applied to the other categories. This results in an overall reduction in the restraint limit for the category from 6,741,600 square yards to 4,706,311 square yards.

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

[2] The limit has not been adjusted to account for any imports exported after December 31, 1984.

[1] The agreement of December 21, 1982, as amended, between the Governments of the United States and India provides, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any Imports exported after December 31, 1984.

amended on April 7, 1983 (48 FR 15175), May 3, (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statitical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984, which prohibited entry into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1985.

Effective on October 24, 1985, the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for the following categories, as indicated:[1]

Category	Adjusted 12-month restraint limit [1]
313	13,554,800 square yards.
314	10,028,130 square yards.
315	19,040,000 square yards.
319	4,706,311 square yards.
320	11,689,822 square yards, 857,716 pounds of which not more than 506,990 pounds shall be in T.S.U.S.A. number 310.5049.
604	
605pt.[2]	564,158 pounds.
613	16,530,965 square yards.

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1984.
[2] In Category 605, only T.S.U.S.A. number 310.9140.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25271 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] According to the terms of the bilateral agreement of July 27 and August 8, 1983, under certain specified conditions any non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Adjusting Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Romania

October 18, 1985.

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 October 24, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Socialist Republic of Romania have exchanged notes amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements to convert the existing minimum consultation level for cotton numbers in Category 360 to a designated consultation level at one million numbers for the 1985 agreement year only. In addition, agreement has been reached to increase the existing designated consultation levels for man-made fiber trousers in Category 648 and for cotton sheets in Category 361 to 63,421 dozen and 532,258 numbers, respectively. These latter increases are also for the 1985 agreement year only. The letter to the Commissioner of Customs which follows this notice establishes these increases and controls for these categories for the first time in 1985. The levels for these categories have not been adjusted to reflect any imports exported during 1985. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983, (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amended, but does not cancel, the directive of December 21,1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Romania and exported during 1985.

Effective on October 24, 1985, the directive of December 21, 1984 is hereby amended to include levels for cotton and man-made fiber textile products in Categories 360, 361, and 648.

Category	12-month levels [1]
360	1,000,000 numbers.
361	532,258 numbers.
648	63,421 dozen.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1984.

Textile products in Categories 360, 361, and 648 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 360, 361, and 648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-25270 Filed 10-22-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Trading in Foreign Currencies for Future Delivery

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory Interpretation and Request for Comments.

SUMMARY: The Commodity Futures Trading Commission is reaffirming its view that the exclusion from the Commission's exclusive jurisdiction over transactions involving contracts of sale of a commodity for future delivery ("futures contracts") as set forth in section 2(a)(1)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. 2 (1982) (and hereinafter referred to as the "Treasury Amendment") which encompasses off-exchange transactions in foreign currency and other specified financial instruments is not applicable

when such transactions involve members of the general public. As a result, any off-exchange offer or sale to the general public of transactions involving foreign currency futures contracts is unlawful under section 4(a) of the Act, and may also properly be prohibited under laws enacted by the states.

Further, the Commission is soliciting written comments concerning certain aspects of the foreign currency market, in particular the nature of the participants and transactions in that market.

DATE: Written comments must be received on or before December 23, 1985.

ADDRESS: Any written comments concerning this interpretation should be addressed to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Raisler, General Counsel, or David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission has, since its creation, consistently been of the view that the Treasury Amendment which, as more fully discussed below, excludes from the Commission's exclusive jurisdiction over futures contracts, certain off-exchange transactions in foreign currencies and other enumerated financial instruments,[1] applies only when such transactions are entered into by and between banks and certain other sophisticated and informed institutional participants. In particular, the Commission has also long been of the view that any reliance upon the Treasury Amendment as removing from the Commission's jurisdiction—and thus as legitimizing—any marketing to the general public of such-exchange transactions in foreign currencies is clearly misplaced.

In this regard, the Commission has repeatedly asserted and the courts have uniformly agreed that the Treasury Amendment cannot be read so as to place outside the Commission's jurisdiction the marketing to the general public of such off-exchange foreign currency transaction; instead, the Amendment was meant to encompass only transactions among and between banks and other sophisticated, informed institutions.[2] The Commission's Office of the General Counsel has similarly construed the scope of the Treasury Amendment in a prior interpretative letter. In that letter, the General Counsel's Office expressed the view that the Treasury Amendment was intended by Congress to apply to the market among institutional participants in transactions for future delivery in the specified financial instruments only so long as that market was supervised by those agencies having regulatory responsibility over those participants. *See* CFTC Staff Interpretative Letter 77-12 at [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,467.[3]

This view of the limited scope of the Treasury Amendment is amply supported by the legislative history leading to its enactment. In 1974, Congress extensively amended the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, to create the Commission as the expert, independent, regulatory agency to administer and enforce the Act's provisions, and provided the Commission with jurisdiction over a broad range of commodity-related instruments and transactions.[4] Prior to 1974, the Act applied only to certain enumerated, generally agricultural, commodities. *See* 7 U.S.C. 2 (1970). In 1974, Congress greatly expanded the coverage of the Act by amending the definition of the term "commodity" to include, in addition to the previously enumerated commodities, "all other goods and articles, . . . and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in . . . ." Section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1982). The purpose of this amendment was to bring within the purview of the Act and the Commission's jurisdiction futures contracts involving a growing number of commodities, *e.g.*, coffee, sugar, and foreign currencies, that were then being traded on commodity exchanges but were not subject to regulation under the Act,[5] as well as to ensure that the Act would apply to futures contracts and other transactions involving additional goods and services which might evolve in the future.[6] The 1974 amendments also vested the Commission with "exclusive jurisdiction" to regulate "accounts, agreements . . . and transactions involving contracts of sale of a commodity for future deliver [*i.e.*, futures contracts] . . . ." Section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1982). However, the 1974 amendments did not change that provision of the Act which makes clear that the term "future delivery" (and hence the term futures contracts) does not apply to "any sale of any cash commodity for deferred shipment or delivery [*i.e.*, cash forward contracts.]" *Id.* This release, therefore, should not be read as applying to those cash forward contracts which historically have been and continue to be excluded from the Act's coverage.[7]

Under the Act, the Commission's primary responsibility involves the regulation of futures contracts traded or executed on boards of trade designated by the Commission as contract markets, *i.e.*, commodity exchanges.[8] In this regard, the Act makes it unlawful for any person to offer or sell, or to conduct a business in the United States for the purpose of dealing in, transactions involving futures contracts unless the transaction is conducted on or subject to the rules of a board of trade that has

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[1] It should be noted that this release deals only with that portion of the Treasury Amendment which refers to transactions in foreign currency.

[2] *See Board of Trade of the City of Chicago v. Securities and Exchange Commission*, 677 F.2d 1137, 1154 (7th Cir. 1982), *vacated as moot*, 459 U.S. 1026 (1982); *Commodity Futures Trading Commission v. The American Board of Trade*, 473 F. Supp. 1177, 1183 (S.D.N.Y. 1979); *Commodity Futures Trading Commission and State of Georgia v. Sterling Capital Company*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,169 at 24,783 (N.D. Ga. 1981).

[3] In addition, two recently-published treatises on commodities law and regulation and a soon-to-be-published law review article which have addressed the issue recognize the Commission's and its General Counsel's view of the narrow scope of the Treasury Amendment. *See P. Johnson, Commodities Regulation*, § 4.36, at 36-39 (1982); *T. Russo, Regulation of the Commodities Futures and Options Markets* § 10.04, at 10-8 — 10-9 (1983); *Commodities Committee of the Association of the Bar of the City of New York, The Forward Contract Exclusion: An Analysis of Off-Exchange Commodity-Based Instruments* at 14-16, respectively.

[4] See the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, 88 Stat. 1389, *et seq.*

[5] *See* S. Rep. No. 1131, 93d Cong., 2d Sess. 19, 94 (1974); H.R. Rep. No. 975, 93d Cong., 2d Sess. 41-42 (1974).

[6] *See* S. Rep. No. 1131, 93d Cong., 2d Sess. 19 (1974); H.R. Rep. No. 975, 93d Cong., 2d Sess. 41 (1974).

[7] In cash forward contracting the parties have the capacity to make or take delivery of the actual commodity, intend to do so, and delivery in fact routinely occurs. *See, e.g., Commodity Futures Trading Commission v. CoPetro Marketing Group, Inc.*, 680 F.2d 573, 578-79 (9th Cir. 1982); *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23, 777-78 (C.F.T.C. 1979). *See also* Office of the Chief Economist, U.S. Commodity Futures Trading Commission, Forward Contracting in Selected Agricultural Commodities: An Inquiry into Defaults 1-5 (1977); CFTC Office of General Counsel Interpretative Statement, Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options, 50 FR 39656 (September 30, 1985).

[8] A "board of trade" is defined in Section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1982), to include:

> Any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment . . . .

been designated by the Commission as a contract market for trading futures contracts in the particular commodity involved,[9] and the transaction is executed or consummated by or through a member of that contract market. Section 4(a) of the Act, 7 U.S.C. 6(a) (1982).[10]

Notwithstanding the broad grant of exclusive jurisdiction to the Commission in section 2(a)(1)(A) of the Act over all accounts, agreements and transactions involving futures contracts, Congress in 1974 also included in that Section of the Act a limited provision excluding from the Commission's jurisdiction certanin non-exchange transactions in foreign currencies and certain enumerated financial instruments. Specifically, section 2(a)(1)(A) in this regard provides:

> Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgate purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.

During the 1974 legislative process, the Department of the Treasury in a letter to the Chairman of the Senate Committee on Agriculture and Forestry expressed concern that the new and expanded definition of "commodity" in the Act then being considered by Congress and ultimately enacted in the 1974 amendments to the Act, in conjuction with other provisions of the Act, would have an unintended impact upon the ability of banks and other financial institutions to trade among themselves in foreign currencies and certain financial instruments. *See* S. Rep. No. 1131, 93d Cong., 2d Sess. 49–51 (1974). In focusing its attention on inter-bank trading in foreign currencies, the Department stated:

> The Department feels strongly that foreign currency futures trading, other than on organized exchanges, should not be regulated by the new agency. Virtually all futures trading in foreign currencies in the United States is carried out through an informal network of banks and dealers. This dealer• market, which consist primarily of the large banks, has proved highly efficient in serving the needs of international business in hedging the risks that stem from foreign exchange rate movements. The participants in this market are sophisticated and informed institutions, unlike the participants on *organized* exchanges, which, in some cases, include individuals and small traders who may need to be protected by some form of governmental regulation. *Id.* at 49–50 (emphasis in original).

As a result of these concerns, the Department has proposed a statutory amendment "to make clear that" the Act's "provisions would not be applicable to futures trading in foreign currencies . . . other than on organized exchanges." *Id.* at 51.[11]

Solely as a result of these expressions of concern by the Department of the Treasury, and only for the purpose of addressing these specific concerns, Congress adopted, virtually without change, a provision recommended by the Treasury and which today appears in section 2(a)(1)(A) of the Act as quoted above and which is generally referred to as the "Treasury Amendment." Insofar as foreign currency transactions were concerned, Congress expressed its intention that the Treasury Amendment be limited in its application to the inter-bank trading of such transactions supervised by the banking agencies. *See* S. Rep. No. 1131, 93d Cong. 2d Sess. 6, 23, 31 (1974); S. Rep. No. 1194, 93d Cong. 2d Sess. 35 (1974).

Recently, the Commission's staff has become aware that futures contracts in foreign currencies that are entered into other than on or through the facilities of a Commission-designated contract market are now being offered directly to the general public. To the extent that such transactions are being viewed by the persons marketing them as falling within the Treasury Amendment's exclusion from the Commission's jurisdiction for non-exchange traded futures contracts in foreign currencies,[12] the Commission at this time is reaffirming and republishing its views to provide guidance to interested persons concerning the limited scope of this exclusion.[13] In this regard, the Commission wishes to make very clear that any marketing to the general public of futures transactions in foreign currencies conducted outside the facilities of a contract market is strictly outside the scope of the Amendment.[14] As a result, such an off-exchange offer or sale of futures contracts involving foreign currencies is unlawful under section 4(a) of the Act, 7 U.S.C. 6(a) (1982).

The Commission also wishes to note that, as the off-exchange marketing to the general public of futures contracts involving foreign currencies as described above is unlawful under federal law, it may not be permitted by the states. However, since the 1982 enactment of the "open season" provisions of section 12(e) of the Act, 7 U.S.C. 16(e) (1982), the states have been enpowered to take legislative or enforcement action to prohibit the offer and sale of such unlawful transactions. State law enforcement actions against such transactions may be prosecuted under any state law or as violations of section 4(a) of the Act.[15] In this regard,

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[9] In order to obtain designation as a contract market, a board of trade must meet rigid requirements and must continue, after designation, to comply with these and additional requirements, including the enforcement of its rules in order to prevent price manipulation and cornering of the market. *See* section 5 and 5a of the Act, 7 U.S.C. 7, 7a (1982). In addition, commodity professionals who solicit, accept and execute customer orders for futures contracts must register with the Commission and must comply with antifraud, reporting, recordkeeping and other requirements. *See, e.g.* sections 4b, 4d, 4e, 4f, 4g, 4i and 4k of the Act, 7 U.S.C. 6b, 6d, 6e, 6f, 6g, 6i and 6k (1982).

[10] Prior to 1982, the proscriptions of section 4(a) were set forth in sections 4 and 4h of the Act, 7 U.S.C. 6, 6h (1976). In the Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2294, *et seq.*, Congress combined these two subsections into current section 4(a), making no substantive change in then existing law. *See, e.g.*, S. Rep. No. 384, 97th Cong. 2d Sess. 65 (1982).

Contracts made on or subject to the rules of exchanges located outside the United States are not included within the proscriptions of section 4(a).

[11] In addition to its concern over foreign currency transactions, the Depastment also stated that "the language of the bills is broad enough to subject to regulation by the proposed futures trading regulatory agency a wide variety of transactions involving financial instruments, such as . . . resale of installment loan contracts . . . " and certain forms of government securities. *Id.* at 51. The Department concluded that "regulation of these transactions, which generally are between large, sophisticated institutional participants, is unnecessary, and could be harmful" and thus suggested that the amendment that it was proposing encompass these types of transactions as well. *Id.* In response to the Department's concerns, the Treasury-Amendment ultimately enacted into law, in addition to encompassing foreign currency transactions, also included transactions in these other financial instruments. However, in adopting the Amendment Congress did not include that part of the Treasury Department proposal which would have excluded "puts and calls" for securities from the provisions of the Act.

[12] The Commission's Office of the General Counsel recently enumerated some of the common indicia of futures contracts. 50 FR 11656, 11657 (March 25, 1985). For a more generalized discussion of the attributes of a futures contract, *see Commodity Futures Trading Commission v. CoPetro Marketing Group, Inc. et al.*, 680 F.2d 573 (9th Cir. 1982); and *In Re Stovall, et al.*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,941 (CFTC 1979).

[13] This release is not intended to define what persons quality as "sophisticated and informed institution[s]" permitted to participate in this market; nor is this release intended to address the applicability of the Treasury Amendment to participation by commodity pools in these foreign exchange transactions, but instead seeks public comment on these issues. *See* the questions which appear at the end of this release.

[14] Of course, to the extent a person enters into a cash forward contract involving foreign currency, no analysis concerning the scope of the exemption provision need be made because such a contract is otherwise outside the Act's coverage. *See* fn. 7, *supra*, and accompanying text.

[15] In addition to being initiated solely by the Commission, enforcement actions under section 4(a) may be brought or joined in by the states. *See*

Continued

the Commission has consistently taken enforcement action, or joined or assisted the states in bringing actions, to curtail the unlawful offer and sale of various off-exchange instruments for future delivery.

The Commission is interested in receiving the written views of any interested persons, including other regulatory agencies, concerning this matter. In particular, while the Treasury Amendment may not be read to sanction the off-exchange marketing of futures transactions involving foreign currencies to the general public, it may be appropriate for the Commission to set forth the nature of permissible participants and activities within the scope of the Treasury Amendment exclusion. Such Commission action would be especially warranted in view of the Commission's long-standing concern over the potential for fraud in the off-exchange offer and sale of commodities instruments which are not conducted in a centralized marketplace where transactions can be confirmed. Therefore, the Commission would be interested in receiving comments from informed persons concerning aspects of the Amendment as well as of certain terms contained in the legislation history of the Amendment. Accordingly, the Commission is seeking information, together with any supporting data, concerning the following specific questions and any other comments relevant to this release:

(1) Who comprised the "sophisticated and informed institutions" who were participating in the off-exchange market in foreign currency transactions in 1974, particularly those with the characteristics of futures transactions? What generally were the commercial or business needs of these participants? What purpose of purposes did this market serve in 1974?

(2) Who comprises the institutional participants in this market today and what generally are their commercial or business needs? Are these needs different from those addressed by the Treasury Amendment in 1974? What purpose or purposes does this market serve today? What purpose do transactions in this market serve which cannot be served in the futures markets regulated by the Commission? Do these transactions pose any special risks to participants that do not exist in Commission-regulated futures markets? To what extent are these off-exchange foreign currency transactions supervised by the banking agencies, which was considered to be a relevant factor in Congress' decision to enact the Treasury Amendment exclusion?

Written comments should be submitted to the Commission to the address set forth above by December 23, 1985.

Issued in Washington, D.C., on October 18, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-25275 Filed 10-22-85; 8:45 am]

BILLING CODE 6351-01-M

section 6d of the Act, 7 U.S.C. 13a-2 (1982), pursuant to which the states are generally authorized to enforce the Commodity Exchange Act and the Commission's regulations in the federal courts.

CONSUMER PRODUCT SAFETY COMMISSION

Commission Decisionmaking Procedures; Availability of Document

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On September 5, 1985, the Commission adopted decisionmaking procedures effective that date.[1] The procedures pertain to various internal activities of the Commission. The purpose of this notice is to inform the public of the availability of these procedures.

EFFECTIVE DATE: The Commission's Decisionmaking Procedures are effective on September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Sadye E. Dunn, Secretary, Office of the Secretary, 301-492-6800, Consumer Product Safety Commission, Washington, DC 20207.

SUPPLEMENTARY INFORMATION: Over the years, the Commission has adopted various internal procedures that govern such matters as the procedure for setting agendas for Commission meetings, review of agenda materials, documenting decisions made at Commission meetings and by ballot vote, and issuance of press releases. These procedures were contained in a number of separate documents.

On September 5, 1985, a majority of the Commission adopted revised Commission decisionmaking procedures set forth in one document. The Commission made these procedures effective September 5, 1985 and they supersede any earlier guidelines, written or otherwise. No provision of these procedures shall be deemed to supersede any provision of the Government in the Sunshine Act, 5 U.S.C. 552b.

A copy of the procedures is available to the public from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6800.

Dated: October 15, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-24989 Filed 10-22-85; 8:45 am]

BILLING CODE 6355-01-M

[1] Vice Chairman Carol G. Dawson voting in the majority has issued a concurring opinion on adoption of the Commission decisionmaking procedures. Chairman Terrence Scanlon voted against adoption of the Commission decisionmaking procedures and has issued a dissenting opinion. Copies of these statements are available from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6800.

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Flood Damage Reduction Project in the Passaic River Basin, New Jersey

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Description of Proposed Action—This project is designed to provide flood protection to residential, commercial and industrial structures in the Passaic River basin in portions of Bergen, Essex, Hudson, Morris and Passaic Counties in northern New Jersey. Protection from Fluvial and tidal flooding would be provided in the floodplains of the mainstem Passaic and the Pompton Rivers, and at their confluences with the Whippany, Rockaway, Pequannock, Wanaque and Ramapo Rivers. Recreational features may be a part of the final plan.

2. Reasonable Alternatives—A wide range of structural and nonstructural flood damage reduction measures were considered in the formulation of alternatives which were evaluated during Stage 2 plan formulation. A "No Action" plan was one of those alternatives. The flood damage reduction measures considered included permanent floodplain evacuation, floodwarning, floodproofing structures, raising structures, levees, floodwalls, channel modifications, bridge modifications, dam modifications, reservoir modifications, reservoir

management, new reservoirs, preservation of natural storage, aquifer recharge, tunnel diversions, and tidal barriers.

3. Scoping Process. a. Public involvement began with the distribution of a letter to all on the mailing list. This letter explained the direction and scope of the study and described the intensive public involvement program to be conducted throughout the study process. An attachment to this letter included a detailed listing of information required for the compilation of a study data base, and a request for assistance in gathering this information. Natural resources and environmental data was requested as well as information on cultural and historic resources. Environmental concerns and issues were included in the request. Early in the Study, municipal environmental commissions and environmental organizations were surveyed and invited to participate in the planning effort by identifying areas of special environmental or cultural concern. Meetings were held in geographic subbasin areas encompassing several municipalities to further develop environmental data, and field inspection trips were made to sites in 34 municipalities where the placement of flood control measures was potential. These meetings were held to gain a more specific inventory of environmentally sensitive areas. Throughout plan formulation, these senstive areas were given priority consideration in terms of impact assessment and impact minimization. Environmental matters were given major consideration during every phase of study, with particular emphasis in public involvement activities. Environmental impacts and concerns were raised at every public involvement activity, including 8 major public information meetings, 6 formal public meetings, approximately 25 coordination meetings with subbasin groups in the PRB Study Subbasin Coordination program, in public speeches and presentation, and at briefings for municipal and county governments on the selected plan. These briefings included at least 50 meetings which were also attended by the New Jersey Department of Environmental Protection, which also participated in most of the public involvement activities. Continued similar public meetings and coordination with governmental officials are planned. A scoping meeting for Federal agencies will be held in New York City, and for State agencies in Trenton, New Jersey. Two public information-scoping meetings will be held in the Passaic River Basin. Workshops on selected significant environmental resources will be held. All affected Federal, State and local agencies and other interested private organizations and parties are invited to participate.

b. Significant Issues Requiring In Depth Analysis in the Draft Environmental Impact Statement include preservation of natural storage (wetlands), terrestrial resources, aquatic resources, water quality, riverfront usage and access, and historic and cultural resources.

c. Assignments—Numerous reports regarding environmental, cultural and historic resources were prepared for the Passaic River Basin Study by U.S. Fish and Wildlife Service, New Jersey's Department of Environmental Protection and the New Jersey State Museum's State Archaeologist. Environmental conditions were also provided under contract by numerous private consultants.

d. Environmental Review and Consultation. U.S. Fish and Wildlife Service (USFWS) reviewed two iterations of preliminary basin-wide plans, for which they submitted Planning Aid Reports. Impact assessments of the flood control alternatives will use these Planning Aid Reports and the section 2(b) FWCA report. New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife conducted aquatic and anadromous fish surveys and reviewed the flood control plans in consultation with USFWS. The cultural resources sensitivity analysis was reviewed by the State Historic Preservation Officer and the State Archaeologist. Coordination will continue with the Federal, State, county and local cultural resource and environmental organizations.

4. Scoping Meetings will X* will not ☐ be held.

**Date, Time, and Location*

November 13, 1985—7:30 P.M.—Clifton High School, 333 Colfax Avenue, Clifton, New Jersey

November 14, 1985—7:30 P.M.—Pequannock High School, 85 Sunset Road, Pompton Plains, N.J.

All interested Federal, State and local agencies, organizations, and individuals are invited to participate.

5. Estimate date of statement availability: December, 1986

Address: U.S. Army Engineer District, New York 26 Federal Plaza, New York, NY 10278-0090.

Questions about the proposed action and DEIS can be answered by:

Project Manager: Robert L. Callegari, Attn: NANPL-P, Tel No. 212/264-3570

EIS Coordinator: M. Lou Benard, Attn: NANPL-P, Tel No. 212/264-3609

U.S. Army Engineer District, New York, 26 Federal Plaza, New York, NY 10278-0090

Dated: October 15, 1985.

Samuel P. Tosi,

Chief, Planning Division.

[FR Doc. 84-25216 Filed 10-22-85; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. 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.

DATES: November 14, 1985—Public Hearing—9:00 a.m.—4:30 p.m., Public hearing will be held at the: John W. McCormack Post Office and Court House, Post Office Square, Room 328, Boston, MA 02109. (617) 223-7500.

FOR FURTHER INFORMATION CONTACT: Paul Balach or Sharon Hawk, Designated Federal Officials, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building Number (6) Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202. (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. On November 14, 1985, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community: (1) Local educational programs for language-minority students with limited-English proficiency.

(a) Type of programs.

(b) Program evaluation procedures.

(c) Entry/exit procedures.

(d) Teachers certification requirements.

(e) Availability and adequacy of staffing.

(f) Funding sources.

(2) Business, industry, and private assistance in helping educate minority-language limited-English proficient students.

(3) Language-minority students success in acquiring the necessary skills for the business world.

Witnesses should notify Ms. Eveleyn Piazza at the U.S. Department of Education Regional Office at (617) 223-7500 of their intention to testify in Boston, MA.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to ten minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the descretion of the Chairperson.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.-4:30 p.m.

Dated: October 17, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-25247 Filed 10-22-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. 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.

DATES: November 15, 1985—Public Hearing—9:00 a.m.-4:30 p.m., Public hearing will be held at the U.S. Department of Education, Room 16030 (16th floor) 3535 Market Street, Philadelphia, PA 19101. (215) 596-1001.

FOR FURTHER INFORMATION CONTACT: Paul Balach or Sharon Hawk, Designated Federal Officials, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building Number (6) Room 5026, 400 Maryland Avenue, SW., Washington DC 20202, (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. On November 15, 1985, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Local educational programs for language-minority students with limited-English proficiency.

(a) Type of programs.

(b) Program evaluation procedures.

(c) Entry/exit procedures.

(d) Teacher certification requirements.

(e) Availability and adequacy of staffing.

(f) Funding sources.

(2) Business, industry, and private assistance in helping educate minority-language limited-English proficient students.

(3) Language-minority students success in acquiring the necessary skills for the business world.

Witnesses should notify Mr. Jerry Weinstein at the U.S. Department of Education Regional Office at (215) 596-1001 of their intention to testify in Philadelphia, PA.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to ten minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.-4:30 p.m.

Dated: October 17, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-25248 Filed 10-22-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. 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: November 18, 1985—Public Hearing—9:00 a.m.-4:30 p.m., Public hearing will be held at the: Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA 98174. (206) 442-0460.

FOR FURTHER INFORMATION CONTACT: Paul Balach or Sharon Hawk, Designated Federal Officials, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building Number (6) Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. On November 18, 1985, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Local educational programs for language-minority students with limited-English proficiency.

(a) Type of programs.

(b) Program evaluation procedures.

(c) Entry/exit procedures.

(d) Teacher certification requirements.

(e) Availability and adequacy of staffing.

(f) Funding sources.

(2) Business, industry, and private assistance in helping educate minority-language limited-English proficient students.

(3) Language-minority students success in acquiring the necessary skills for the business world.

Witnesses should notify Mr. Sam Kerr at the U.S. Department of Education Regional Office at (206) 442-0460 of their intention to testify in Seattle, WA.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to ten minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: October 17, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-25249 Filed 10-22-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. 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.

DATES: November 21, 1985—Public Hearing—9:00 a.m.–4:30 p.m., Public hearing will be held at the: Insurance Exchange Building, Room 1658, 175 West Jackson Blvd., Chicago, Illinois 60606. (312) 353-5215.

FOR FURTHER INFORMATION CONTACT: Paul Balach or Sharon Hawk, Designated Federal Officials, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building Number (6) Room 5026, 400 Maryland Avenue SW., Washington, DC 20202. (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. On November 21, 1985, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Local educational programs for language-minority students with limited-English proficiency.

(a) Type of programs.

(b) Program evaluation procedures.

(c) Entry/exit procedures.

(d) Teacher certification requirements.

(e) Availability and adequacy of staffing.

(f) Funding sources.

(2) Business, industry, and private assistance in helping educate minority-language limited-English proficient students.

(3) Language-minority students success in acquiring the necessary skills for the business world.

Witnesses should notify Rosemary Thompson at the U.S. Department of Education Regional Office at (312) 353-5215 of their intention to testify in Chicago, Illinois.

The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to ten minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the discretion of the Chairperson.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: October 17, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-25246 Filed 10-22-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Hearing

AGENCY: Department of Education.

ACTION: Notice of Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. 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.

DATES: November 22, 1985—Public Hearing—9:00 a.m.–4:30 p.m., Public hearing will be held at the: U.S. Court House, Room 541-8, 231 West Lafayette, Detroit, Michigan 48226. (313) 548-4484.

FOR FURTHER INFORMATION CONTACT: Paul Balach or Sharon Hawk, Designated Federal Officials, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building Number (6) Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202. (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. On November 22, 1985, in consonance with the Council's mission to advise in the preparation of regulations under the Bilingual Education Act, testimony will be heard on the following topics which impact on the bilingual community:

(1) Local educational programs for language-minority students with limited-English proficiency.

(a) Type of programs.

(b) Program evaluation procedures.

(c) Entry/exit procedures.

(d) Teacher certification requirements.

(e) Availability and adequacy of staffing.

(f) Funding sources.

(2) Business, industry, and private assistance in helping educate minority-language limited-English proficient students.

(3) Language-minority students success in acquiring the necessary skills for the business world.

Witnesses should notify Mr. George Giannetti at Oak Park Schools at (313)

548–4484 of their intention to testify in Detroit, Michigan. The following procedures shall be observed during the public hearings:

(1) Witnesses shall be heard on a first come basis.

(2) Witnesses shall limit their testimony to ten minutes.

(3) All testimony shall be tape recorded.

(4) Exceptions to the aforementioned procedures shall be at the descretion of the Chairperson.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: October 17, 1985.

Carol Pendas Whitten,

Directors, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85–25250 Filed 10–22–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to Trigon Exploration, Inc.; Amended

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Trigon Exploration, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $624,208.81 plus interest, in connection with the sale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period June 1, 1979 through December 31, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the: Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon the person to whom the Proposed Remedial Order is directed: upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002,

and upon:

Carl A. Corrallo, Esquire, Chief Counsel for Administrative Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–15, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on the 4th day of October 1985.

Avrom Landesman,

Director of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–25244 Filed 10–22–85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP84–441–010 et al.]

Natural Gas Certificate Filings; Tennessee Gas Pipeline Company et al.

Take notice that the following filings have been made with the Commission.

1. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

[Docket No. CP84–441–010]

October 11, 1985.

Take notice that on October 4, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–441–010 a petition to amend further the order issued August 15, 1985, in Docket No. CP84–441–441–002, as amended September 26, 1985, pursuant to section 7(c) of the Natural Gas Act so as to authorize the construction and operation of a modified and extended Line Loop M–9 located in Wantage Township, Sussex County, New Jersey, at an estimated additional cost of $352,000, 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 in Docket No. CP84–441–002 it was authorized to construct and operate the facilities necessary to provide 81,000 Mcf per day of firm gas storage transportation service for certain of its customers. The authorized facilities include facilities designated as Line Loop M–9 located in Wantage Township, Sussex County, New Jersey, consisting of approximately 3.2 miles of 30-inch diameter pipeline loop from milepost 325 + 1.11 miles to milepost 325+ 4.31 miles on Petitioner's system. In authorizing the route of Line Loop M–9, Petitioner states that the Commissioner required Petitioner to agree (1) to a variation which avoids the Tri-States True Value (®) Supply property owned by Mr. Roy G. Rohel, and (2) to a 10-foot separation between the proposed Line Loop M–9 and existing facilities. Petitioner further states that the record in Docket No. Docket No. CP84–441–002 reflects that the route agreed to by Petitioner would cross a small part of Mr. Rohel's property and that the 10-foot separation would be applicable only to that portion of of Line Loop M–9 passing through a residential subdivision between mileposts 325 + 2.85 and 325 + 3.06. Petitioner alleges that it has now determined that it can modify the route Line Loop M–9 to avoid Mr. Rohel's property and the residential area.

Petitioner further requests authorization to extend Line Loop M–9 approximately 1,800 feet. Petitioner states that the proposed 1,800-foot extension to Line Loop M–9 would allow it to avoid disrupting of the construction schedule of a planned residential development known as Deer Trail Lake Estates. The proposed extension from milepost 325 + 4.31 to milepost 325 + 4.64 is part of a larger 7-mile extension currently pending authorization in Docket No. CP84–441–003. As construction of Deer Trail Lake Estates may begin prior to authorization and construction of the extension of Line Loop M–9, Petitioner proposes to construct the 1,800-foot portion of the extension which crosses the planned residential development at this time. Petitioner further states that the developers of Deep Trail Lake Estates have agreed to a right-of-way easement for the proposed 1,800-foot extension of Line Loop M–9.

With respect to the proposed construction, Petitioner alleges that no obstruction or environmentally sensitive feature would be encountered along the proposed route of Line Loop M–9. Peitioner states that it has received

approval for the modified and extended route from the New Jersey State Historical Preservation Office, and the Sussex County Soil Conservation District has been contacted and has no objection provided Petitioner's existing Erosion Control Plan and Wetland and Water Crossings Plan are followed. Petitioner states that it is preparing an application for a permit from the New Jersey Department of Environmental Protection to cross a small tributary of the Wallkill River. Petitioner states further that no other state or local authorizations are required for the proposed modified and extended Line Loop M-9.

Petitioner indicates in its petition that it proposes to construct and operate approximately $4,439,000 in facilities detailed in the Appendix to this notice to build the modified and extended Line Loop M-9. Petitioner states that this estimated cost is a $352,000 increase as compared to the unmodified and unextended Line Loop M-9. It is indicated that the proposed facilities would initially be financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements on short-term financiing which would be rolled in to permanent financing.

Petitioner alleges that if the proposed modified and extended Line Loop M-9 is not completed, the capacity of Petitioner's system from its compressor station 321 on its 300-line to the New York-Connecticut state line would be reduced by approximately 10,000 Mcf per day. Petitioner states that two groups of customers would be adversely affected: (1) Firm storage and transportation service to Connecticut Natural Gas Corporation, Connecticut Lighting and Power Company and Long Island Lighting Company would be affected by reduced capacity through the 300-line; and (2) deliveries through Petitioner's 16-inch Connecticut line south out of compressor station 261 at Agwam, Massachusetts, would have to be increased to offset some of the lost capacity of the 300-line affecting deliveries east of compressor station 261 on Petitioner's 200-line to Boston Gas Company, Commonwealth Gas Company, Energy North Inc., Fitchburg Gas and Electric Company; Granite State Gas Transmission, Inc., and Valley Gas Company.

Comment date: October 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

2. Williston Basin Interstate Pipeline Company

[Docket No. CP86-1-000]

October 16, 1985.

Take notice that on October 1, 1985,[1] Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP86-1-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) or, in the alternative, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of one tap and appurtenant facilities in order to deliver natural gas, volumes all as more fully set forth in the application/request which is on file with the Commission and open to public inspection.

Williston Basin proposes under its blanket certificate in Docket No. CP83-1-000 or under separate authorization to construct and operate one tap and appurtenant facilities on its natural gas transmission system for the delivery of gas under its Rate Schedules S-2 and T-3 programs. The proposed tap would be used to deliver up to 365,000 Mcf of natural gas annually to Koch Hydrocarbon Company (Koch), in Bowman County, North Dakota, to enhance oil recovery. The gas is said to be dedicated to Williston Basin by Koch and temporarily released by Williston Basin to Koch. The estimated cost of the tap would be $15,000 and would be 100 percent reimbursed by Koch.

Comment date: November 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Valley Gas Transmission, Inc.

[Docket No. CP85-891-000]

October 16, 1985.

Take notice that on September 19, 1985, Valley Gas Transmission, Inc. (Valley), P.O. Box 32999, 601 Northwest Loop 410, San Antonio, Texas 78216, filed in Docket No. CP85-891-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued sale and delivery of natural gas to Entex, Inc. (Entex), and the continued operation of minor facilities necessary therefor, all as more fully set forth in the application on file with the Commission and open to public inspection.

Valley proposes to sell up to 375 Mcf of natural gas per day to Entex through November 1, 1993, at a price established in accordance with Valley's F.E.R.C. Gas Tariff, Original Volume No. 2, Rate Schedule No. 1. Valley states that as a result of its recent acquisition by Gulf Energy Development Corporation, the new management reviewed the regulatory status of Valley's transactions and determined that Valley's sale and delivery of natural gas to Entex under a January 19, 1963, contract between Valley and Entex's predecessor, United Gas Corporation, required Commission certificate authorization. Valley's sale to Entex has always been considered a non-jurisdictional activity based on the fact that the gas sold to Entex, which Entex resells in the community of Hackberry, Louisiana, and environs, was produced and consumed entirely within Louisiana, it is stated. Valley's new management has concluded that the sale to Entex has jurisdictional characteristics based on the fact that the gas involved, on its way from the wellhead to the delivery point, is transported as part of a commingled stream along with gas destined to flow in interstate commerce. Valley states that Entex's ultimate consumers are primarily residential and small commercial users and that the delivery and sale would be made through existing facilities.

Comment date: November 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP85-907-000]

October 16, 1985.

Take notice that on September 24, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-907-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon 6.67 miles of the Baton Rouge-New Orleans main line and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that there are two delivery points to Louisiana Gas Service Company (LGS) located on the segment of pipeline to be abandoned. United says that it has not utilized these points for delivery of gas to LGS because of the poor condition of this segment of the line and that it has not been used since September 1984, and foresees no future need to do so. Further, it is stated that

[1] The application was initially tendered for filing on October 1, 1985; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 7, 1985; thus, filing was not completed until the latter date.

the State of Louisiana is engaged in extensive highway construction in the area of United's pipeline and that the proposed abandonment would accommodate such highway construction.

Comment date: November 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP72-189-001]

October 16, 1985.

Take notice that on September 20, 1985, Columbia Gulf Transmission Company (Petitioner), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP72-189-001 a petition to amend the order issued August 23, 1972, in Docket No. CP72-189, as amended, so as to authorize the transportation and redelivery of natural gas by Petitioner to Consolidated Gas Transmission Corporation (Consolidated) on a thermally equivalent basis, 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 by the order issued August 23, 1972, as amended, Petitioner was authorized to transport for Consolidated pursuant to a gas transportation agreement dated September 1, 1972 (agreement), natural gas from points in Eugene Island area Block 227, Vermilion area Block 248, and Ship Shoal area Block 198, offshore Louisiana, through Petitioner's capacity entitlement in the Offshore Header and the Western Shore Line of the Blue Water Project, with delivery to Consolidated at Egan, Acadia Parish, Louisiana.

Pursuant to two amendments, each dated August 13, 1985, to the agreement, Petitioner and Consolidated have agreed to provide for the redelivery of gas on a thermally equivalent basis rather than a volumetric basis, it is explained.

Comment date: November 6, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. K N Energy, Inc.,

[Docket No. CP85-917-000]

October 16, 1985.

Take notice that on September 30, 1985, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP85-917-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Prime Pork, Inc. (Prime Pork), in Lane County, Kansas, under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7(c) 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.

Applicant states that the quantity to be sold is approximately 120 Mcf of gas per year and 2 Mcf on a peak day. The gas sold to Prime Pork would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction. Applicant states that the proposed sales tap is not prohibited by any of its existing tariffs and that the additional tap would have no significant impact on Applicant's peak day and annual deliveries.

Comment date: December 12, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. National Fuel Gas Supply Corporation

[Docket No. CP83-526-003]

October 16, 1985.

Take notice that on September 26, 1985, National Fuel Gas Supply Corporation (Petitioner), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP83-526-003, a petition to amend the order issued November 10, 1983, in Docket No. CP83-526-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to extend the term and modify certain conditions of the off-system sale of natural gas to Public Service Electric & Gas Company (PSE&G) for its system supply, 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 explained that Petitioner was authorized by the Commission's order of November 10, 1983, to sell up to 50,000 Mcf of natural gas per day under its Rate Schedule I-1 to PSE&G during a term extending from the issuance of the order through October 31, 1984. Further, it is explained that Petitioner was authorized by the Commission's order of October 30, 1984, to continue the sale of up to 50,000 dt equivalent of natural gas per day, and 10,243,084 dt overall, to PSE&G for the period ending October 31, 1985, in Docket No. CP83-526-002. Petitioner now proposes to sell a maximum of 10,243,084 dt equivalent of natural gas to PSE&G during the period, November 1, 1985, through October 31, 1986. The maximum daily quantity would continue to be 50,000 dt, subject to increase at the sole discretion of Petitioner, upon the request of PSE&G when transportation is available.

Petitioner states that it would continue to make such sales on an interruptible basis pursuant to its Rate Schedule I-1 under a new service agreement attached to a precedent agreement dated September 25, 1985. Petitioner states that the Rate Schedule I-1 rate is its 100 percent load factor rate and is expected to be $3.550 per dt upon the effectiveness August 1, 1985, of Petitioner's most recent purchased gas adjustment filing in docket No. TA85-2-16-000.

Petitioner states that the continued sale of gas would be made on terms consistent with each criterion in the Commission's *Statement of Policy* on off-system sales issued April 25, 1983, in Docket No. PL82-3-000, as supplemented by the Commission's adoption of a "net economic benefit" test for the effect of off-system sales on on-system customers. Petitioner submits that its Rate Schedule I-1 is consistent with the net economic benefit test for on-system customers even though it is lower than Petitioner's average system load factor rate. Petitioner submits further that its 100 percent load factor rate is appropriate because (1) the proposed sale made at the Rate Schedule I-1 rate would not be made at a price lower than is available to on-system customers, (2) the proposed sale would reduce Petitioner's existing average cost of gas, and (3) the Commission has determined in its *Order Granting Rehearing* issued September 16, 1983, in Docket No. CP83-217-001 that the Rate Schedule I-1 rate was appropriate in a similar circumstance.

Petitioner states further that the gas sold would be delivered to PSE&G through the facilities of Transcontinental Gas Pipe Line Corporation (Transco), Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), and/or Texas Eastern Transmission Corporation (TETCO). It is explained that Petitioner would deliver such gas to Trnasco at Petitioner's Wharton interconnection in Potter County, Pennsylvania, to Tennessee at Petitioner's Ellisburg interconnection in Potter County, Pennsylvania, and/or to TETCO at Petitioner's Windridge interconnection in Greene County, Pennsylvania, and the transporter(s) would transport and redeliver the gas on an interruptible basis pursuant to Section 284.101, *et seq.*, of the Commission's Regulations to existing delivery points in PSE&G's service territory.

Comment date: November 6, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. National Fuel Gas Supply Corporation

[Docket No. CP85-885-000]

October 16, 1985.

Take notice that on September 17, 1985, National Fuel Gas Supply Corporation (Applicant), 11 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-885-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to The Brooklyn Union Gas Company (Brooklyn Union), all as more fully set forth in the application which is on filed with the Commission and open to public inspection.

Applicant requests authorization to sell up to 30,000 dt equivalent of natural gas per day to Brooklyn Union during a one-year period beginning on November 1, 1985, or the date when authorization is received, whichever is later. Applicant states that it would make such sales on an interruptible basis under a service agreement entered into pursuant to its Rate Schedule I-1. This rate is expected to be $3.550 per dt.

It is further stated that transportation would be provided by Texas Eastern Transmission Corporation (TETCO), Transcontinental Gas Pipe Line Corporation (Transco) and/or Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), under Part 284 of the Commission's Regulations or other authority. It is explained that gas would be delivered by Applicant to TETCO and/or Transco at existing interconnections between Applicant and such transporter's facilities and/or to Tennessee in Potter County, Pennsylvania, and that gas would be redelivered to Brooklyn Union on an interruptible basis at existing delivery points.

Comment date: Novermber 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. National Fuel Gas Supply Corporation

[Docket No. CP85-892-000]

October 16, 1985.

Take notice that on September 19, 1985, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-892-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Buffalo Crushed Stone (Buffalo) under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to transport up to 500 Mcf of natural gas per day for the account of Buffalo to National Fuel Gas Distribution Corporation which, in turn, would deliver the natural gas to Buffalo's facilities in Buffalo, New York, pursuant to a transportation agreement dated August 1, 1985. National Fuel states that the transportation would commence on November 30, 1985, provided that the Commission extends the availability of transportation under § 157.209(e) of the Regulations, and terminate upon termination of the contract which term is for three months, effective August 1, 1985, and month-to-month thereafter.

National Fuel states that the natural gas to be purchased by Buffalo involves natural gas supplies previously under contract to and released by National Fuel and that Buffalo would use the gas in kilns. It is further stated that no intermediary participated in the transaction between Buffalo and National Fuel.

National Fuel indicates that the current transportation rate is 26.72 cents per Mcf, plus 2 percent retainage for shrinkage, which is in accordance with its transportation Rate Schedule T-2. It is further indicated that no new facilities would be necessary to effectuate the proposed transportation.

National Fuel also requests flexible authority to add or delete receipt/delivery points associated with sources of natural gas acquired by Buffalo. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. National Fuel would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of natural gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP85-647-001]

October 16, 1985.

Take notice that on September 26, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-647-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to decrease the quantity of natural gas to be transported for a shipper end-user, Wabash Alloys, Inc. (Wabash), 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 it is currently authorized in Docket No., CP85-647-000 to transport for Wabash up to 4.3 billion Btu equivalent of natural gas per day pursuant to the terms of a gas transportation agreement dated May 1, 1985. Natural requests a reduction in the authorized daily transportation quantity to 1.3 billion Btu equivalent of natural gas in accordance with the first amendment dated August 1, 1985, to the transportation agreement.

Natural does not propose at this time any other change in the instant transportation activity as currently authorized.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP85-888-000]

October 16, 1985.

Take notice that on September 18, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-888-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a field compressing unit and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to abandon 175 horsepower of compression and related facilities known as its Fairplay booster station located in the JGS field in Panola County, Texas. Natural states that the compression facilities are no longer required, there is no contractual obligation to provide compression and the facilities have been idle for some time.

It is stated that all salvable facilities would be removed and sold or retained for reuse at another location. The estimated cost of removing the facilities is $26,000 which cost would be met with funds on hand, it is explained.

Comment date: November 6, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-916-000]

October 16, 1985.

Take notice that on September 26, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-916-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate three small volume measurement stations to accommodate natural gas deliveries to three non-right-of-way grantors through Peoples Natural Gas Company (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 which is on file with the Commission and open to public inspection.

Northern requests authority to construct and operate three small volume measurement stations as follows:

End-user	Distributor	Location	End-use
James Fider	Peoples	Scott County, MN	Residential heat.
Group W Cable	do	Dakota County, MN	Commercial heat.
Douglas Swanson	do	do	Residential heat.

The total cost of construction is estiamated to be $2,226.

Comment date: December 2, 1985, in accordance with standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP85-557-001]

October 16, 1985.

Take notice that on September 13, 1985,[1] United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, pursuant to Rule 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, filed in Docket No. CP85-557-001 an amendment pursuant to section 7 of the Natural Gas Act to its pending application in Docket No. CP85-557-000 for partial abandonment of service to Louisiana Gas Service Company (LGS), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

United, in the amendment to its application, requests the Commission's authorization: (1) To change LGS' maximum daily quantity (MDQ) for New Orleans area service to 21,990 Mcf of natural gas per day; (2) to change LGS' related minimum billing demand level to 15,000 Mcf; (3) to modify the curtailment plan to reflect LGS' reduced service; (4) to reduce LGS' grouped MDQ as set out on Tariff Sheets Nos. 6 and 11; and (5) to make a reduction of the daily quantity obligation at the affected New Orleans delivery points. It is explained that the reduced service would be provided under two new service agreements and replace the certificated service United is presently rendering LGS under the May 2, 1977, service agreement between the parties.

Comment date: November 6, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice. All persons who have heretofore filed need not file again.

14. Ohio River Pipeline Corporation

[Docket No. CP85-704-001]

October 16, 1985.

Take notice that on August 28, 1985, Ohio River Pipeline Corporation (Ohio River), 1630 North Meridian Street, Indianapolis, Indiana 46202-1496, filed in Docket No. CP85-704-001, an amendment to pending application application in Docket No. CP85-704-000 pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Ohio River to engage in any of the activities specified in that subpart, all as more fully set forth in this amendment and application on file with the Commission and open to public inspection.

The amendment requests, in addition to the authority requested in the original filing, approval of a transportation rate schedule for transportation services provided pursuant to the blanket certificate.

Ohio River also requests approval of its *pro forma* transportation rate schedule (Rate Schedule T-1). It is explained that Rate Schedule T-1 would apply to Ohio River's transportation services performed on behalf of shippers under authority of the blanket certificate requested in this docket. Rate Schedule T-1 provides for a transportation rate of 8.22 cents per Mcf of natural gas transported, it is submitted.

Comment date: November 6, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice. All persons who have heretofore filed need not file again.

15. United Gas Pipeline Company

[Docket No. CP85-496-001]

October 17, 1985.

Take notice that on September 30, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-496-001, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to amend its authority to transport gas on behalf of Bishop Pipeline Corporation, which is acting as an agent for Allied Corporation-Chemical Sector (Allied), to be used by Allied at its plant located in Hopewell, Virginia, under its certificate issued in Docket No. CP82-430-000 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.

United requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. United will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: December 2, 1985, in accordance with Standard Paragraph G at the end of this notice.

16. Northwest Central Pipeline Corporation and El Paso Natural Gas Company

[Docket No. CP79-114-003]

October 17, 1985

Take notice that on September 27, 1985, Northwest Central Pipeline Corporation (Northwest), P.O. Box 3288, Tulsa, Oklahoma 74101, and El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-114-003 a petition to amend the order issued August 9, 1979, in Docket No. CP79-114 pursuant to section 7(c) of the Natural Gas Act so as to modify the existing exchange of natural gas by authorizing the reduction of volumes exchange and

[1] The application was initially tendered for filing on September 13, 1985; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 25, 1985, thus, filing was not completed until the latter date.

authorizing the measurement of balancing volumes on a heating basis rather than on a volume basis, all as more fully set forth in the petition which is on file with Commission and open to public inspection.

Applicants request authorization for the reduction of maximum volumes exchanged on a daily basis from 100,000 Mcf to 35, 000 Mcf. It is stated that the proposed reduction would make available to El Paso additional capacity needed for other arrangements while providing sufficient volumes to meet Northwest's needs.

Comment date: November 7, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25206 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline; Tentative Valuation

October 21, 1985.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report.

Valuation Docket, No. PV-1480-000:

Locap, Inc., P.O. Box 42130, Houston, Texas 77242.

On or before November 29, 1985, persons other than those specificially designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85-25211 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-102]

Owens River Basin, CA; Availability of Environmental Assessment for Owens River Basin Cluster Impact Assessment Procedure—Phase 1

October 18, 1985.

As part of the Commission Staff's Cluster Impact Assessment Procedure, an Environmental Assessment (Phase 1) on the subject basin has been prepared.

A copy of this document is available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE, Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25209 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-103]

Salmon River Basin, ID; Availability of Environmental Assessment for Salmon River Basin Cluster Impact Assessment Procedure—Phase 1

October 18, 1985.

As part of the Commission Staff's Cluster Impact Assessment Procedure, an Environmental Assessment (Phase 1) on the subject basin has been prepared.

A copy of this document is available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25210 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-101]

Snohomish River Basin, WA; Availability of Geographic Scoping Report for Snohomish River Basin Cluster Impact Assessment Procedure

October 18, 1985.

As part of the Commission Staff's Cluster Impact Assessment Procedure, a Geographic Scoping Report on the subject basin has been prepared.

A copy of this document is available for review in the Commission's Division of Public Information, Room 1000, 825

North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-25208 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-44-000]

Kurt A. Quillen v. City of Longmont, CO; Intent Not To Consider Initiation of Enforcement Action Without Prejudice

October 16, 1985.

On August 15, 1985, Mr. Kurt A. Quillen filed a letter with the Secretary of the Commission alleging that the City of Longmont, Colorado (the City), which operates a municipal electric utility system, has improperly implemented this Commission's regulations implementing section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Mr. Quillen states that he is building a facility that he believes will be a qualifying cogeneration facility, and proposes to sell surplus power therefrom to the City. Mr. Quillen asserts that the City has improperly implemented this Commission's regulations in that it requires qualifying facilities in the City's service area to sell power to the Platte River Power Authority (Platte River) rather than to the City. Mr. Quillen requests that the Commission order the City to bring its implementation plan into compliance with the Commission's regulations.

On October 3, 1985, the City answered Mr. Quillen's complaint. The City states that it does not know whether Mr. Quillen's facility is in fact a qualifying facility. The City admits that its implementation plan requires qualifying facilities to sell their power to Platte River, but contends that its plan is in full compliance with this Commission's regulations. The City also states that it will file within 30 days of its answer to the complaint a petition for waiver of its obligation to purchase power from qualifying facilities. The City requests that Mr. Quillen's complaint be dismissed with prejudice or, in the alternative, that the Commission postpone consideration of the complaint until the City has filed its petition for waiver.

Section 210(h)(2)(B) of PURPA provides that if the Commission does not initiate an enforcement action on a complaint seeking enforcement of its PURPA implementation requirements within 60 days of filing, the complainant may bring an enforcement action in the appropriate U.S. District Court. In view of the City's representation that it will shortly file a petition for waiver of the purchase obligation, the Commission declines to consider initiation of an enforcement action at this time. The Commission believes the issues raised by Mr. Quillen's complaint can be fully considered in the waiver proceeding.[1]

Should the City fail to file a petition as represented, Mr. Quillen may renew his complaint. In this connection, the Commission notes that the City has raised an issue regarding standing to file complaints seeking enforcement pursuant to section 210(h)(2)(B) of PURPA. In view of our decision to take no action on the complaint at this time, we need not consider the standing question at this time, but would expect the parties to address it in any subsequent complaint filing.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-25212 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA86-2-37-000, 001]

Northwest Pipeline Corp., Change in FERC Gas Tariff

October 16, 1985.

Take notice that on October 4, 1985, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume 1, the following tariff sheets:

Twenty-Third Revised Sheet No. 10 (Consenting Parties)
Fifth Amended Substitute Revised Sheet No. 10 (Nonconsenting Parties)

These tariff sheets reflect a reduction in Northwest's purchased gas cost as a result of the decline in the price of No. 6 fuel oil. No. 6 fuel oil is the alternate fuel to which a significant portion of Northwest's domestic contracts are keyed, under "Market Out" or "Uneconomic" provisions. The commodity price of Canadian gas is also subject to adjustment quarterly to reflect changes in the price of No. 6 fuel oil pursuant to the terms of Northwest's contract with its Canadian supplier for the 1984-85 contract year.

The instant filing reflects estimated annualized decreases of $15,341,593 in domestic purchased gas cost and $15,737,388 in Canadian purchased gas cost. This reduction of $31,078,981 in estimated annualized purchase gas costs results in a reduction of 1.254 cents per therm in Northwest's commodity rate.

The above listed tariff sheets also reflect a Surcharge Credit for all jurisdictional sales customers except Rate Schedule PL-1 customers to effect Northest's refund obligation in Docket No. RP81-47. Refunds to Rate Schedule PL-1 customers will be made in cash. The Surcharge Credit of .501 cents per therm will refund approximately $7.0 million including interest.

A copy of this filing has been served on all parties of record in Docket Nos. TA86-1-37-000 and 001 and on all jurisdictional customers and affected state regulatory Commissions.

Northwest requests waivers to allow an effective date of November 1, 1985 for the tendered tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 23, 1985. 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. 85-25213 Filed 10-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-101]

Snohomish River Basin, WA; Intent To Prepare Environmental Impact Statement and Conduct a Scoping Meeting

October 16, 1985.

The staff (Staff) of the Federal Energy Regulatory Commission has concluded Phases 1 and 2 of the Snohomish River Basin Cluster Impact Assessment Procedure (CIAP), and its analysis indicates that the development of the seven [1] proposed hydroelectric projects included in the CIAP study constitutes a major Federal action significantly affecting the quality of the human environment. Therefore, the Staff intends to prepare an environmental

[1] In so stating, the Commission makes no intimation as to what, if any, action it might have taken on the complaint absent the City's representation.

[1] FERC Projects Nos. 2859, 5305, 5335, 5853, 6220, 6221, and 6310.

impact statement (EIS) on the seven proposed projects in accordance with the National Environmental Policy Act. Possible alternatives to the proposed actions will be addressed. Site specific and cumulative environmental impacts will be evaluated in the EIS.

Interested persons and agencies are invited to provide comments and recommendations, including any supporting data, on the scope of the planned EIS. The identified target resources [2] already under detailed analysis by the Staff, will be evaluated in the EIS, as well as other relevant resources and issues.

The EIS scoping process will entail an evaluation by the Staff of all the environmental issues of primary concern, based on the comments received and the Staff's independent analysis. An EIS scoping document will be prepared, distributed to the interested parties, and discussed in conjunction with the Staff's planned CIAP Phase 3 Technical Session scheduled for the week of November 18–22, 1985. The time and location of the combined EIS Scoping Meeting and Technical Session will be announced in a subsequent public notice.

Comments and recommendations should be filed with the Commission on or before December 6, 1985, and must be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should clearly show the following caption on the first page: Snohomish River Basin, Washington, Docket No. EL85–19–101.

For further information, please contact the FERC Project Manager, Frank Karwoski, at (202) 376–1761 or David Boergers at (202) 357–5773.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–25207 Filed 10–22–85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-31067A; FRL-2914-4]

Approval of a Pesticide Product Registration; Calgon Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Calgon Corp. to conditionally register the pesticide product Calgon Thiabendazole Dispersion W, containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 229, TS–767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 7, 1984 (49 FR 8484), which announced that Calgon Corp., PO Box 1346, Pittsburgh, PA 15230, had submitted an application to conditionally register the pesticide product Calgon Thiabendazole Dispersion W a fungicide containing the active ingredient 2-(4-thiazolyl) benzimidazole at 50 percent; involving a changed use pattern of the product.

The application was approved on September 9, 1985 for Calgon Thiabendazole Dispersion W for use to inhibit the growth of fungi in paint and stain. The product was assigned EPA Registration No. 10445–76.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, DC 20460.

Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: October 9, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–25124 Filed 10–22–85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66125; FRL-2913-9]

Intent To Cancel Registrations of Pesticide Products Containing Carbon Tetrachloride, Carbon Disulfide, and Ethylene Dichloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice lists the names of the firms requesting voluntary cancellation of registration of pesticide products containing carbon tetrachloride (CTC), carbon disulfide (CDS), and ethylene dichloride (EDC). It shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver any product subject to this cancellation Order after its effective date. Also, any use not in accordance with the existing stocks provision of this Notice will be a violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, unless the registration is continued.

EFFECTIVE DATE: Cancellation will be effective 30 days after publication in the **Federal Register** or receipt by the registrant, whichever is later.

ADDRESS: Written comments, in triplicate and identified as "OPP–66125", should be sent by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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

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 not containing 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 non-CBI 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid M. Sunzenauer, Registration Division (TS–767C), Office of Pesticide Programs, Environmental

[2] Anadromous fish, resident salmonids, bald eagles, and blacktailed deer.

Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 717, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

SUPPLEMENTARY INFORMATION: EPA intends to cancel the registration of the following products at the request of the registrants:

Registrant	Registration No.	Product name	Chemical(s) affected by this notice
Atomic Chemical Company	6152-5	Dyna Fume	EDC, CTC
Do	6152-6	Iso-Fume	EDC, CTC
Big F Insecticides, Inc	33161-2	Big F "LGF" Liquid Gas Fumigant	EDC, CTC
Brayton Chemicals, Inc	2993-7	Brayton 75-25 Grain Fumigant	EDC, CTC
Do	2993-14	Grayton Flour Equipment Fumigant for Bakeries	EDC, CTC
Cardinal Chemical Company	5440-6	Cardinalfume	EDC, CTC
Carmel Chemical Corporation	5011-143	Formuta MU-39	EDC
Central Chemical Company	477-251	Farmsite Mushroom Spray	EDC
Chemical Formulators	456-42	Chemform Brand Bore-kill	EDC
Chem-Sol Chemical and Sales Company	2618-2	Chemi-Fume Premium Grain Fumigant	CDS, CTC
Coyne Chemical Company	3050-23	Spray-Trol Brand Insecticide Fumi-Trol	EDC, CTC
Douglas Chemical Company	1015-27	Douglas Tetrakote Liquid Grain Protectant	CTC
Do	1015-29	Douglas Topkote #77 Insect Killer	CTC
Do	1015-33	Proteckote	CTC
Do	1015-36	Douglas Grainkote	CTC
Do	1015-53	Douglas Proteckote	CTC
Dow Chemical Company	464-34	Dowfume 75	EDC, CTC
Do	464-188	Vertifume	CDS, CTC
Do	464-227	Dow Vertifume S	CDS, CTC
Durhams Drug Products Company	430-35	Durham's Carbon Disulfide	CDS
Falls Chemical, Inc	40831-21	Best 4 Servis Brand 75-25 Standard Fumigant	EDC, CTC
Farmland Industries, Inc	1900-116	80-20 Grain Fumigant Fco Inhibited	CDS, CTC
Do	1900-392	Fire Retarded Milifume No. 1 Grain Fumigant With Sulfur Dioxide	CDS, CTC
Ferguson Fumigants	3886-18	WACO-50	EDC, CTC
Rockwald Chemical, Division of Oxford Chemical	1111-132	Fumisol	EDC, CTC
Hugo Company, Inc	2270-5	Excelicide Excelfume	EDC, CTC
Humco Laboratory Inc	2600-16	Humco Brand Carbon Disulfide	CDS
Industrial Fumigant Company	485-7	Infuco 80-20 with SO_2 Grain Fumigant	CDS, CTC
Do	485-9	Infuco 30-20 Grain Fumigant	CDS, CTC
Do	485-13	Infuco Bin-Fume Grain Fumigant	CDS, CTC
Do	485-17	Infuco Fumigant 75	EDC, CTC
J-Chem, A Division of Fumigators, Inc	36301-5	J-Fume 80-20	CDS, CTC
Do	36301-7	J-Fume 75	EDC
Kaw Valley, Inc	44215-61	Grain Fumigant #2	CDS, CTC
Do	44215-62	Grain Fumigant #3	CDS, CTC
Knox Chemical Company	1645-12	Fume-O-Death Gas No. 3	EDC, CTC
Los Angeles Chemical Company	962-390	Carbon Disulphide	CDS
Lester Laboratories	337-16	Bug Devil Fumigant	EDC, CTC
Lystad, Inc	2681-21	Extrafume	CDS, CTC
MFA Oil Company	746-93	M.F.A. Inhibited 80-20 Plus	CDS, CTC
Mid-America Chemical Company	36480-48	MACCO Grain Fumigant #2	CDS, CTC
Do	36480-49	MACCO Grain Fumigant #3	CDS, CTC
Midland Lab, Inc	527-11	Gas-O-Cide	EDC, CTC
Morgro Chemical and Energy Corporation	42057-96	WASCO GRAIN FUMIGANT	CDS, CTC
Oxford Chemicals	3635-136	Fumisol	EDC, CTC
PBI/Gordon Corp	2217-139	Standard 75-25 Fumigant	EDC
Research Products Company	2548-22	Max Kill Life Liquid Grain Fumigant	CDS, CTC
Do	2548-30	Max Kill 75-25	CDS, EDC, CTC
Riverdale Chemical Company	228-8	Riverdale Fumigant	EDC, CTC
Rochester Midland	527-11	Gas-O-Cide	EDC, CTC
Selig Chemical Industries	491-2	Selig's Grainfume	CDS, CTC
Do	491-47	Selig's Selcofume	EDC, CTC
Sirotta, Bernard Company, Inc	2626-1	Sirotta's Stecofume Liquid Fumigating Gas	EDC, CTC
Southland Pearson and Company	728-19	Pearson's Fumigrain P-75	EDC, CTC
Stauffer Chemicals Company	476-1	Stauffer Carbon Bisulphine	CDS
Do	476-537	F.I.A. "80-20" Grain Fumigant	CDS, CTC
Do	476-1112	F.I.A. "80-20" Grain Fumigant	CDS, CTC
Do	476-1113	F.I.A. "80-20" Grain Fumigant With SO_2	CDS, CTC
Stephenson Chemical Company	4687-57	Stephenson Chemicals Stored Grain Fumigant	EDC, CTC
Do	4687-127	Stephenson Sure-Guard Brand Liquid Grain Protectant and Fumigant	EDC, CTC
Stewart Sanitary Supply Co., Ltd	43954-6	Okay Mole and Gopher Fumigant	EDC, CTC
Uniroyal Chemical	400-203	Super Fumigas	CDS, CTC
Do	400-268	De-Pester fumigant 62 FR	CDS, CTC
Universal Cooperatives, Inc	1386-463	Premium Grain Fumigant #2	CDS, CTC
Vulcan Materials Company	5382-2	Volcan formula 72 Grain Fumigant	EDC, CTC
Do	5382-6	F.I.A. "FORMULA 82-H"	CDS, CTC
Do	5382-31	F.I.A. "TERMINAL (FC-15)" Grain Fumigant	CDS, CTC
Warren Douglas Chemical	1616-4	Wartasco Grain Fumigant No. 3	CDS, CTC
R.R. Webb Hardware	35059-5939	Carbon Bisulphide	CDS
Weevil-Cide Company	1629-1	Weevil-Cide Grain Fumigant	CDS, CTC
Woolfolk Chemical Works	769-70	DIWEEVIL	EDC, CTC
Do	769-491	Security-Di-Chlor-Mulsion	EDC

EPA is notifying the registrants by certified mail of this action. This Notice shall become a final and effective order of cancellation of the registrations of the above identified products 30 days from the date of publication of this Notice in the **Federal Register** or 30 days after its receipt by the affected registrants, whichever is later, unless within that time a registrants, or any other interest person with the concurrence of the registrant, requests that the registration be continued in effect. The distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment or

receiving (having so received) delivering or offering to deliver any cancelled products not in accordance with the terms of this notice after the date of cancellation is a violation of this Order and of FIFRA. EPA has determined under the authority of FIFRA section 6, existing stocks of CTC, CDS, or EDC products subject to this Notice may be sold and distributed until December 31, 1985. EPA defines "existing stocks" to mean any quantity of CTC, CDS, or EDC product subject to this Notice in the United States on the date of this Notice that has been formulated, packaged, and labeled and that either is being held for shipment or release, or has been shipped or released into commerce. Existing stocks may be used until June 30, 1986, or until existing inventories are depleted, whichever is earlier, provided that the use of these products is consistent with its labeling. EPA is also requiring registrants to contact commercial distributors of CTC, CDS, or EDC products, to inform them of the time limitations on distribution, sale, and use.

Following expiration of the time limitations on distribution, sale, or use of existing stocks, existing stocks shall be disposed of in accordance with the requirements of the Resource Conservation and Recovery Act.

The Agency has determined that the risk associated with the sale and distribution until December 31, 1985 and use of existing stocks until June 30, 1986, will not have unreasonable adverse effects on the environment and that granting this existing stock provision is not inconsistent with the purposes of FIFRA. Any person in any State distributing, selling, offering to sell, holding for sale, delivering for shipment, or receiving and (having so received) delivering or offering to deliver or using any quantity of these products after the cancellation becomes effective will be a violation of this Order and of FIFRA.

Public Comment Opportunity

Requests that the registration of these products be continued may be submitted in triplicate to the Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

If the registration of any of these products in not cancelled under the terms of this Notice, EPA intends to issue immediately a Notice of Intent to Suspend the registration pursuant to section 3(c)(2)(B) of FIFRA, unless an adequate commitment to develop and submit the data requested in the March 16, 1984, letter to the registrant is received.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "OPP-66125" and the specific registration number. Any comments filed regarding this Notice will be available for public inspection in Rm. 236, CM #2 at the above address from 8 a.m. to 4 p.m., excluding legal holidays.

Authority: (7 U.S.C. 136a, 136d, and 136j).

Dated: October 9, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-25123 Filed 10-22-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Quarterly Report on Travel Reimbursement Experiment

AGENCY: Federal Communications Commission.

ACTION: Publishing of Quarterly Report on Travel Reimbursement Experiment.

SUMMARY: In Pub. L. 97-259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. In addition the Federal Communications Commission must publish each quarterly report in the Federal Register.

DATE: This report is for the period from July 1, 1985 through September 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Sherman, Office of the Managing Director, (202) 632-6900.

SUPPLEMENTARY INFORMATION: The report for the quarter ending September 30, 1985 is as follows:

Fiscal Year 1985 Summary Report

Total Number of Sponsored Events: 47.

Total Number of Sponsoring Organizations: 46.

Total Number of Commissioners/Employees Attending: 95.

Total Amount of Reimbursement Expected:

Transportation	$31,411.50
Room	16,732.07
Board	3,675.31
Other Expenses	2,976.50
Total	54,795.38

Summary Report—Quarter Ending September 30, 1985

Total Number of Sponsored Events: 17.

Total Number of Sponsoring Organizations: 17.

Total Number of Commissioners/Employees Attending: 22.

Total Amount of Reimbursement Expected:

Transportation	$7,633.00
Room	4,071.00
Board	727.50
Other Expenses	630.23
Total	13,061.73

Individual Event Reports Attached.

Individual Event Report

Sponsoring Organization: Jamestown Area Chamber of Commerce, 101 W. 5th Street, Jamestown, NY 14701.

Date of the Event: September 26, 1985

Description of the Event: To participate in a panel discussion at the Combined Meeting of the Manufacturer's Association and the Jamestown Area Chamber of Commerce in Jamestown, New York.

Commissioners Attending: N/A.

Other Employees Attending: Mary L. Brown (Attorney Advisor-Common Carrier Bureau)

Amount of Reimbursement:

Transportation	$160.00
Room	50.00
Board	0
Other expenses	25.00
Total	[1] 235.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Association of American Railroads, 1920 L Street, NW., Washington, DC 20036.

Date of the Event: September 22-25, 1985

Description of the Event: To participate in the annual meeting of the

Association of American Railroads in Chicago, Illnois.

Commissioners Attending: N/A.

Other Employees Attending: Robert Foosaner (Chief, Private Radio Bureau).

Amount of Reimbursement:	
Transportation	$330.00
Room	200.00
Board	62.50
Other expenses	25.00
Total	[1] 617.50

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: The Diebold Group, Inc., 475 Park Avenue South, New York, New York 10016.

Date of the Event: September 30—October 2, 1985

Description of the Event: To speak at the 67th Diebold Plenary Meeting in Scottsdale, Arizona.

Commissioners Attending: N/A.

Other Employees Attending: Janice Obuchowski (Legal Assistant to the Chairman).

Amount of Reimbursement:	
Transportation	$348.00
Room	100.00
Board	50.00
Other expenses	20.00
Total	[1] 518.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Ohio Telephone Association, 150 East Broad Street, Columbus, Ohio 43215.

Date of the Event: September 15, 1985.

Description of the Event: To speak to the 90th annual convention of the Ohio Telephone Association in Cincinnati, Ohio.

Commissioners Attending: N/A.

Other Employees Attending: Judith Nitsche (Supervisory Public Utilities Specialist—Common Carrier Bureau).

Amount of Reimbursement:	
Transportation	$244.00
Room	125.00
Board	25.00
Other expenses	50.00
Total	[1] 444.0

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: United Telephone System, Inc., P.O. Box 7927, Overland Park, Kansas 66207.

Date of the Event: September 26, 1985.

Description of the Event: To speak at the United Telephone System's Legal Conference in Orlando, Florida.

Commissioners Attending: N/A.

Other Employees Attending: Peter Pitsch (Chief, Office of Plans and Policy).

Amount of Reimbursement:	
Transportation	$198.00
Room	75.00
Board	0
Other expenses	25.00
Total	[1] 298.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: North Carolina South Carolina Telecommunications Association, 1022 Calhoun Street, Suite 302, Columbia, South Carolina 29202–8416.

Date of the Event: September 14, 1985.

Description of the Event: To speak at the North Carolina/South Carolina Telecommuncations Manager's Association Conference in Charleston, South Carolina.

Commissioners Attending: N/A.

Other Employees Attending: Jerald Fritz (Chief of Staff—Office of the Chairman).

Amount of Reimbursement:	
Transportation	$148.00
Room	75.00
Board	0
Other expenses	25.00
Total	[1] 248.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Mountain Bell, 1801 California, Room 1730, Denver, Colorado 80202.

Date of the Event: August 19, 1985.

Description of the Event: To lecture at the 1985 Mountain Bell Academic Seminar in Denver, Colorado.

Commissioners Attending: N/A.

Other Employees Attending: James R. Keegan (Chief, Domestic Facilities Branch—Common Carrier Bureau).

Amount of Reimbursement:	
Transportation	$254.00
Room	100.00
Board	50.00
Other expenses	30.00
Total	[1] 434.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: International Radio & Television Society, Inc., 420 Lexington Avenue, New York, New York 10170.

Date of the Event: September 23, 1985.

Description of the Event: To attend the International Radio and Television Society Newsmaker Luncheon in New York City.

Commissioners Attending: Commissioner Mark Fowler.

Other Employees Attending: Daniel Brenner (Senior advisor to the Chairman).

Amount of Reimbursement:	
Transportation	$208.00
Room	150.00
Board	0
Other expenses	40.00
Total	[1] 398.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Alaska Broadcasters Association, P.O. Box 102424, Anchorage, AK. 99510.

Date of the Event: August 23, 1985.

Description of the Event: To address the Alaska Broadcasters Convention in Anchorage Alaska.

Commissioners Attending: Commissioner Mark Fowler.

Other Employees Attending: N/A.

Amount of Reimbursement:	
Transportation	$1,221.00
Room	100.00
Board	16.00
Other expenses	20.00
Total	[1] 1,357.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Bell Communications Technical Education Center, 1020 19th Street NW., Suite 700, Washington, DC 20036.

Date of the Event: July 14–28, 1985.

Description of the Event: To attend a conference on "Part 67—FCC Separations Manual" sponsored by Bell Communications Technical Education Center in Lisle, Illinois.

Commissioners Attending: N/A.

Other Employees Attending: Mark Uretsky (Public Utilities Specialist-Common Carrier Bureau), James Ferrell (Public Utilities Specialist-Common Carrier Bureau).

Amount of Reimbursement:	
Transportation	$404.00

Room	1,560.00
Board	134.00
Other expenses	150.00
Total	[1] 2,246.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: National Association of Broadcasters, 1771 N. Street NW., Washington, DC 20036.

Date of the Event: September 11–14, 1985.

Description of the Event: To attend the NRBA Radio Management and Programming Convention in Dallas, Texas.

Commissioners Attending: N/A.

Other Employees Attending: Raymond LaForge (Supervisory Electronics Engineer-Mass Media Bureau), H. John Morgan (Supervisory Electronics Engineer-Mass Media Bureau), Larry Eads (Chief, Audio Services Division-Mass Media Bureau).

Amount of Reimbursement:

Transportation	$1,950.00
Room	1,050.00
Board	300.00
Other expenses	125.00
Total	[1] 3,425.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Atlantic Cable Show, P.O. Box 1141, Harrisburg, Pennsylvania 17108.

Date of the Event: September 19, 1985.

Description of the Event: To attend the session entitled "FCC Questions and Answers" at the Atlantic Cable Show in Atlantic City, New Jersey.

Commissioners Attending: N/A.

Other Employees Attending: James McKinney (Chief, Mass Media Bureau), James Keegan (Chief, Domestic Facilities Branch-Common Carrier Bureau).

Amount of Reimbursement:

Transportation	$123.00
Room	150.00
Board	75.00
Other expenses	20.00
Total	[1] 368.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: United States Council for International Business, 1212 Avenue of the Americas, New York, New York 10036.

Date of the Event: July 11, 1985.

Description of the Event: To participate in a seminar sponsored by the United States Council for Internal Business in New York City.

Commissioners Attending: N/A.

Other Employees Attending: Anthony Rutkowski (Electronics Engineer-Office of Science and Technology).

Amount of Reimbursement:

Transportation	$150.00
Room	0
Board	0
Other expenses	41.00
Total	[1] 191.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Oklahoma 73105.

Date of the Event: September 24, 1985.

Description of the Event: To address the Mid America Regulatory Commissioners Conference in Afton, Oklahoma.

Commissioners Attending: Commissioner Dennis R. Patrick.

Other Employees Attending: N/A.

Amount of Reimbursement:

Transportation	$278.00
Room	75.00
Board	0
Other expenses	4.23
Total	[1] 357.23

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Radio Academy, The Council House, College Green, Bristol BS1 5TR.

Date of the Event: July 15–19, 1985.

Description of the Event: To speak at the United Kingdom Radio Festival in Bristol, England.

Commissioners Attending: Commissioner James H. Quello.

Other Employees Attending: N/A.

Amount of Reimbursement:

Transportation	$1,052.00
Room	101.00
Board	0
Other expenses	0
Total	[1] 1,153.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: National Association of Telecommunications Officers & Advisors, 1301 Pennsylvania Avenue NW., Washington, DC 20004.

Date of the Event: September 29, 1985.

Description of the Event: To address the National Association of Telecommunications Officers and Advisors annual conference in St. Louis, Missouri.

Commissioners Attending: N/A.

Other Employees Attending: James McKinney (Chief, Mass Media Bureau).

Amount of Reimbursement:

Transportation	$282.50
Room	80.00
Board	7.50
Other Expenses	15.00
Total	[1] 385.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Individual Event Report

Sponsoring Organization: Nebraska Broadcasters Association, P.O. Box 30350, Lincoln, Nebraska 68503.

Date of the Event: September 30, 1985.

Description of the Event: To speak at the Nebraska Broadcasters Association Luncheon in Grand Island, Nebraska.

Commissioners Attending: N/A.

Other Employees Attending: James McKinney (Chief, Mass Media Bureau).

Amount of Reimbursement:

Transportation	$282.50
Room	80.00
Board	7.50
Other expenses	15.00
Total	[1] 385.00

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed but not received.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-25104 Filed 10-21-85; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Rugby Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Rugby Broadcasting, Inc.	Rugby, North Dakota	BPH-840913EB	85-296
B. Rugby Broadcasting, a limited partnership	Do.	BPH-841113MC	

2. Pursuant to section 309(e) of the Communications Act of 1984, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Comparative	A, B
2. Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-25277 Filed 10-22-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-747-DR]

Major Disaster and Related Determinations; Connecticut

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA-747-DR), dated October 11, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice is hereby given that, in a letter of October 11, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Connecitucut resulting from Hurricane Gloria, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert A. Gammal, Jr., of the Federal Emergency Management Agency to act as the Federal Coordianting Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecitcut to have been affected adversely by this declared major disaster and are designated eligibile for Public Assistance only:

The Counties of New Haven, New London, and Middlesex.

The City of Bridgeport and the Town of Westport in Faiffield County.

The Town of Killingly and the Town of Windham in Windham County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: Octoter 11, 1985.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 85-25232 Filed 10-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-749-Dr]

Notice of Major Disaster and Related Determinations; New Jersey

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA-749-DR), dated October 15, 1985, and related determinations.

DATED: October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice is hereby given that, in a letter of October 15, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from Hurricane Gloria, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Michael J. Chivinski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster:

Atlantic, Cape May, Cumberland, and Monmouth Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James J. Delaney,

Acting Deputy Director, Federal Emergency Management Agency.

[FR Doc. 85-25231 Filed 10-22-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-745-DR]

Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–745–DR), dated October 8, 1985, and related determinations.

DATED: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

The notice of a major disaster for the Commonwealth of Pennsylvania, dated October 8, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 8, 1985:

Carbon and Wyoming Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–25237 Filed 10–22–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–746–DR]

Amendment to Notice of a Major-Disaster Declaration; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–746–DR), dated October 10, 1985, and related determinations.

DATED: October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

In a letter of October 15, 1985, the President amended this major disaster as follows:

I have determined that the damages in certain areas of the Commonwealth of Puerto Rico resulting from severe storms, landslides, mudslides, and flooding began on October 4, 1985.

I therefore amend my declaration of the major disaster under Public Law 93–288, dated October 10, 1985, for this incident to begin October 4, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–25236 Filed 10–22–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–746–DR]

Notice of Major Disaster and Related Determinations; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–746–DR), dated October 10, 1985, and related determinations.

DATED: October 10, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice is hereby given that, in a letter of October 10, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from severe storms, landslides, mudslides, and flooding, beginning on October 6, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal asssitance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the Commonwealth its 25-percent share of the Individual and Family Grant program, to be repaid to the United States by the Commonwealth when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Curtis R. Carleton of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following Municipalities of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

Coamo, Ponce, Santa Isabel, and Toa Baja for Individual Assistance.

Coamo and Ponce for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: October 11,1985.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 85–25235 Filed 10–22–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–748–DR]

Notice of Major Disaster and Related Determinations; Rhode Island

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–748–DR), dated October 15, 1985, and related determinations.

DATED: October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice is hereby given that, in a letter of October 15, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Rhode Island resulting from Hurricane Gloria, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these programs, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75

percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared major disaster:

Newport and Washington Counties; the Town of Barrington in Bristol County; the Town of East Greenwich, the City of Warwick and the Town in West Warwick in Kent County; and the City of Cranston and the Town of Cumberland in Providence County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James J. Delaney,

Acting Deputy Director, Federal Emergency Management Agency.

[FR Doc. 85-25230 Filed 10-22-85; 8:45 am]

BILLING CODE 6718-02-M

[Docket No. FEMA-REP-6-LA-3]

The Louisiana Peacetime Radiological Response Plan Site-Specific to the River Bend Nuclear Generating Station; Certification of FEMA Finding and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Louisiana submitted its plans relating to the River Bend Nuclear Generating Station to the Regional Director of FEMA Region VI on December 22, 1983, for FEMA review and approval. On July 12, 1985, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the River Bend Nuclear Generating Station, an evaluation of the joint exercise conducted on January 16, 1985, in accordance with § 350.9 of the FEMA rule, and a public meeting held on January 21, 1985, to discuss the site-specific aspects of the State and local plans around the River Bend Nuclear Generating Station in accordance with § 350.10 of the FEMA rule. In addition, the Regional Director submitted an addendum dated June 21, 1985, that considered the revision in plans and preparedness. This addendum reported that the remaining outstanding deficiencies have been resolved.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the River Bend Nuclear Generating Station are adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in the Nuclear Regulatory Commission/FEMA criteria of NUREG-0654/FEMA REP-1, Rev. 1, Appendix 3, and in the "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (FEMA-43).

FEMA will continue to review the status of offsite plans and preparedness associated with the River Bend Nuclear Generating Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-Rep-6-LA-3 maintained by the Regional Director, FEMA Region VI, Federal Center, Denton, Texas 76201.

Dated: October 17, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-25234 Filed 10-22-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Union National Corp., et al.

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) ot 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 November 11, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union National Corporation,* Mount Lebanon, Pennsylvania; to merge with First Financial Group, Inc., Washington, Pennsylvania, thereby indirectly acquiring The First National Bank & Trust Co., Washington, Pennsylvania.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Colonial Bankshares Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of All American Bank of Chicago, Chicago, Illinois, thereby indirectly acquiring Northwest Commerce Bank, Rosemont, Illinois.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Landmark Bancshares Corporation,* Clayton, Missouri; to merge with Brentwood Bancshares Corporation, Brentwood, Missouri, thereby indirectly acquiring Brentwood Bank, Brentwood, Missouri.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *St. James Bancorp, Inc.,* Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Roseville Bancorp, Inc., Minneapolis, Indiana. Comments on this application must be received not later than November 14, 1985.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fannin Bancorp, Inc.,* Windom, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Fannin Bank, Windom, Texas.

Board of Governors of the Federal Reserve System, October 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25306 Filed 10-22-85; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; United Virginia Bankshares Inc.

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 11, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Virginia Bankshares Incorporated,* Richmond, Virginia; to acquire NS&T Bankshares Incorporated, Washington, DC, thereby indirectly acquiring NS&T Bank, N.A., Washington, DC.

Applicant has also applied to acquire Internet, Inc., Reston, Virginia and thereby engage in providing electronic network and switching services pursuant to § 225.25(b)(7) of Regulation Y.

Applicant has also applied to acquire Franklin Mortgage Corporation, Fairfax, Virginia and thereby engage in acquiring and servicing first and second mortgage loans pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25307 Filed 10-22-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

November Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of November 1985.

Basic Behavioral Processes Research Review Committee, November 7-8; 9:00 a.m., The State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037
Open—November 7; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Doris East, Parklawn Building, Room 9C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., November 7, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Neurobehavioral Research Subcommittee of the Neurosciences Research Review Committee, November 7-9; 9:00 a.m., Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Open—November 7; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Dorthy Tengood, Parklawn Building, Room 9C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., November 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIAAA, November 18-19; 9:00 a.m., Flow Building, Room 51, 12501 Washington Avenue, Rockville, Maryland 20852
Open—November 18; 9:00-9:30 a.m.
Closed—Otherwise
Contact: Boris Tabakoff, 9000 Rockville Pike, Building 10, Room 3C103, Bethesda, Maryland 20892, (301) 496-8996.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, DICBR, NIAAA, and through him to the Director, NIAAA, on the alcohol intramural research

program. This advice is derived from periodic visits to the laboratories for assessement of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: The Board will meet in the Flow Building, Room 51, for approximately 30 minutes for a report on recent administrative developments. The remainder of the session will be devoted to a review and evaluation of intramural projects and individual staff scientists in the Division of Intramural Clinical and Biological Research, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375, NIMH: Ms. Helen Garrett, Committee Management Officer, Room 17C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: October 17, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-25200 Filed 10-22-85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket Nos. 83P-0003 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by eight organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted each of the eight organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less, or from § 1040.20(d)(2) that requires all labels prescribed in the paragraph for ultraviolet lamps to be permanently affixed or inscribed on an exterior surface of the product so as to be legible and readily accessible to view when the product is fully assembled for use. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, some of the requirements of § 1040.20 are not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk of harm to chemically sensitized lenses or, of cornea damage, or of long-term development of lens opacities.

CDRH has determined that suitable or alternate means of radiation protection are provided by (1) constraints on the physical and optical design of the products and (2) warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, CDRH approved the requested variances by a letter to each manufacturer or importer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification lable required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Paragraph in 21 CFR 1040.20 pertaining to the variance	Effective date/ termination date
83P-0003 (amendment)	DUVATEC, Inc., 13135 Ventura Blvd., Suite 306, Studio City, California 91604	Osram or Philips ultraviolet lamps intended to be used on in UVATEC sunlamp products	(d)(2)	July 25, 1985 / Feb. 24, 1989
85V-0292	The Suntanning Co., Inc., 1000 S. Caraway, Suite 103, Jonesboro, Arkansas 72401	UVA sunlamp products manufactured by The Suntanning Co., Inc	(c)(2)(ii)	July 29, 1985 / July 29, 1990
85V-0293	The Silver Group, Inc., 655 Montgomery St., #1710, San Francisco, California 94111	High intensity discharge (HID) lamps intended to be used only in Silver Solarium sunlamp products	(d)(2)	July 25, 1985 / July 25, 1990
85V-0309	Hapro Holland B.V., c/o Bernstein, Krieger, & Marks, 17 Academy Street, Newark, New Jersey 07102	UVA sunlamp products manufactured by Hapro Holland B.V	(c)(2)(ii)	July 25, 1985 / July 25, 1990
85V-0325	W.C. Heraeus GmbH, Produkt Bereich Original Hanau, Heraeusstrasse 12-14, D-6450, Hanau 1, West Germany	High intensity discharge (HID) ultraviolet lamps manufactured by W.C. Heraeus GmbH	(d)(2)	Aug. 9, 1985 / Aug. 9, 1990
85V-0326	Ecumol Therapeutics GmbH, Wengewiese 14, D4630 Bochum, West Germany	UVA sunlamp products manufactured by Ecumol Therapeutics GmbH	(c)(2)(ii)	Aug. 29, 1985 / Aug. 29, 1990

Docket No.	Organization granted the variance	Sunlamp product	Paragraph in 21 CFR 1040.20 pertaining to the variance	Effective date/ termination date
85V-0329	Sahara Sunbeds, Inc., 3702 15th Street, S., Fargo, North Dakota 58103	UVA sunlamp products manufactured by Sahara Sunbeds, Inc	(c)(2)(i)	Aug. 25, 1985 Aug. 25, 1990
85V-0405	Challenger Products Limited, Units 28-29 Roe Lee Industrial Est., Whalley New Road, Blackburn, Lancashire, England BB1 9SU	UVA sunlamp products manufactured by Challenger Products Limited	(c)(2)(i)	Aug. 29, 1985 Aug. 29, 1990

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: October 15, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-25203 Filed 10-22-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board and its subcommittees on December 9, 1985, 1:00 p.m. to adjournment and December 10, 1985, 8:30 a.m. to adjournment at the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Arthritis Advisory Board, Federal Building, Room 616, Bethesda, Maryland 20892, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 15, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25220 Filed 10-22-85; 8:45 am]

BILLING CODE 4140-01-M

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Diabetes Advisory Board and its subcommittees on November 18, 1985, 8:30 a.m. to adjournment, at the Marriott Crystall Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Adisory Board, Federal Building, Room 616, Bethesda, Maryland 20892, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 15, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25218 Filed 10-22-85; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on December 2, 1985, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda Maryland, 20692, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 15, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-25219 Filed 10-22-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Reassumption of Jurisdiction; Ely Colony Council of Ely, NV

October 7, 1985.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.

The Indian Child Welfare Act of 1978 provides, subject to certain specified conditions, that Indian tribes may petition the Secretary of the Interior for reassumption of jurisdiction over Indian child custody proceedings.

This is notice that a petition has been received by the Secretary from the Ely Colony Council, Ely, Nevada, for the tribal reassumption of jurisdiction over child custody proceedings. The petition is under review, and may be inspected and copied at the Western Nevada Agency Office, Bureau of Indian Affairs, Carson City, Nevada.

Ronal D. Eden,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-25241 Filed 10-22-85; 8:45 am]

BILLING CODE 4310-02-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-223 (Final)]

Agricultural Tillage Tools From Brazil

Determination

On the basis of the record [1] developed in investigation No. 701-TA-223 (Final), the Commission determines,[2, 3] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Brazil of discs (round shaped agricultural tillage tools with plain or notched edge), provided for in item 666.00 of the Tariff Schedules of the United States, which are subsidized by the Government of Brazil. The Commission also finds that "critical circumstances" do not exist with respect to such imports.

On the basis of the record [1] developed in investigation No. 701-TA-223 (Final), the Comission determines,[4] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports from Brazil of non round-shaped agricultural tillage tools, provided for in item 666.00 of the Tariff Schedules of the United States, which are subsidized 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. On June 10, 1985, Commerce made a preliminary determination that imports of agricultural tillage tools from Brazil were being subsidized within the meaning of the Act (19 U.S.C. 1671). Accordingly, effective June 10, 1985, the Commission instituted final countervailing duty investigation No. 701-TA-223 (Final).

Notice of the institution of the Commission's investigation and of a public hearing 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** of July 11, 1985 (50 FR 28282). The hearing was held in Washington, DC, on September 10, 1985, 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 October 7, 1985. A public version of the Commission's report, *Agricultural Tillage Tools from Brazil* (investigation No. 701-TA-223 (Final), USITC Publication 1761, October 1985) contains the views of the Commission and information developed during the investigation.

By order of the Commission:
Issued: October 8, 1985.

Kenneth R. Mason,
Secretary.

[FR Doc. 85-25118 Filed 10-21-85; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-257 (Final)]

Carbon Steel Wire Rod From Portugal

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-257 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Portugal of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 2, 1985, and the Commission will make its final injury determination by January 17, 1986, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of carbon steel wire rod from Portugal are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 8, 1985, by Atlantic Steel Company, Continental Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was reasonable indication that an industry in the United States was marterially injured by reason of imports of the subject merchandise (50 FR 23084, May 30, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the later entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of

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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] Chairwoman Stern finds threat of material injury.

[3] Vice Chairman Liebeler dissenting.

service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 22, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 11:00 a.m. on December 6, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 29, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 1:30 p.m. on December 3, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 3, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 13, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 13, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-25119 Filed 10-21-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-201-57]

Electric Shavers and Parts Thereof

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt of a petition filed on September 27, 1985 on behalf of Remington Products Inc., Bridgeport, CT, the United States International Trade Commission instituted investigation No. TA-201-57 under section 201 of the Trade Act of 1974 to determine whether shavers with self-contained electric motors, and parts thereof, provided for in item 683.50 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission will make its determination in this investigation by March 27, 1985 (see section 201(d)(2) of the act (19 U.S.C. 2251(d)(2))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 206, Subparts A and B (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202-523-0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Participation in the Investigation.

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on January 14, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 2, 1986. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs and attend a

prehearing conference to be held at 9:30 a.m. on January 6, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 8, 1986. Posthearing briefs must be submitted not later than the close of business on January 23, 1986. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions.

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 23, 1986. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Remedy

In the event that the Commission makes an affirmative injury determination in this investigation, remedy briefs will be due to the Secretary no later than the close of business on February 27, 1986, and must conform with the requirements of § 201.6 of the Commission's rules. Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present oral arguments on the issue of remedy may do so at the hearing scheduled for January 14, 1986.

Authority: This investigation is being conducted under the authority of section 201 of the Trade Act of 1974. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: October 11, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-25120 Filed 10-21-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-201-56]

Wood Shingles and Shakes

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt of a petition on September 25, 1985, on behalf of domestic wood shingle and shake producers, the United States International Trade Commission instituted investigation No. TA-201-56 under section 201 of the Trade Act of 1974 to determine whether wood shingles and shakes, provided for in item 200.85 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission will make its determination in this investigation by March 25, 1986 (see section 201(d)(2) of the act (19 U.S.C. 2251(d)(2))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 206, subparts A and B (19 CFR 206), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Tom Westcot (202-724-0095), U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Participation in the investigation. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on January 9, 1986, in room 331 of the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 30, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on January 3, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 3, 1986. Posthearing briefs must be submitted not later than the close of business on January 17, 1986. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials

submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 17, 1986. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Remedy. In the event that the Commission makes an affirmative injury determination in this investigation, remedy briefs will be due to the Secretary no later than the close of business on March 4, 1986, and must conform with the requirements of § 201.6 of the Commission's rules. Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present oral arguments on the issue of remedy may do so at the hearing scheduled for January 9, 1986.

Authority

This investigation is being conducted under the authority of section 201 of the Trade Act of 1974. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: October 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-25283 Filed 10-22-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30592]

Burlington Northern Railroad Co.; Exemption; Operation of Property of Lake Superior Terminal and Transfer Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343(a)(2) and 11342(a), respectively, (1) operation of the property of Lake Superior Terminal and Transfer Company by Burlington Northern Railroad Company, subject to standard labor protective conditions, and (2) the pooling of revenues by Burlington Northern Railroad Company, Chicago and North Western Transportation Company, and Soo Line Railroad Company, arising out of the operations in (1).

DATES: Exemption is effective on November 22, 1985. Petitions to stay must be filed by November 4, 1985, and petitions for reconsideration must be filed by November 12, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30592 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-25243 Filed 10-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-268)]

Burlington Northern Railroad Co., Abandonment in Spokane County, WA; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 4.43-mile rail line between Milepost 10.00 near Carders and Milepost 14.40 near Greenacres in Spokane County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-25280 Filed 10-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Crime Victim Assistance Grants

AGENCY: Office of Justice Programs, Justice.

ACTION: Final Guidelines.

SUMMARY: The Office of Justice Programs is publishing final guidelines to implement the crime assistance grant provisions of the Victims of Crime Act of 1984.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Charles M. Hollis, (202) 724-5947. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 20, 1985, the Office of Justice Programs (OJP) published in the **Federal Register** a notice of Program Guidelines for crime victim assistance grants. 50 FR 11262. The guidelines implement the crime victim assistance grant provisions of the Victims for Crime Act of 1984, Pub. L. 98-473, Title II, Chap. XIV, 42

U.S.C. 10601, et seq., which was signed into law by President Reagan on October 12, 1984.

The Act authorizes the Attorney General to make annual grants from a Crime Victims Fund established in the United States Treasury. Fifty percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remainder of the Fund is allocated for grants to the States for crime victim assistance programs. The Attorney General may take up to 5% of the Fund from the portion allocated for victim assistance grants and expend it for the purpose of providing services to victims of Federal crimes.

In addition to written comments on the guidelines, OJP solicited and received oral comments at four regional meetings attended by representatives of crime victim compensation boards, other units of State and local government, and victims assistance organizations. All of these comments were considered by OJP in preparing the final guideline. An analysis of the comments received, and our response to them is set forth below.

1. Priority Programs

The Victims of Crime Act requires each State to certify that "prority" will be given to programs serving victims of sexual assault, spousal abuse, and child abuse. In the proposed guideline, OJP set out three options for the States to meet the priority requirement and specifically invited comment on those options. Well over half of the 237 letters received on the guideline responded to our invitation. After careful consideration of the comments, OJP has decided to retain Options 1 and 2 as proposed, but to amend Option 3 to assure that it will, in fact, accord priority treatment to the intended programs. A review of the "priority" provision and its legislative history would be helpful to a full understanding of OJP's response to the comments received.

The Act requires the chief executive of the State to "certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse". Section 1404(a)(2)(A). This provision was added to the act as the result of an amendment offered by Senator Arlen Specter. Senator Specter explained the amendment as follows:

". . . it is important to note that the amendment would not unduly infringe on State prerogatives. States would be free to fund organizations of their choice at an amount of their choice. Nor does the bill establish a definite percentage of funding that must be given to these programs; instead the States would be able to consider the availability and quality of existing services." Cong. Rec. S10541 (August 10, 1984, daily ed.)

Senator Strom Thurmond, primary sponsor of the Act in the Senate, interpreted the Specter amendment to mean the following:

"This amendment requires the States to certify that priority will be given to these services. This is to ensure that at least some funds will be used to address these crucial problems but does not require any specific percent of the funds to be spent." *Id.*, S10537

Upon passage of the amended Act in the House of Representatives, Representative Peter Rodino, primary sponsor of the Act in the House, offered his construction of the Specter amendment:

"The requirement that the chief executive give 'priority' to these programs thus will ensure that a substantial portion of the State's grant under section 1404(a) will be used to support the provision, on a 24 hour per day basis, of vitally important crisis intervention services by rape crisis centers and child and spouse abuse counseling services." Cong. Rec. H12087 (October 10, 1984, daily ed.)

Although the cited remarks do provide some significant guidance on the intended meaning of the "priority" amendment, it is also apparent that Congressional intent on some critical aspects of the amendment is ambiguous. The options set out by OJP in the proposed guideline sought to reflect the broad Congressional themes underlying the legislation by affording the States maximum flexibility in making their funding decisions regarding priority programs, yet assuring that, regardless of the approach taken by a particular State, those programs would receive signficant financial assistance from each State.

An analysis of the comments received, and OJP's reponse to them, follows:

Option 1

As proposed, Option 1 would require States electing that option to:

"(1) Allocate at least ten percent of the total crime victim assistance funds granted to the State to each of the three priority categories, unless the State convincingly demonstrates that (A) a particular category is receiving significant amounts of financial assistance from the State or other fund sources and (B) a smaller amount of financial assistance or no assistance for that category is needed from the crime victim assistance grant funds. A program should be included in a priority category only if a principal mission of the program is to serve that particular category of priority victims."

Almost half of the letters addressing the priority issue suggested that the ten percent benchmark figure be raised. The proponents for raising the level were generally rape crisis centers, domestic violence shelters, and their respective State coalitions. The largest number of commenters generally recommended that the percentage be raised to an unspecified higher level, but substantial numbers urged raising the level to 25% for each category and others recommended raising the level to 15%. Other writers either favored the ten percent figure or counseled us not to fix any figure, but to leave the distribution totally to the States. These commenters included a variety of victim service providers and governmental agencies. In addition, several commenters recommended that OJP restrict the circumstances in which a State could allocate less than ten percent to a priority category.

After reviewing the broad range of divergent opinions expressed on this issue, OJP has concluded that this option should remain unchanged in the final guideline.

First, raising the ten percent figure alone would not assure priority programs any greater share of Victims of Crime Act funding. The ten percent figure was meant to serve as a starting place for the planning of States selecting this option. By requiring those States to allocate "at least" ten percent, the guideline sought to encourage States to provide greater funding to the priority programs in circumstances where greater funding was warranted. OJP acknowledges that, under Option 1, a State would allocate less than 10% to a particular priority category if it determined that that category of programs was receiving substantial funding from other sources and that no further assistance was needed. But the State could also allocate less than 25%, for example, if it made the same judgment: i.e., that other fund sources were already supporting sufficient services in a particular category.

More importantly, OJP believes that setting a higher percentage for each category would be inconsistent with two of the fundamental themes of the legislation. The first of these is that each State must have the flexibility and the authority to determine how to best use all available resources to meet the needs of crime victims within its borders. Establishing a 25% benchmark for each category would be perceived by many States and victim service providers as signaling OJP's intention that each

States must dedicate 75% of its Victims of Crime Act funds to the special needs of the priority category victims. To the contrary, OJP intends to afford the States the opportunity to meet the needs of all victims while encouraging them to pay special attention to the needs of the priority victims. Option 1, as proposed, established that balance correctly.

The second theme of the legislation that would be undercut by setting a higher percentage figure is the need to establish coordinated, comprehensive services for crime victims throughout each State. Toward that end, the Act requires, as a condition of funding eligibility, that victim service providers "promote within the community served coordinated public and private efforts to aid crime victims." Section 1404(b)(1)(D). In addition, the State must spend its funds so as not to supplant State and local funds otherwise available for crime victim assistance. Section 1404(a)(2)(B). Recipient programs must also help victims seek victim compensation benefits. Section 1404(b)(1)(E). All of these provisions are designed to promote the coordination of efforts among diverse victim service providers for the benefit of all victims.

A higher percentage allocation for each of the priority categories would likely mean less money for organizations that serve all crime victims, or that serve other specific groups of crime victims, e.g., the elderly. Beyond this tangible consequence, the establishment of a higher percentage would create two other equally real, if less tangible, barriers to comprehensive, coordinated victims services: enmity between the large number of non-priority groups competing for scarce dollars, and enmity between those groups and the priority groups receiving special funding treatment.

With respect to the recommendations that OJP restrict a State's ability to allocate less than ten percent of its Victims of Crime Act funds to a priority category, we believe that the terms of Opition 1 are already sufficiently restrictive. To allocate less than ten percent, a State must not only determine that the category is receiving "significant" funding from other sources, but that the other funding justifies allocation of less than ten percent as well. This is a two-step process; the State may not award less than ten percent simply because the category is receiving significant outside money. It must further determine that little or no Victim of Crime Act funding is needed. OJP will closely monitor State allocations for priority programs and the explanations of awards below then percent that will be required in the year-end performance reports. If our review leads us to believe that States have allocated less than ten percent to priority categories with insufficient justifications, the guidelines will be revised to remedy the problem in future years.

In sum, OJP believes that priority programs must be accorded the substantial priority to which the statute entitles them, but not such an overwhelming priority as to impair the ability of the many non-priority programs to receive sufficient funds to provide effective services to all victims. Option 1, as well as the other options, is also designed to facilitate communication between the State and service providers, and to promote cooperation among all service providers. It is, accordingly, adopted without amendment in the final guideline.

Option 2

Option 2 in essence requires States to base their funding decisions, including the allocation of funds to priority categories of victims, on a needs assessment. In their applications for funding, the States would set forth their criteria for determining the allocation of funds to each priority category. The criteria would have to include the extent and quality of existing services to priority victims, the particular needs of those victims, and the overall funding for victim services within the State, regardless of fund source. The State would also describe in an annual performance report the amount of funds awarded to priority programs; changes in the level, quality, or comprehensiveness of services to priority victims; and any continuing unmet needs.

Critics of this option contended that it would provide no guarantee that the priority categories of victims would receive adequate funding commensurate with their priority status. They viewed it as too vague, too complex, and too vulnerable to political influence. On the other hand, supporters of the option cited the flexibility it afforded decisionmakers in awarding funds to meet the real needs of the State and local jurisdictions.

We believe that Option 2 should be retained in the final guideline. It places decisionmaking responsibility in the hands of the State, an approach fully consistent with the Victims of Crime Act. It recognizes that no national standard can be appropriate for all jurisdictions and that needs vary from State to State. At the same time, it requires that State decisions be based on a careful analysis of victims' needs and that the State be accountable for these decisions. We believe that the guideline requirements defining the analysis the State must conduct, and the analysis required in the performance report, are substantial safeguards against any State seeking to use this option to evade its responsibility to priority victims programs.

Several commenters suggested deleting consideration of the "overall distribution of victim services funding from all sources within the State" from the State's allocation process. Although the rationale for this recommendation was not explained, apparently it stems from a concern that programs currently receiving support from other sources (Federal, State or local) will be unfairly penalized in seeking Victims of Crime Act assistance.

We believe that it is both reasonable and prudent for the State to consider all the resources available to meet the needs of crime victims in determining how to use Victims of Crime Act funds. Which is at issue is not the fact that programs that serve one or more of the priority categories of victims may be receiving funds from other sources, but the relationship of the needs of those victims to the overall services and resources available in the State to meet those needs. Therefore, we believe that consideration of the distribution of victim services funding from all sources should be retained as one factor in the States' allocation process.

Option 3

Several commenters were also critical of Option 3, believing that it provided the least assurance of any option that priority programs would actually receive priority treatment. Specifically, some writers felt that this option would permit a State to fund programs that only incidentally served "priority victims" and that, as a result, programs principally serving those victims would not receive adequate funds.

Other commenters suggested that a program should be excused from serving a priority category only if the State found that every category was being funded at an "adequate level" in the community in question. As proposed, Option 3 would have excused a program if the State found that inclusion of services to those categories would be "impractical or not necessary" in a particular community.

OJP believes that these comments were well founded, and has modified Option 3 accordingly. Option 3 has been revised to read as follows:

"(The three options are:)

* * * * *

"(3) Require every program receiving crime victim assistance *funds to* include, *as a principal mission or component of its program,* services to at least one category of priority victims unless and to the extent *the State determines that other programs are providing adequate services of a similar nature to priority victims* in the community in question." (new language underlined)

An example would illustrate the difference between proposed Option 3 and final Option 3. Under the proposed option, if a prosecutor's office could demonstrate that rape victims were among the victims it planned to serve through its new "court assistance" program, that program would qualify as a "priority program". Such a program would not meet the requirements of final Option 3. Final Option 3 would require the prosecutor to, e.g., establish a special liaison program with rape crisis centers to qualify as a priority program.

2. Financial Support from Other Sources [Program "Match"]

There were approximately 20 comments directed to the issue of "financial support from other sources" (or match) as required by the statute. Most of these comments addressed the draft guideline's proposed requirement that two-thirds of a new program's budget be in the form of financial support from other sources. These commenters believed that the two-thirds match requirement was too high, or even prohibitive for initiating a victim assistance program with grant funds. In addition, the Office of Management and Budget (OMB) recommended that the financial support from other sources be in the form of a cash or "hard" match.

One of the primary purposes of the Victims of Crime Act of 1984 was to expand and enhance the delivery of services to crime victims being provided by existing victim assistance programs. This legislation was not intended to be a primary source of funding to initiate new victim service programs. After considering the comments, OJP believes that the goals of the Act can be met with less onerous match requirements. For new programs OJP has, accordingly, reduced the percentage of support to be provided from sources other than Federal crime vicitim assistance grant funds from two-thirds to one-half. This will be the "substantial financial support" required for a program that has not yet demonstrated a "record of providing effective services" to victims of crime.

In addition the OMB recommendation that OJP consider requiring the measure of financial support be in cash rather than an in-kind contribution has been accepted in part. The final guidelines programs that have not yet established a record of effective service to victims to provide one-half of their budget in cash from sources other than the Federal victim assistance grant. For existing programs that have demonstrated a record of delivering effective services, the minimum requirement is that one-fourth of the program's support (including in-kind contributions) be from sources other than the Federal victim assistance grant. The 25% "soft match" requirement for existing programs is unchanged from the draft guidelines.

3. Definition of Victim

A number of commenters urged the inclusion of language to specify that secondary victims, "significant others," or families of victims would be eligible for services under the Act. They argued that the family is vital to the recovery of victims and that family members frequently suffer the same trauma as the direct victim and therefore require support services. Programs servicing child victims of sexual assault indicated that counseling to the parents of the child victim was always included in the treatment plan.

Still other writers commented on the need for a definition of "crime victim." Several commenters felt the definition should be determined by the State but that the Guidelines should specify that services need not be limited to victims who had contact with the criminal justice system, e.g., rape victims who chose not to report the crime.

OJP believes that this issue is clearly best left to the individual States for resolution. Section 1403(b)(1) reflects the intent of the legislation to benefit victims of crime and survivors of crime under the crime victim compensation portion of the Act. While a large, well established victim assistance program may view the new grant funds as an opportunity to formally expand services to secondary or "co-victims," a fledging program may not yet have the staff or other resources to include services to secondary victims in their program goals. A requirement to include this category of victim coulds therefore, in some circumstances, have the effect of reducing services to direct victims of crime. We have not therefore, amended the final guideline to include a definition of crime victim OJP encourages States to be flexible in attempting to resolve this issue.

4. Training

A substantial number of letters (67) commented on the omission of training in the proposed guideline as an allowable cost under the Act. Comments were representative of the board cross-section of programs and agencies including victim service providers, prosecutors, law enforcement, victims constituency organizations, state administrative, and professional organizations.

Many writers directed their comments to section III.(e)(4) of the guideline which requires the use of volunteers in victim assistance programs, and observed that the prohibition against training volunteers was inconsistent with the requirement to use volunteers to provide victim services.

These writers emphasized that funds for necessary training is a critical issue and essential to assure the provision of quality services to crime victims. They further commented that to expand services to victims with untrained personnel might inadvertently cause the victims another victimization.

Several writers commented on section 1404(d)(3) of the Victims of Crime Act which specifically includes "training" under the definition of "services to victims of Federal crime." These writer suggested that the inclusion of "training" in the services definition for the local program level would provide consistency between what seems to be the legislative intent and the guidelines. They further expanded their comments by stating that quality volunteer recruitment and training are required and directly related to quality service delivery.

The majority of commenters supported "funds for training" without qualifying the target group while a few letters specified that training for service providers should be multidisciplinary, i.e., include psychological, medical, law enforcement and prosecutor personnel.

After careful consideration of these comments we have amended the final guidelines to include training and reasonable related expenses as an allowable coat as follows:

"('Services to victims' of crime includes the following:)

* * *

"(6) Training for those persons (salaried or volunteer staff) who provide direct services to crime victms, which may include personnel employed by criminal justice, social service, mental health or related agencies. Funds may only be used for training programs that improve the skills of service providers in meeting the needs of crime victims. Management training and training aimed at persons who do not provide direct services are not eligible for support.

"Included as allowable costs are the necessary and reasonable travel expenses related to staff participation in eligible training programs. Such costs are, however, permitted only for travel

within the State or a comparable geographic region. Training services supported with crime victim assistance grant funds must be sponsored by a program that is an eligible recipient of these funds and that meets the requirements stated in section III(c) of the guidelines."

OJP fully supports the concept of training for victim service practitioners and related personnel in criminal justice, human services, mental health, medical and legal areas. The guidelines accordingly recognize the need for training of these professionals in the new and developing field of victim services and the potential for victim harm which may be perpetrated by untrained, unskilled, and uninformed practitioners. The Office of Justice Programs encourages that training efforts be coordinated to complement service development in the States, to insure cost effectiveness, and to maximize the use of the relatively limited number of trainers in this field.

5. Audit

Several comments were received concerning the financial burden that would be imposed on local programs by the audit requirements, particularly if the expenses of performing the audit were not treated as an allowable cost reimbursed from grant funds. The final guidelines modify this position for subgrantees. Reasonable expenses required to meet the requirements of OMB Circular A–128 may be charged to a victim assistance program's subgrant as a necessary cost of providing direct services to crime victims. The final guidelines do not, however, permit the state to use Victims of Crime Act funds to bear the cost of State audits required by Circular A–128.

6. Reporting Requirements

Section VIII of the final guideline substantially changes the reporting requirements set forth in Section V of the proposed guideline. First, the report is now to be submitted semi-annually, rather than annually. The reporting form will solicit more statistical information from the sub-grantees and additional information from the State victim assistance office concerning other sources of funding for victim services in the State. The primary consideration in requesting more detailed information is the need to provide a comprehensive report to Congress in 1987 on the cumulative results of the Victims Act grant programs.

In addition, recipient programs will be required to maintain information on victims served by race, color, national origin, religion, handicap, age, and sex. This information need not be submitted as part of the performance report; however, programs will be required to specify what steps are being taken to keep records on these items.

Our review of a representative sample of annual and activity reports submitted by State and local victim assistance offices and projects indicated that much of the basic information required to compile the performance report is already being collected.

7. Other Revisions

The final guidelines expands on the explanation of activities ineligible for funding under the Act. It also discusses several additional services to victims of crime that are eligible for funding, as suggested by several commenters. See section III(d).

The guideline also provides a more complete explanation of the financial and audit requirements for easier reference by grantees and sub-grantees. See section V.

An explanatory note has also been added to the confidentiality provision, explaining that the clause is intended to protect information given by crime victims to counselors. Section VII. Finally, minor organizational and grammatical changes have also been made at several places in the guideline.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) an effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because the guideline will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The final crime victim assistance grant guidelines are, accordingly, revised to read as follows:

I. General Provisions

Eligible Applicants: All States, (including the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions), are eligible to apply for and receive grants. Section 1404(d)(1).

State Office: The chief executive of each participating State shall designate or establish a State office for the purpose of preparing an application for funds and administering the funds received including fund accounting and disbursement, monitoring, reporting, and audit.

II. Allocation of Funds

Fund Availability: Section 1404(a)(1) of the Victims of Crime Act provides that crime victim assistance grants shall be made from the portion of the Fund not used for crime victim compensation grants or reserved by the Attorney General to provide services to victims of Federal crimes. Funds are available for expenditure in the fiscal year of award and in the next succeeding fiscal year.

Allocation to States: Each State, the District of Columbia and Puerto Rico, shall receive a base amount of $100,000. Each State, the District of Columbia, Puerto, and all territories and possessions shall receive a portion of the available remaining monies based on its share of total population using the most recent data of the U.S. Bureau of the Census.

Allocation of Funds within the States: Funds granted to the States are further subgranted by the State to eligible crime victim services programs. The State has sole discretion as to which programs providing services to victims receive funds, so long as the eligiblity requirements set out in the Act and enumerated in this guideline are met.

III. Program Requirements

(a) Under the Act, the chief executive of the State must certify that the State will give priority to eligible crime victim assistance programs providing assistance to victims of sexual assualt, spousal abuse, or child abuse. Section 1404(a)(2)(A). To meet this requirement, the State must adopt one of the following practices with respect to the subgranting of crime victim assistance funds and must inform the Office of Justice Programs (OJP) in its application of the practice adopted. Regardless of the option selected, the State must include in its semi-annaul performance report to OJP a statement describing how the State has assured that priority has been given to programs that serve victims of sexual assualt, spousal abuse or child abuse. The three options are:

(1) Allocate at least ten percent of the total crime victim assistance funds granted to the State to each of the three priority categories, unless the State convincingly demonstrates that (A) a particular category is receiving significant amounts of financial assistance from the State or other fund sources and (B) a smaller amount of financial assistance or no assistance for that category is needed from the crime victim assistance grant funds. A program should be included in a priority

category only if a principal mission of the program is to serve that particular category of priority victims.

(2) Develop criteria for allocating funds that assure that programs serving each priority category of victims receive a share of crime victim assistance funds commensurate with: the special needs of the crime victims in question; the level, quality, and availability of existing services to them; and the overall distribution of victim services funding from all sources within the State. In addition, describe in the semi-annual performance report to OJP the amount of funds awarded to priority programs; changes in the level, quality or availability of services; and any continuing unmet needs.

(3) Require every program receiving crime victim assistance funds to include, as a principal mission or component of its program, services to at least one category of priority victims unless and to the extent the State determines that other programs are providing adequate services of a similar nature to priority victims in the community in question.

(b) The chief executive of the State must certify that crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim assistance services. Section 1404(a)(2)(B). Grant funds are intended to enhance or expand services, not substitute for other sources of support.

(c) States must use crime victim assistance grant funds to support programs that provide services to crime victims. An eligible crime victim assistance program must meet the following requirements.

(1) Be operated by a public agency or non-profit organization, or a combination thereof, that provides services to crime victims.

(2) If it is an existing program, have a record of providing effective services to victims of crime and financial support from other sources. In determining whether or not a program has a "record of providing effective services," the State shall consider how long the program has been in operation, and whether or not an analysis of its activities shows that it achieves its intended results in a cost-effective manner. An existing program shall be considered to have "financial support from other sources" if at least one-fourth of its support (including in-kind contributions) is from sources other than the State's crime victim assistance grant. Section 1404(b)(1)(B)(i).

(3) If it is a new program that has not yet demonstrated a record of effective services as required under (2) above, it may be eligible for funding if it demonstrates substantial financial support from other sources. "Substantial financial support" means that at least fifty percent (50%) of its budget is in the form of cash from sources other than the Federal crime victim assistance grant. Section 1404(b)(1)(B)(ii).

(4) Utilize volunteers unless and to the extent the State chief executive determines compelling reasons exist to waive this requirement. A "compelling reason" may include statutory or contractual provisions that bar the use of volunteers for certain positions or a lack of persons volunteering after a sustained and aggressive recruitment effort has been conducted.

(5) Promote within the community served coordinated public and private efforts to aid crime victims. Section 1404(b)(1)(D). Because of the various kinds of services needed by victims of crime, services are usually provided by a variety of agencies. Therefore, it is essential that these services be coordinated to insure continuity of support to the victim. In determining whether or not a program meets this requirement, the State shall consider the extent to which the program demonstrates that it will coordinate its activities with other service providers in the community so that the best interests of the crime victim are served and interagency communication enhanced.

(6) Assist victims in seeking available crime victim compensation benefits. Section 1404(b)(1)(E). Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. An eligible program must demonstrate that it will coordinate its activities with the State compensation program, where one exists.

(d) Crime victim assistance funds shall be used only to provide services to victims of crime. Section 1404(b)(2). "Services to victims of crime" means those activities that directly benefit individual crime victims, including the required coordination of such activities, i.e., coordination of volunteers and/or coordination of public and private efforts to aid crime victims. Activities unrelated or only tangentially related to the provision of direct services to victims are not eligible for support.

Examples of ineligible activities include:

(1) Crime prevention programs (other than those prevention efforts specifically included in providing emergency assistance after a victimization incident).

(2) Advocacy for particular legislation or administrative reform. Programs that are focused primarily on lobbying or raising public awareness concerning a particular issue or cause do not as qualify as "direct services to crime victims."

(3) General criminal justice agency improvements or programs where crime victims are not sole or primary beneficiaries.

(4) Witness management or notification programs. Victim/witness assistance programs which provide both victim services and witness notification services can receive funding support only for that portion of the program that provides direct services to crime victims.

"Services to victims of crime" includes, but is not limited to, the following:

(1) Crisis intervention services that meet urgent emotional or physical needs of crime victims. Crisis intervention services may include the operation of a 24-hour hotline that provides counseling or referral for crime victims.

(2) Emergency services that provide temporary shelter for crime victims who cannot safely remain in their current lodgings; offer measures such as repair of locks or boarding up of windows to prevent the immediate reburglarization of a home or an apartment; or provide crime victims petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities.

(3) Support services that include follow-up counseling (for other than crisis reactions), reassurance and empathetic listening, and guidance for resolving practical problems created by the victimization experience; acting on the crime victim's behalf vis a vis other social services and criminal justice agencies; assistance in obtaining the swift return of property being kept by police as evidence; intervention, as appropriate, with landlords or employers; and referral to other sources of assistance, as needed.

(4) Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, and escort services.

(5) Payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are not otherwise reimbursed or paid by third parties. Funds may only be used to pay for those forensic medical examinations that conform to standards adopted by the State or meet the evidentiary requirements of the local prosecutor.

(6) Training for those persons (salaries or volunteer staff) who provide direct services to crime victims, which may

include personnel employed by criminal justice, social services, mental health or related agencies. Funds may only be used for training programs that improve the skills of service provisions in meeting the needs of crime victims. Management training and training aimed at persons who do not provide direct services are not eligible for support.

Included as allowable costs are the necessary and reasonable travel expenses relating to staff participation in eligible training programs. Such costs are, however, permitted only for travel within the State or a comparable geographic region. Training services supported with crime victim assistance grant funds must be sponsored by a program that is an eligible recipient of these funds and that meets the requirements stated in Section III(c) of the guidelines.

(7) Printing and distribution of brochures and similar announcements describing the direct services available and how to obtain a program's assistance, and similar public notification efforts intended to recruit volunteers.

(e) As stated in section (d) above, crime victim assistance funds shall be used only to provide services to victims of crime. Section 1404(b)(2). A State may not use assistance funds to pay for costs it incurs in applying for, administering or auditing grant funds. The State must establish procedures to assure that funds subgranted to an eligible crime victim assistance program are expended only for providing services to victims of crime. These procedures shall require a program to demonstrate to the State that the assistance funds it requests are directly related to the delivery of services to crime victims. Any costs not directly related to service delivery for victims must not be charged to the subgrant. Programs that serve both victims and non-victims must reasonably prorate their costs to assure that crime victim funds are used only for victims services.

IV. Application Requirements

(a) Applications from the State for crime victim assistance grants must be submitted on Standard Form 424, Application for Federal Assistance, no later than November 29, 1985. The Office of Justice Programs will provide an "Application Kit" to the States that includes SF 424, a list of assurances, a table of fund allocations, and additional guidance on how to prepare and submit an application for crime victim assistance grants. Applications should be submitted to the following address: Control Desk, Office of the Comptroller, Office for Victims of Crime, OJP, 633 Indiana Avenue, NW., Washington, DC 20531.

(b) Applications from the State need not specify the subgrants the State intends to make with the Federal crime victim assistance funds it receives. However, the application must contain the following certifications and assurances:

(1) A certification that the State shall give priority to programs aiding victims of sexual assault, spousal abuse, or child abuse and a statement of the practice the State will adopt in allocating funds to assure that this requirement is met;

(2) A certification that funds will be awarded only to eligible crime victim assistance programs and will not be used to supplant State and local funds that would otherwise be available for crime victim assistance;

(3) An assurance that the State will provide for accounting, auditing, and monitoring procedures, and keep such records as prescribed in these guidelines so as to assure fiscal control, proper management, and efficient disbursement of Federal funds;

(4) An assurance that the State will comply with all applicable non-discrimination requirements and that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex or handicap against the State, it will forward a copy of the finding to the Office of Justice Programs, Office of Civil Rights Compliance (OCRC);

(5) An assurance that the State will comply with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 11, Applicability of Office of Management and Budget Circulars; and

(6) An assurance that the State will comply, and its subgrantees will comply, with the applicable provisions of the Victims of Crime Act, the guidelines for crime victim assistance grants, and the requirements of the "Financial and Administrative Guide for Grants," Guideline Manual M7100.1, Office of Justice Programs. (c) Applications from the State must include the name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the Office of Civil Rights Compliance.

(d) Applications from the State must include the date of the last audit of the State agency and the anticipated date of the next audit.

(e) The State is required to notify the Office of Justice Programs immediately upon the award of a subgrant and provide the following information: the name of the subgrantee and the address; the title of the program; the amount of Federal crime victim assistance funds awarded; the amount of financial support from other sources; the subgrant period; classification fo the program by service category; and a summary description of the subgrant objectives and services.

V. Financial Requirements

A. Payment of Grant Funds

1. Annual Requirement Under $120,000. Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H–3 Report (Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issurance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. Annual Requirement Over $120,000. Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the 'Letter of Credit" procedures. This funding mehtod is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. Check Issuance. All checks drawn for payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

4. Termination of Advance Funding. If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that grantee organizations maintain a minimal amount of cash on hand and that drawdowns of cash are

made only when necessary for disbursement.

B. Financial Status Report.

A Financial Status Report (Form H–1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of the calendar quarter. Final reports are due 90 days after the end of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the standard H–1 Report, grantees may satisfy the financial reporting requirements by completing an H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer.

C. Cost allowability.

Although, under OMB Circular A–128, audit costs are generally allowable charges under Federal grants, the Victims of Crime Act specifically states that Crime Victim Assistance grant funds may be used only for providing services to victims of crime. Audit costs incurred at the grantee level are therefore unallowable expenses. Reasonable audit costs incurred at the subgrantee level are, however, considered necessary for the operation of the program and may be reimbursed as allowable costs.

D. Audit Responsibilities.

Pursuant to Office Management and Budget Circular A–128, "Audits of State and Local Governments", grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A–128.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The auditor's report on financial statements of the recipient organization, and a schedule of financial assistance, showing the total expenditures for each Federal assistance program;

(2) The auditor's report on compliance containing: (A) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements; (B) a negative assurance of those items not tested, and a summary of all instances of noncompliance; and (C) the auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

E. Audit Objectives.

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulation; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

F. Audit Implementation.

Grantees are required to specify their arrangement for complying with the provision of OMB Circular A–128 and include in thier grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit;

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the grantees will not comply;

(5) Receipt and appropriate distribution of the resultant audit report; and

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

G. Fund Suspension or Termination

If, after notice and opportunity for a hearing, OJP finds that a State has failed to substantially comply with the Victims of Crime Act or any implementing regulations or guidelines, OJP must suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; subgrantees in the State may not.

VI. Civil Rights

A. General

The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. Section 1407(e). Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), Section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR, Part 42, Subparts C, D, and G.

B. Required Assurances and Information

To be eligible for funding under the Act, a crime victim assistance program must submit the following assurances and information:

(1) An assurance that the program will comply with all applicable nondiscrimination requirements;

(2) An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due

process hearing, on the ground of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the OJP office of Civil Rights Compliance (OCRC); and

(3) The name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCRC.

(4) An assurance that programs will maintain information on victim services provided by race, national origin, sex, age, and handicap.

VII. Confidentiality of Research Information

No recipient of monies under the Victims of Crime Act shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. Section 1407(d). This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under this Act.

VIII. Reporting Requirements

Each victim assistance program receiving funds under the Act will be required to submit a semi-annual performance report to the State Victim Assistance Office. The State Office will be responsible for compiling the information and submitting a report to OJP on the effect the Federal funds have had on services to victims of crime in its State. OJP will prepare a form for the semi-annual report for the purpose of soliciting the information required in the most convenient manner possible. The reports will be due in OJP each *November 1*, for the preceding April 1-September 30 reporting period, and each *May 1*, for the preceding October 1-March 31 reporting period. The first performance report is due *May 1, 1986.*

A. Each Victim Assistance Program Will Be Asked To Provide the Following Information to the State

1. Service jurisdiction (County, City, Circuit, etc.).

2. Type of program (Rape Crisis Center (non-medical), Rape Treatment Center (medical); Domestic Violence-Shelter; Domestic Violence Program (non-shelter) Victim Services-Law Enforcement; Victim Witness-Prosecutor; Victim Assistance-Community; Other (specify)).

3. Summary Program Statement (Purpose, Goals, Objectives).

4. Amount and each source of funding for the program.

5. Victim statistics (Total number of victims served by program; by type of crime; by type of services provided; by criminal justice status, e.g., reporting/non-reporting, prosecution/non-prosecution).

6. Staff information (Number of hours contributed during reporting period by professional and clerical staff, paid and volunteer; interns; number of hours of training received by staff by type of training program).

7. Program information and activities (Number and source of referrals to program; number of referrals to other agencies to type of agency; number of hours of training presented by type of training and type of audience; number of hours of public information and education programs presented).

8. Changes which have been made in the program since receiving the Federal grant which will benefit victims of crime.

9. A short description of how the programs funded have coordinated their activities with other service providers in the community.

10. A short description of how the programs funded have assisted crime victims in seeking available crime victim compensation benefits.

Optional

Program evaluation results, case histories, victim satisfaction surveys, anecdotal information.

B. Each State Victim Assistance Office Will Be Required To Provide the Following Information to OJP

1. The amount and each source of funding for victim assistance in the State, including other Federal grant programs.

2. Number of awards by type of program and amount of money awarded to each type of program. (Rape Crisis Center (non-medical); Rape Treatment Center (medical); Domestic Violence-Shelter; Domestic Violence Program (non-shelter); Victim Services-Law Enforcement; Victim Witness-Prosecutor; Victim Assistance-Community; Other (specify)).

3. Changes in victim services in the State as a result of Victims of Crime Act funds.

4. The aggregate of items 4, 5, 6, and 7 under Section A by type of program.

5. Total number of victims who are directly assisted by the State Office (where applicable).

6. Statement describing how the State has given priority to programs that serve victims of sexual assault, spousal abuse, or child abuse and indicating the number and amount of crime victim assistance subgrants awarded to programs that provide services to a category of priority victim as a principal component of their operations.

Optional

States are encouraged to submit a brief narrative report containing anecdotal information, accomplishments, unmet needs, or other information which may be helpful to OJP in evaluating the effectiveness of Victims of Crime Act funding. Of particular interest to OJP are the achievements of local programs whose use of funds have resulted in significant changes in the treatment of crime victims in their community.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 85-25228 Filed 10-22-85; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Semiannual Financial and Statistical Report, NCUA 5300 (3133-0004).

Respondents: Federally Insured Credit Unions.

Abstract: 701.13 Financial and Statistical and Other Reports—the regulation requires each federally insured credit union to submit to the NCUA a completed Financial and Statistical Report NCUA 5300 for midyear and year-end.

OMB Desk Officer: Robert Neal.

Copies of the above information collection clearance package may be obtained by calling the National Credit Union Administration, Office of

Programs, Department of Supervision and Examination, on (202) 357–1065.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 17, 1985.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 85–25245 Filed 10–22–85; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Backgroumd

Pursuant to Pub. L. 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly 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 bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on October 9, 1985 (50 FR 41241), through October 11, 1985.

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 Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m., Monday through Friday.

By November 22, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating on shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no

significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., 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 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 later 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 Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: August 9, 1984, as supplemented August 9, 1985.

Description of amendment request: The amendment would change the Technical Specifications (TS) for the Standby Gas Treatment System (SBGTS) and the Control Room High Efficiency Air Filtration System (CRHEAF) as follows:

1. Obsolete footnotes granting relief from certain limiting conditions for operation (LCOs) during past periods of time would be deleted.

2. A requirement to verify analysis results within 31 days after carbon samples are removed would be added to the LCOs for both systems.

3. SBGTS surveillance requirements would be increased by adding detailed operating procedure (DOP) testing of high-efficiency particulate air (HEPA) filters and halogenated hydrocarbon testing of the charcoal adsorber banks every 18 months or following painting, fire or chemical releases that could contaminate the HEPA filters or charcoal adsorbers.

4. The requirement in TS 3.7.B.1.c for a daily demonstration that all active components of one SBGTS train are operable after the other train is found inoperable would be deleted, but such a demonstration within 2 hours would continue to be required.

5. Also in TS 3.7.B.1.c and in TS 3.7.B.1.e, the term "fuel handling" would be changed to "irradiated fuel handling, or new fuel handling over the spent fuel pool or core. . ." These changes are intended to clarify the intent of these LCOs, which limit reactor operation or fuel handling when SBGTS operation is impaired, and bring them into closer correspondence with Standard Technical Specifications.

6. The surveillance requirement in TS 4.7.B.1.a(2) to perform an instrument functional test on the humidistats controlling the SBGTS heaters would be deleted because these humidistats have been permanently bypassed. The humidistats were removed from service because they are not environmentally qualified and suitable replacements are not available.

7. An additional restriction "providing that within two hours all active components of the other CRHEAF train shall be demonstrated operable" would be added to Section 3.7.B.2.c, which permits reactor operation or refueling operations during the 7 succeeding days after one train of the CRHEAF is made or found incapable of supplying filtered air to the control room.

8. Section 4.7.B.2.c would be changed from requiring a demonstration of the operability of the CRHEAF heaters at rated power to a demonstration of the "ability of the heaters to perform their design function."

9. The words "once per 18 months" would be added to Section 4.7.B.3 to specify the time interval between instrument functional tests of the humidistat which controls the CRHEAF heaters.

10. The explanatory discussion in the BASES would be modified to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its 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 hazard consideration 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."

Proposed change no. 1 is similar to example (i) since it would eliminate footnotes that are no longer operative. Change no. 8 is similar to example (i) since its sole purpose is to restate the requirement so as to avoid possible misinterpretation that operability of the heaters is to be demonstrated with the reactor at rated power, whereas the intent is simply to determine that the heaters are functioning properly. Change no. 10 is also similar to example (i) since it involves only descriptive changes to achieve consistency.

Another Commission example of an amendment considered unlikely to involve a significant hazard consideration is "(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." Proposed change nos. 2, 3, 5, 7 and 9 would impose such additional requirements and are, therefore, similar to example (ii).

Another example of an amendment considered unlikely to involve a significant hazards consideration is "(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 acceptance criteria with respect to the system or component specific 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."

Proposed change no. 4 would eliminate daily testing which is no longer considered necessary to verify

that the remaining SBGTS train is operable during the 7-day period the plant is allowed to continue operation while the inoperable train is being repaired. Reducing the number of such tests will reduce the resulting wear on the SBGTS components and thereby provide greater assurance that they will operate properly. While the proposed change would relax the existing surveillance requirements, it meets all acceptance criteria of the Standard Review Plan and, therefore, is similar to example (vi) above.

Proposed change no. 6 does not compromise safety because the humidistats are not essential. The licensee states that the relative humidity of the incoming gas stream to the SBGTS will continue to be controlled by the heaters, which are now being energized when the exhaust fans are energized. Without the humidistats, the heaters will be in operation more of the time and wear out faster, which may in some way reduce a safety margin but where the results would be within acceptance criteria of the Standard Review Plan. This change is, therefore, similar to example (vi).

Having found that all of the changes included in this proposed amendment are similar to examples considered not likely to involve significant hazards considerations, the staff has made a proposed determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station Units 1 and 2, Ogle County,

Illinois Date of application for amendment: September 27, 1985.

Description of amendment request: The amendment would revise the Technical Specifications to correct typographical and grammatical errors on six pages.

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 of actions not likely to involve a significant hazards consideration (48 FR 14870). One of the examples (i) relates to purely administrative changes to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correct errors, or change nomenclature. The proposed change would correct typographical and grammatical errors. Based on the above, since the proposed change involves actions that conform to example (i), the staff proposes to determine that this application for amendment involves no significant hazards consideration.

Local Public Document Room locations: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Branch Chief: B. J. Youngblood.

Commonwealth Edison Company, Docket Nos. 50/237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: August 13, 1985.

Description of amendment request: The proposed amendments would delet license conditions 3.N.1, 3.N.2 and 3.N.3 from Provisional Operating License No. DPR–19 for Dresden Unit 2 and 3.M.1, 3.M.2 and 3.M.3 from Facility Operating License No. DPR–25 for Dresden Unit 3 and transfer the requirements therein to appropriate sections of the respective Technical Specifications for the units. The transfer of requirements would be either the same technically or in an equivalent or improved amended form. The aforementioned license conditions all involve the spent fuel storage racks and the spent fuel pool. License condition 3.M.4 of Facility Operating License DPR–25 is proposed to be deleted entirely as it requires conditions to be reflected in the Dresden Updated FSAR which have now been included in the latter document.

Basis for proposed no significant hazards consideration determination: The standards used to arrive at a proposed determination that a request for amendments involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which state that the operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in the August 13, 1985 submittal, addressed these criteria as follows:

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

(1) The transfer of License Conditions 3.N and 3.M for Units 2 and 3 respectively into Appendix A is an administrative change which does not in any way change the licensing requirements, operating practices or equipment reliability at the facility.

(2) The addition of an allowed capacity for the new-fuel storage vault only reflects the existing storage capacity and does not increase the number of bundles stored over that previously allowed.

(3) The use of K–INF criteria in place of the U–235 axial loading criteria is an alternate means of specifying reactivity limits for fuel bundles in storage and does not change the manner in which fuel is handled or stored. Reactivity restrictions are provided to protect against fuel pool criticality; this protection is maintained by the proposed K–INF limits.

The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because all three of the proposed changes are largely administrative and deal with the manner in which compliance with fuel storage requirements will be demonstrated. The proposed changes do not allow any new or different modes of operation nor any changes to plant equipment.

The proposed changes do not involve a significant reduction in a margin of safety because:

(1) The transfer of License Conditions into the Technical Specifications is administrative and does not affect the manner in which the plant will be operated.

(2) The addition of an allowable capacity for the new-fuel vault represents an additional restriction not previously included in the Technical Specifications. The allowable number of bundles does not reflect a change or increase in the storage capacity of the plant.

(3) The substitution of bundle K–INF limits for the U–235 axial loading restriction reflects a more sophisticated method for identifying bundle reactivities. Compliance with these limits will assure that future fuel designs stored in the spent fuel pool are bounded by the pool criticality analyses which have been performed. These analyses have demonstrated that the

margin of safety for pool criticality, i.e., pool K_{eff} less than or equal to 0.95, is maintained.

Based on the above discussion, the staff proposes to determine that the application does not involve a significant hazards consideration.

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 No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 2, 1985.

Description of amendment request: The proposed amendment to operating License NPF-11 would revise the La Salle Unit 1 Technical Specifications because the eight 26-in and two 8-inch vent and purge isolation valves are being replaced by Clow Corporation made valves which meet all the requirements for containment vent and purge isolation valves. Since the new valves are qualified to close from any position including the full open (90°) position Technical Specifications 3.6.1.8, 4.6.1.8 and associated basis 3/4.6.1.8 must be revised to remove the 50° limit on valve opening. This limit was required until these valves could be replaced by valves capable of closing during a loss-of-coolant accident or a steam line break. In addition, the new valves do not contain resilient seals. As a result, the once per 92 days leakage surveillance is no longer required since the purpose of the accelerated leakage rate testing (every 92 days) was to provide an early indication of resilient material seal degradation.

The above items addressed in this proposed amendment and these modifications will be incorporated at the first refueling outage in accordance with Supplement No. 7 to the La Salle Safety Evaluation Report. *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 amendments will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the new vent and purge isolation valves replace the existing isolation valves one for one. No additional valves have been added. The new valves meet the requirements for vent and purge containment isolation valves. This amendment simply removes requirements which only apply to the valves being removed.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the modification does not affect the containment isolation valve arrangement.

(3) Involve a significant reduction in the margin of safety because the design continues to meet the requirements of General Design Criterion 56, as specified in the updated Final Safety Analysis Report. 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, N.W., Washington, DC 20036.

NRC Branch Chief: W. R. Butler.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 16, 1985, as supplemented September 20 and 23, 1985.

Description of amendment request: The proposed amendments would change Technical Specification 3.7.7 and its associated bases to reflect that the Auxiliary Building Filtered Ventilation Exhaust (VA) system consists of two shared safety-grade systems serving the common Auxiliary Building, rather than one safety-grade system for each of the two McGuire units. The proposed change would require, as a limiting condition for operation, that both VA systems be operable when either McGuire Unit 1 or Unit 2 is in Modes 1 (power operation), 2 (startup), 3 (hot standby), or 4 (hot shutdown). A change in the action statement would increase the time allowed to restore the VA system to operable status (when one of the two systems is inoperable) from 24 hours to 7 days, and the action statement would be clarified to reflect its applicability to both Unit 1 and Unit 2. Consequently, if one of the two systems should not be restored to operable status within the allowed 7 days, both McGuire Unit 1 and Unit 2 would be required to be in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours. The proposed change would also delete an outdated footnote for Specification 3.7.7 which allowed hot standby conditions to be maintained until 11:59 p.m., September 7, 1983.

Basis for proposed no significant hazards consideration determination: The function of the VA system is to filter radioactive materials associated with coolant leakage from ECCS equipment in the Auxiliary Building (shared for both units) following a LOCA. The VA system includes for 50% capacity fans (two associated with Unit 1 and two with Unit 2); two filter trains (one associated with each unit); and two trains of ductwork (one associated with each unit). Air intakes for these two VA trains are located in the same general open area of the Auxiliary Building near the ECCS Pump Rooms. Both VA trains are automatically actuated following a LOCA in either unit and are powered from separate sources.

The Commission's Standard Technical Specifications (STS) for Westinghouse plants (NUREG-0452, Revision 4, Specification 3.7.8) provide a 7 day restoration period for filtration designs with redundant systems if one of the two redundant systems remains functional. The licensee has determined that the McGuire VA system design meets the requirements of a redundant system for the common Auxiliary Building area, that the consequences of inoperability of one of the two VA system trains following a LOCA are insignificant, and that the McGuire Specifications should be revised in accordance with this STS. The licensee also notes that the offsite thyroid dose calculated for a LOCA and presented in FSAR Section 15.6.4.3 and Table 15.6.4-11 (i.e., 200 REM at the exclusion area boundary which includes the contribution due to ECCS equipment leakages) took no credit for exhaust filtration by the VA system, and still these consequences were well below 10 CFR Part 100 values. The licensee has also determined that the probability of a LOCA with fuel damage during a 7-day period is less than 10^{-6} and the probability of such occurrence in combination with significant ECCS equipment leakage is even smaller. Preliminary review results and separate

calculations by the Commission support these statements and conclusions by the licensee.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The licensee's request to allow 7 days rather than 24 hours to restore one inoperable VA system does not match any of those examples. Based on the review of the licensee's submittal, the staff proposes to determine that this part of the licensee's amendment request does not involve a significant hazards consideration. Operation with this requested change would not involve a significant increase in the probability of an accident previously analyzed or create the possibility of a new or different kind of accident from any accident previously analyzed because the system serves only to mitigate accidents, and because the duration of the allowed time (7 days) is sufficiently limited such that the attendant opportunity for a LOCA is so small as to be negligible. This change from 24 hours to 7 days does not involve a significant reduction in a margin of safety or a significant increase in the consequences of an accident previously evaluated because as discussed above either one of the two redundant filtration trains would accomplish the system function, and even if both filter trains should fail to function, the increment is such that the total offsite doses to the thyroid following a LOCA would remain well below the 10 CFR Part 100 guideline values.

One of the Commission's examples of an amendment likely to involve no significant hazards consideration relates to changes (ii) that constitute additional limitations, restrictions, or controls not presently in the Technical Specifications. The changes to clarify that the action statement applies to both units is a more appropriate representation of system (shared) design and provides a more restrictive requirement (dual unit shutdowns) if one inoperable VA system is not restored within the allowed time period. Another example (i) involves purely administrative changes to Technical Specifications. The change to delete the existing outdated footnote is purely administrative and has no safety implication.

On the above bases, the Commission proposes to determine that these proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Dockets Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 26, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications to add Limiting Conditions for Operation (LCO), surveillance requirements and bases, and manpower requirements for the operation of the Standby Shutdown Facility (SSF). The SSF is an alternate means to provide the capability to maintain each Oconee unit as hot shutdown. It is a facility which would mitigate the effects of postulated fires within certain fire areas. In addition, the facility provides the means in which the safe shutdown requirements of turbine building flooding and physical security are resolved.

Specification 3.18 provides the LCO for the SSF. The systems of the SSF necessary to assure its operability, namely the SSF Auxiliary Service Water (ASW), SSF Reactor Coolant (RC) Makeup, associated instrumentation, electrical generation and distribution are included. Specification 3.18.1 requires that these systems be operable for each Unit in the hot shutdown, hot standby, or power operation. Specification 3.18.2 addresses the SSF ASW system, covering planned test or maintenance, restoration to operable status if inoperable. In a similar manner, Specifications 3.18.3, 3.18.4, and 3.18.5 cover the SSF RC Makeup, the SSF Power System and associated SSF instrumentation, respectively.

Specification 4.20 provides the surveillance requirements for the SSF. Pumps, valves, instrumentation, and electrical power systems are included. The pumps and valves required for the SSF systems to function are included in the pump and valve test program which is maintained in accordance with ASME Section XI. SSF instrumentation is both checked and calibrated on frequencies contained in Table 4.20–1. The periodic surveillance is frequent enough to provide assurance that the instrumentation is properly functioning. Calibrations are conducted on either an annual or refueling outage interval depending on location of the device and whether or not it's accessible during operation. Specification 4.20.3 covers operability of the SSF diesel generator and SSF DC power system.

Finally, Specification 6.1 is revised to include the manpower requirements for the operation of the SSF.

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). Example (ii) of the types of amendments not likely to involve significant hazards considerations applies in this case as these amendments constitute an additional limitation, restriction or control not presently included in the Technical Specifications.

The Oconee SSF was designed to resolve the safe shutdown requirements for fire protection, turbine building flooding, and physical security requirements. The NRC has reviewed the design and provided the results of this review in a letter dated April 28, 1983. These proposed license amendments are being submitted by the licensee in response to an NRC request contained in the April 28, 1983 letter.

The current Technical Specifications do not include operability nor surveillance requirements for the SSF. Therefore, the proposed amendments match the example.

Accordingly, the Commission proposes to determine that the amendment changes do not involve significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 29, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to delete TS 4.2.4, 4.2.5 and Table 4.2–1 on the Reactor Vessel Material Surveillance program. By letter dated May 8, 1985, the NRC had informed the license that the Babcock and Wilcox Owners Group (B&WOG) Materials Committee Report, BAW–1543, Revision 2 and 2A, "Integrated Materials Vessel Surveillance Program, February 1984," would be acceptable for referencing in

Oconee Nuclear Station license applications in accordance with the requirements of Section II.C of Appendix H, 10 CFR 50.

Currently, Oconee 1, 2 and 3 have Technical Specification requirements for reactor vessel materials surveillance which satisfy Appendix H, 10 CFR 50, and which are a part of the B&WOG Materials Committee integrated reactor vessel materials surveillance program. As a result of the NRC acceptance of BAW-1543, Revision 2 and 2A, to satisfy the requirements of Appendix H, 10 CFR 50, it is not considered necessary to maintain the current reactor vessel material surveillance requirements within the Oconee Technical Specifications. Therefore, in accordance with Section II.C of Appendix H, 10 CFR 50, the licensee has submitted for NRC consideration and approval, the B&WOG integrated reactor vessel materials program, BAW-1543 Revision 2 and 2A, for Oconee Units 1, 2 and 3. This document will be maintained current and will serve as the basis for reactor vessel materials surveillance program for Oconee Nuclear Station. Subsequent changes and/or revisions to the program will be made through revision of BAW-1543. The licensee will notify the NRC staff of such changes and will request approval for use of the modified integrated surveillance program.

Basis for proposed no significant hazards consideration determination: The NRC staff has made a proposed determination that these amendment requests involve no significant hazards consideration by applying the standards established by the Commission's regulations in 10 CFR 50.92. This ensures 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 new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed Technical Specification amendments reflect the new process in which changes to Oconee's Reactor Vessel Surveillance Program (RVSP) will be handled in the future. The current Oconee Nuclear Station Technical Specifications 4.2.4 and 4.2.5 for reactor vessel materials surveillance satisfy the requirements of Appendix H, 10 CFR 50. However, as part of the Babcock and Wilcox Owners Group (B&WOG) Materials Committee integrated reactor vessel materials surveillance program, these Technical Specificatons are affected by changes in the program.

By a letter dated May 8, 1985, NRC found the B&WOG Materials Committee Report, BAW-1543, Revision 2 and 2A, "Intergrated Materials Vessel Surveillance Program, February 1984," acceptable for referencing in Oconee Nuclear Station license applications in accordance with Section II.C of Appendix H, 10 CFR 50. This document provides the basis for and explains the Oconee Nuclear Station reactor vessel materials surveillance program incuding the Surveillance Capsule Insertion and Withdrawal schedule. This document will be maintained current to reflect changes in the program. Subsequent changes or revisions to the program will be made through revision of BAW-1543. If affected by the change, the licensee will request the NRC approval for use of the modified integrated surveillance program for Oconee Nuclear Station per Section II.C of Appendix H of 10 CFR 50.

Inasmuch as the proposed Technical Specification change is in support of this program and that the NRC staff has accepted the BAW-1543 and found it applicable for Oconee Nuclear Station reactor vessel surveillance program, it is considered unnecessary to retain Technical Specifications 4.2.4, 4.2.5 and Table 4.2-1.

The NRC staff has determined, based on the consideration that the requested amendments will not alter the Oconee reactor vessel surveillance program, which is in compliance with the regulations, that the revisions do not involve a significnt increase in the probability or consequences of accidents previously considered, nor create the possibility of a new or different kind of accident and will not involve a significant decrease in a safety margin. Therefore, the Commission proposes to determine that the changes do not involve significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 15, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to correct typographical errors in several sections; correct a section title in the Table of Contents; address a change in nomenclature; update Final Safety Analysis Report (FSAR) references; delete out-of-date footnotes; delete an unnecessary section; change wording for clarification; and also, update organizational charts that appear in the Technical Specifications.

There are several areas where typographical errors were found in the Oconee Technical Specifications. High pressure valves are designated as HP, but were mistakenly referred to as 3HP in two places. The word "and" was used instead of "or" in section 3.7.1. and thirdly, an "f" is shown instead of a "g" in a reference in section 3.8.2(e). In section 3, the word "present" was misspelled, and an underline was used instead of a minus sign to denote "±". Finally, in section 3.5.2., the words that relate to the acronym APSR were incorrect and are now being corrected. The changes included in the proposed amendments correct these errors.

An inconsistency was found between the Table of Contents and the title for section 1.2.3. The Table of Contents refers to "Reactor Control" when it should be "Reactor Critical". This change will provide for uniformity throughout the Technical Specifications, and thus, assure a consistent application of the term.

The initial Oconee FSAR update was provided as required by 10 CFR 50.71 by the licensee's letter date July 19, 1982. The updated FSAR was reformatted to be consistent with present FSAR format criteria. This resulted in the FSAR references within the Technical Specifications being out of date. The updating of the reference to the FSAR within the Technical Specifications assures that the appropriate figure of the FSAR is being identified. The updating of the Technical Specifications is an administrative change to achieve consistency with other documents.

In section 6.1.1.4 of the Technical Specifications, a change in nomenclature is requested. The Health Physicists at the Oconee Nuclear Station are referred to as Station Health Physicists, not Site Health Physicists.

Two footnoted special exemptions should be deleted as they are no longer applicable. In both cases, the dates of which the footnotes are valid have passed; therefore they can be deleted.

In sections 6.1.3 and 6.6.2, some wording has been changed in order to achieve clarity and consistency throughout the Technical Specifications. "Individuals" was changed to "members

of the public" to clarify which individuals and "during the reporting period" is being used instead of "each quarter" and "each calender quarter" to be consistent with other Techical Specifications. "Container volume" was changed to "total container volume, in cubic meters", for clarification purposes. Also, since 10 CFR 61 curently does not address types of containers, "type of container" was changed to "numbers of shipments". Finally, a footnote was added concerning Radioactive Effluent Release Reports to achieve consistency with other Technical Specifications.

Technical Specification 3.1.8, Single Loop Restriction, is being deleted because it is obsolete and no longer applicable to Oconee. There are currently no plans to ever use this specification at Oconee. The original purpose for this section was to (1) supplement the 1/6 scale model test information, (2) verify predicted flow through the idle loop, (3) verify that changes in power level did not affect flow distribution or core power distribution and (4) demonstrate that the limiting safety system settings (pump monitor trip setpoint and reactor outlet temperature trip setpoint) could be conservatively adjusted taking into account instrument errors. In addition, this specification required prior Commission approval before it could be used.

In summary, this specification was included in Oconee Technical Specification to provide additional restrictions for single loop operation solely for the purpose of performing tests. During routine operations, single loop operation restriction is provided by Specification 2.3 Specification 3.1.8 is limited to when special tests are performed, and in addition required prior Commission approval. Thus, the deletion of Specification 3.1.8 would not result in the removal or decrease in any limitation, restriction or control. In addition, the reference to single loop restrictions in section 6.6.3 is being deleted.

The final revisions are updates to the Station Organizational Chart and Management Organization Chart for Oconee Nuclear Station to achieve consistency with Duke Power's current organization.

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). Example (i) of the types of amendments not likely to involve significant hazards considerations is an amendment considered to be purely administrative. For example, a change to achieve consistency throughout the technical specification, correction of an error, or a change in nomenclature.

The proposed Technical Specification changes have been determined by the Commission to contain administrative changes only. The requested changes are required so that the Technical Specifications will be consistent throughout and past omissions will be corrected.

Briefly, the proposed amendments correct typographical errors in several places; revise the Table of Contents to provide for consistency; change nomenclature in one place; update two organizational charts; update FSAR figures and tables being referenced; delete out-of-date footnotes; and change wording for clarification.

The reason for the deletion of Technical Specification 3.1.8, Single Loop Restriction, is because it is obsolete and no longer applicable to Oconee. Further, there are currently no plans to ever use this specification at Ocone. This specification was included to provide, during special tests being conducted, additional restrictions for single loop operation. During routine operations, single loop operation restriction is provided by Specification 2.3. In addition, prior to invoking Specification 3.1.8, specific Commission approval was required. Thus, the deletion of Specification 3.1.8 would not result in the removal or reduction in any limitation, restriction, control or margin of safety.

The Commission has determined, based on the above consideration that the requested amendments are administrative in nature that the proposed license amendments appear to be encompassed by example (i) of amendments not likely to involve significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licenses: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 22, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specification (TSs) to correct a typographical error, delete an expired footnote, update the station organization by adding the Station Services and Integrated Scheduling areas, and provide clarity and consistency through different wording.

A footnote is being deleted from Section 3.3.5.c(1)(b). The footnote was no longer valid after April 20, 1985. There is also a typographical error in this section that is being corrected.

Technical Specifications 6.1.2.1.h. and i. require *annual* review of the station security program, the station emergency plans and their implementing procedues. The wording is being changed to read "once per 12 months" instead of "annually."

Technical Specifications 6.1.2.1.h. also required that the Station Manager approve all procedure changes in the security program implementing procedures. This specification is being changed to allow the Station Services Superintendent to also approve changes.

The Superintendent of Integrated Scheduling and the Station Services Superintendent are included in Specifications 6.1.1.3 and 6.1.2.1.a, c. and e. and 6.2.2. The proposed changes would allow the Station Services Superintendent and the Superintendent of Integrated Scheduling to review and/or approve procedures specified under Specification 6.4 and changes thereto (6.1.2.1.a.), modifications of safety-rated structures, systems or components (6.1.2.1.c.), proposed tests and experiments which affect nuclear safety and are not addressed in the Final Safety Analysis Report or Technical Specifications (6.1.2.1.e.), and Reportable Events (6.2.2), if so designated by the Station Manager.

Also, in section 6.2.1, the wording is being changed to better reflect the Station Manager's role in the occurrence of a reportable event. the Station Manager does not investigate a reportable event himself, but instead sees that the event is investigated by the appropriate personnel.

Section 6.2.2 is being revised to include the Superintendent of Integrated Scheduling and Station Services Superintendent.

Finally, Section 6.2.3 is being revised for completeness. Reportable events are reported pursuant to Specification 6.6.2 and 10 CFR 50.73.

Basic 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). Example (i) of the types of amendments not likely to involve significant hazards considerations in an amendment considered to be 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.

The proposed Technical Specifications have been determined to contain administrative changes only. The requested changes are required so that the Technical Specifications will be consistent throughout and consistent with the Administrative Policy Manual for Nuclear Stations.

The Commission has determined, based on the above consideration, that the requested amendments are administrative in nature. Thus, the proposed license amendments appear to be encompassed by example (i) of amendments not likely to involve significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards considerations.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 23, 1985, revising the October 22, 1984, submittal.

Description of amendment request: The proposed amendment requests approval for changes to the Appendix A Technical Specifications (TS) related to the Reactor Coolant System Leakage in Sections 1., 3.3 and 4.3 of the TS by (1) the addition of reactor coolant leak rate detection requirements and surveillance, (2) the incorporation of additional requirements for identified and unidentified leakage, (3) the addition of definitions for identified and unidentified leakage, and (4) the correction of the Bases to Section 3.3, Reactor Coolant, to reflect the actual plant configuration.

Basis for proposed no significant hazards consideration determination: The licensee, in its submittal dated October 22, 1984, proposed additional TS on reactor coolant leakage to incorporate the requirements of Section 4.16.2 in the Integrated Plant Safety Assessment Report, NUREG-0822 dated January 1983, for Oyster Creek and of IE Bulletin 82-03. Section 4.16.2 stated that the TS do not contain requirements regarding the leakage detection systems and that the licensee committed to more restrictive TS requirements for unidentified leakage in its final response to IE Bulletin 82-03. The licensee's October 22, 1984, submittal addresses Section 4.16.2 and IE Bulletin 82-03 by requesting additional requirements in Sections 3.3 and 4.3, Reactor Coolant, of the TS on the following: leakage from the reactor coolant system and the reactor coolant leakage detection systems. It also requests corrections to the Bases for Section 3.3 to have the Bases reflect the actual plant configuration.

The October 22, 1984, request was noticed in the **Federal Register** on February 27, 1985 (50 FR 7990) as an additional limitation, restriction, or control not presently included in the TS and is, therefore, consistent with example (ii) of the Commission's guidance (48 FR 14870, April 6, 1983) as a type of action which would not likely involve a significant hazards consideration and the staff proposed to determine that the requested action would not involve a significant hazards consideration.

The August 23, 1985, submittal has all the TS proposed in the October 22, 1984, submittal and additionally revises the proposed TS 3.3.D.1.c and 3.3.D.3 on the rate of increase of unidentified leakage. This revision was the result of discussions between the licensee and the staff and was to bring the proposed TS into agreement with the Standard Technical Specifications for General Electric Boiling Water Reactors, NUREG-0123, Revision 3. The revised TS 3.3.D.1.c and 3.3.D.3 remain additional restrictions on plant operation not presently included in the TS.

The proposed TS in the August 23, 1985, submittal, therefore, would also constitute an additional limitation, restriction, or control not presently included in the TS and is, therefore, consistent with example (ii) of the Commission's guidance as a type of action which would not likely involve a significant hazards consideration. Therefore, the staff proposes to determine that the requested action would not involve a 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, N.W. Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 30, 1985.

Description of amendment request: Requests approval of changes to the Appendix A Technical Specifications (TS) to revise Table 4.1.1, Minimum Check, Calibration and Test Frequency for Protective Instrumentation, in Section 4.1, Protective Instrumentation, of the TS. The changes would delete the requirement for channel check for the following instrument channels: low reactor water level and low-low reactor water level, due to a replacement of instruments in accordance with 10 CFR 50.49(g).

Basis for proposed no significant hazards consideration determination: The TS Table 4.1.1 requires that a daily channel check be performed on the low reactor water level and low-low reactor water level instrument channels. Channel check is defined in the TS (Definition 1.19A) as a qualitative determination of acceptable operability by observation of channel behavior during operation. Switches in these two channels are currently equipped with indicating gauges; however, during the Cycle 10M outage scheduled to begin in October 1985, these non-environmentally qualified switches are to be replaced with qualified switches. The qualified switches are not equipped with indicating gauges. Therefore, a channel check cannot be made on these channels after the new switches are installed.

The non-environmentally qualified switches are being replaced by qualified switches to meet the schedule and technical requirements of 10 CFR 50.49(g) and the staff's letter of March 30, 1985, to have all electrical equipment at Oyster Creek important to safety environmentally qualified by November 30, 1985.

The new switches will perform the same safety function as the switches they replace. These new switches are similar to switches in other instrument channels listed in Table 4.1.1 which do not allow a channel check of the instrument channel. These other channels have an "NA" (not applicable)

listed under the column for channel check in Table 4.1.1.

The daily channel check does not verify the channel's proper response or that it responds within acceptable range and accuracy to fulfill its safety functions. The channel check is only the qualitative determination of acceptable operability of the channel by comparing, in this case, the existing channel switches indicating gauges to each other. Tests of proper functioning of an instrument channel are performed by the channel calibration and channel test which are also listed in Table 4.1.1. The frequency for channel calibration and channel test would not be changed by the licensee's proposed action.

An instrument channel for which a channel check cannot be performed is within acceptable criteria with respect to the reactor protection system as specified in both the Standard Review Plan, Section 7.2, Reactor Trip System, and in the Integrated Plant Safety Assessment Report (NUREG–0822 dated January 1983) for Oyster Creek for the staff's Systematic Evaluation Program. In addition, similar instrument channels to the low reactor water level and low-low reactor water level in the reactor protection system lack the capability of a channel check. Although the channel check or lack of it does not affect the probability of a previously analyzed accident and does not introduce an accident not previously analyzed, it may increase the consequences of a previously analyzed accident or may reduce a safety margin because a qualitative determination of acceptable operability by observation of channel behavior may indicate the channels are not functioning properly. However, there are other instrument channels of the reactor protection system available to respond to an accident to provide a defense-in-depth. Therefore, this proposed change is a change which may result in some increase to the consequences of a previously analyzed 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. Thus, this proposed change is encompassed by the Commission's example (vi) provided in 48 FR 14870 of actions not likely to involve significant hazards considerations. Based on this, the staff proposes to determine that the requested action 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, N.W. Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: August 1, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by correcting three typographical errors in Table 3.8–1, "Containment Penetration Conductor Overcurrent Protective Devices" of Technical Specification 3/4.84, "Electrical Protective Devices".

Technical Specification 3/4.8.4 delineates the operability and surveillance requirements for the containment penetration conductor overcurrent protective devices listed in Table 3.8–1. The requirements of this Technical Specification ensure these devices will not prevent safety related valves from performing their function. The proposed change to Table 3.8–1 consists of the following three parts:

(a) Item 8, 480 Volts Power from MCCs, Table 3.8–1, page 3/4 8–24 currently lists the valve number as 1SI–V1508 TK 1B. The proposed change will correct the typographical error in the tank designation suffix to accurately list the valve number as 1SI–V1508 TK 2B.

(b) Item 57, 120 Volts Control Power from PDPs or MCCs, Table 3.8–1, page 3/4 8–39 currently lists the Power Distribution and Motor Data (PDMD) sheet number for primary protection as 148. The proposed change will correct the typographical error to accurately list the PDMD sheet number as 148A.

(c) Item 71, 120 Volts Control Power from PDPs or MCCs, Table 3.8–1 page 3/4 8–41 currently lists the valve number as 2BM–P237. The proposed change will correct the typographical error in the code class prefix to accurately list the valve number as 7BM–P237.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (49 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, correction of an error, or change in nomenclature.

The proposed changes to Table 3.8–1 as described in parts a, b, and c above, will correct the typographical errors and bring the Technical Specification into conformance with other plant documents. Therefore, the proposed changes are similar to example (i).

As the changes requested by the licensee's August 1, 1985 submittal fit the example provided, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., NW., Washington, D.C. 20036.

NRC Branch Chief: George W. Knighton.

Louisiana Power and Light Company, Docket No. 509–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: August 1, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by changing the first inservice inspection period for inaccessible snubbers in Technical Specification 3/4.7.8 "Snubbers".

Technical Specification 4.7.8 delineates the surveillance requirements for hydraulic and mechanical snubbers. In particular, item (b) allows for independent inspection of accessible and inaccessible snubbers, and requires that the first inservice visual inspection of each type of snubber shall be performed after 4 months but within 10 months of commencing "POWER OPERATION" and shall include all hydraulic and mechanical snubbers.

Waterford 3 power operation commenced on March 18, 1985 placing the beginning of the initial snubber inservice visual inspection period at July 18, 1985. However, in order to take advantage of an unscheduled outage, Louisiana Power and Light Company (LP&L) performed an inservice visual inspection of inaccessible hydraulic and mechanical snubbers during mid-June.

1985—approximately 3 months after commencing power operation.

The requested Technical Specification change would alter the beginning of the first inservice visual inspection period from four months to two months post-power operation for inaccessible snubbers only. Technical Specification 4.7.8.b would be footnoted to reflect the change. With this change LP&L will be allowed to take credit for the June 1985 visual inspection of inaccessible snubbers, precluding a potential future plant shutdown during the 4-10 month period that may have been required for inaccessible snubber inspection.

Basis for Proposed No Significant Hazards Considerations 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 changes are clearly with all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

The proposed change allows LP&L to take credit for a visual inspection of inaccessible snubbers conducted approximately three months after commencing power operation rather than the four months required by the existing Technical Specification. The time period from initial power operation to the beginning of the visual inspection period is intended to ensure exposure of the snubbers to representative plant conditions.

The operating history of Waterford 3 over the initial three-month period covers several heat-ups and cool-downs along with numerous plant trips, both planned and inadvertent. This three-month history constitutes a representative exposure to plant conditions for validation of the initial snubber inspection and validation of snubber operability. An additional month's delay of the initial inspection to mid-July provides little additional exposure (one heat-up and several inadvertent trips) due to outages experienced during that time.

Additionally, the proposed change is in conformance with ANSI/ASME Standard OM4–1982, "Dynamic Restraints Examination and Performance Testing". Section 3.2.3, Inservice Examination Frequency, states: "The initial inservice examination of all snubbers shall be initiated after at least 2 months of power operation and shall be completed prior to 12 calendar months after initial criticality."

Based on the low system demands occurring during the fourth month of power operation, and the technical guidance of ANSI/ASME OM4–1982, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change deals only with a scheduling interval and introduces no new systems, procedures or modes of operation. As discussed above, the inaccessible snubbers received a representative exposure to plant conditions prior to the initial inspection, ensuring an adequate basis for operability determination. Subsequent inaccessible snubber inspections will be scheduled in accordance with the existing Technical Specification formula for inspection frequency. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The inaccessible snubbers were inspected following a representative exposure period, and deficiencies were corrected as necessary. In accordance with the Technical Specification the next inspection of inaccessible snubbers will be scheduled based upon the results of the initial inspection. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

In the case of the initial inaccessible snubber inservice inspection period, the nearly three-month period from initial power operation for Waterford 3 sufficiently exercised the snubbers and associated systems to provide a representative "shakedown" period. The proposed change allows LP&L to take credit for the three-month inspection conducted during an outage. While the SRP is silent as to the beginning of the initial inspection period, the three-month inspection is clearly within the guidance of ANSI/ASME OM4–1982. Therefore, the proposed change is similar to example (vi).

As this change requested by the licensee's August 1, 1985 submittal fits the examples provided, it is concluded that: (1) the proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; and (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M St., N.W., Washington, D.C. 20036.

NRC Branch Chief: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: August 1, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by changing Technical Specification 3/4.9.7 "Crane Travel-Fuel Handling Building" so that use of the spent fuel handling machine is not required for movement of new fuel outside the spent fuel pool.

The purpose of Technical Specification 3/4.9.7 is to restrict movement of loads in excess of the nominal weight of a fuel assembly, control element assembly (CEA), and associated handling tool over other fuel assemblies in the spent fuel pool to ensure that in the event this load is dropped, (1) the activity release will be limited to that contained in a single fuel assembly, and (2) any possible distortion of fuel in the storage racks will not result in a critical array. The original intent of the Specification, as it relates to new fuel, was to require new fuel within the spent fuel pool be handled by the spent fuel handling machine to protect against damage to irradiated fuel.

The proposed change to Technical Specification 3.9.7 will clarify that the use of the spent fuel handling machine is not required for movement of new fuel assemblies outside the spent fuel pool and will also allow for movement of new fuel assemblies in areas other than the spent fuel pool if the spent fuel handling machine is inoperable.

Along this line, the proposed change will bring Technical Specification 3/4.9.7 into conformance with FSAR 9.1.4 which specifies the use of other fuel handling equipment (cask crane, new fuel elevator, etc.) for the movement of new fuel outside the spent fuel pool.

The proposed change consists of the following two parts:

(a) Technical Specification 3.9.7 currently states in part:

Cranes in the fuel handling building shall be restricted as follows: a. The spent fuel handling machine shall be used for the movement of fuel assemblies (with or without CEAs) and shall be OPERABLE with. . . .

The proposed change will add the following note of clarification: Not required for movement of new fuel assemblies outside the spent fuel pool.

(b) The proposed change will add the following Action Statement to Technical Specification 3.9.7:

The provisions of Specification 3.0.4 are not applicable. Specification 3.0.4 normally prevents entry into the applicable mode or condition (movement of fuel assemblies in this case) unless the conditions of the Limiting Condition for Operation are met. This added Action statement will allow for the start of new fuel movement in areas other than the spent fuel pool while Action statement a. is in effect.

Basis for Proposed No Significant Hazards Considerations 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 changes are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

The Fuel Handling Accident Analysis in FSAR Chapter 15 is based on the Fuel Handling System described in FSAR Subsection 9.1.4. The proposed change only allows for the use of fuel handling equipment as described by FSAR Subsection 9.1.4 and continues to restrict the movement of heavy loads over fuel assemblies in the spent fuel pool. Therefore, the proposed change will not involve any increase in the probability or consequence of any accident previously evaluated.

Operation of the facility will be in accordance with the assumptions made in the FSAR and the Technical Specification that fuel will be handled in accordance with the designed fuel handling system and movement of heavy loads in the spent fuel pool will be restricted. Therefore, the proposed change will not involve any reduction in the margin of safety.

Operation of the facility will be in accordance with the assumptions made in the FSAR and the Technical Specification that fuel will be handled in accordance with the designed Fuel Handling System and movement of heavy loads in the spent fuel pool will be restricted. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 3/4.9.7 as described in parts a and b above, will allow for the use of fuel handling equipment designed and intended for the movement of new fuel outside the spent fuel pool and bring the Technical Specification into conformance with the FSAR. Therefore, the proposed change is similar to example (vi).

As the change requested by the licensee's August 1, 1985 submittal fits the example provided, it is concluded that: (1) the proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.91; and (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change, and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: George W. Knighton.

Louisiana Power Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: August 1, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by changing Technical Specification 3/4.7.2 "Steam Generator Pressure/ Temperature Limits".

The purpose of Technical Specification 3/4.7.2 is to ensure that steam generator secondary pressure and temperature is limited so that pressure induced stresses in the steam generators do not exceed the maximum allowable fracture toughness stress limits. The purpose of Specification 3.7.2(b) is to ensure, in the event of a low temperature overpressurization of the steam generator secondary, that an engineering evaluation is completed and it is determined that the steam generator remains acceptable for continued operation prior to increasing its temperature above 115 °F.

The proposed change will allow for steam generator temperatures up to 200 °F prior to completion of the engineering evaluation, consistent with the Revision 3 of the CE Standard Technical Specifications. The present temperature value of 115 °F, with respect to performing an engineering evaluation, is incorrect.

The LIMITING CONDITION FOR OPERATION (LCO) 3.7.2 properly requires that secondary side steam generator temperature be greater than 115 °F when secondary side pressure is above 210 psig. The limitation to 115 °F and 210 psig is based on a steam generator RT_{NDT} of 40 °F, which is sufficient to prevent brittle fracture.

However, in developing the Waterford 3 Technical Specifications, the LCO temperature of 115 °F was inadvertently substituted into ACTION statement 3.7.2.b. As noted above, the CE Standard Technical Specification temperature limitation of 200 °F prior to completion of the engineering evaluation (the ACTION statement temperature) should not have been stated as 115 °F. Raising the Action statement temperature limitation to 200 °F corrects this error and is more conservative in the event of an overpressure condition.

Basis for Proposed No Significant Hazards Considerations 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 (i) relates to a purely administrative change to technical specifications, correction of an error, or change in nomenclature.

The lowest service temperature for the secondary side of the steam generators is 115 °F when pressure is 210 psig or greater. Assuming steam generator temperature drops below 115 °F, the Technical Specification as currently written limits temperature to 115 °F or below while an engineering evaluation is performed. In so doing, the Technical Specification unnecessarily exposes the steam generators to the potential for brittle fracture in the event of an overpressure condition. The proposed change would allow an increase in steam generator temperature by to 200 °F while performing the engineering evaluation, thus providing a more conservative condition with

respect to brittle fracture should an overpressure condition occur. Therefore, the proposed change will not involve any increase in the probability or consequences of any accident previously evaluated. In fact, the probability of brittle fracture will decrease.

Temperatures less than 200 °F do not impact LOCA or MSLB considerations. The proposed change requires temperatures be maintained to 200 °F or less until it is determined that the steam generator remains acceptable for continued operation. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The lowest service temperature for the secondary side of the steam generators is 115 °F. The Technical Specification, as currently written, limits the temperature to 115 °F or below and is nonconservative because it unnecessarily exposes the steam generator to brittle fracture in the event of an overpressure condition. The proposed change allows for temperatures up to 200 °F, providing for a more conservative condition by allowing temperatures that will place the steam generator material in the ductile range and making them less susceptible to brittle fracture. Therefore, the proposed change will not involve any reduction, but will increase the margin of safety.

The proposed change will change the temperature value of 115 °F by revising Technical Specification 3.7.2(b) to reflect the 200 °F temperature value shown in the CE Standard Technical Specifications, which is the temperature value originally intended for this ACTION. Because the proposed change will correct an error that occurred during development of the Technical Specifications, the proposed change is similar to example (i).

As the change requested by the licensee's August 1, 1985 submittal fits the examples provided, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; and (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station or the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St., N.W., Washington, D.C. 20036.

NRC Branch Chief: George W. Knighton.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 22, 1982, as revised June 25, 1984 and May 1, 1985.

Description of amendment request: The proposed amendment will change the Technical Specifications (TS) in the areas of the containment atmosphere control and station battery system. The changes are as follows:

1. Title of TS 3.7/4.7.A.5. is changed from "Oxygen Concentration" to "Containment Atmosphere Control." Technical Specifications and surveillance requirements for the operability of purge and vent valves are added.

2. Appropriate limiting conditions for operation (LCO) and surveillance requirements are added for the new 250 VDC battery installed to supply auxiliary power for the high pressure core injection (HPCI) system.

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 examples (48 FR 14870, April 6, 1983) of actions likely to involve no significant hazards considerations. Example (ii) states "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 proposed changes fall in this category. Item No. 1 provides additional assurance that the containment purge and vent valves will close as required after an accident and Item No. 2 improves the ability of the plant to cope with severe fires by providing separate 250 VDC power to HPCI and reactor core isolation cooling (RCIC) systems. Therefore, the staff proposes to characterize these as involving no significant hazards considerations.

Local Public Document Room Location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 17, 1984.

Description of amendment request: Item (2) of the proposed amendment request would modify Technical Specification (TS) 5.1.A to more accurately define the property line at the site boundary. Item (1) of the request has already been addressed in Amendment No. 28, dated November 2, 1984.

Basis for proposed no significant hazards consideration determination: The proposed change defines a more up-to-date property line as a result of acquisition of small portion of land at the site boundary. This change does not involve any change in the site boundary. The proposed change is administrative in nature and does not affect the operation of the plant or the safety of the public. For these reasons, the staff concludes that the proposed change would not: (1) Involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety. Therefore, the staff proposes to characterize this as involving no significant hazards consideration.

Local Public Document Room Location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036

NRC Branch Chief: Domenic B. Vassallo

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of amendment request: August 27, 1985 (Reference LAR 85–07, Rev. 1).

Description of amendment request: The proposed amendment would revise the Diablo Canyon Units 1 and 2 combined Technical Specifications 3.8.2.1 and 3.8.2.2 and related Bases regarding electrical power systems (battery sets and associated chargers) as follows:

In Specification 3.8.2.1, (a) the Limiting Condition for Operation would be revised to indicate a battery bank is

energized from its associated full-capacity charger, and (b) an Action Statement would be added to indicate that with more than one full-capacity charger receiving power simultaneously from a single 480 volt vital bus or any D.C. bus not receiving power from its associated A.C. division, the system is restored to a configuration wherein each charger is powered from its associated 480 volt vital bus within 14 days or the unit is to be in at least Hot Standby within the next 6 hours and in Cold Shutdown within the following 30 hours. In Specification 3.8.2.2, Item c, the wording would be revised to clearly indicate that a 125 volt D.C. bus is energized from its associated battery bank, and a full-capacity charger supplied from its associated Operable A.C. vital bus. A statement would be added to the Bases for the Electric Power System to indicate Technical Specification 3.8.2.1, Action c, limits operation to 14 days with an alternate full-capacity charger powered from another 480 volt vital bus.

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). Example (ii) involves a change that constitutes an additional limitation, restriction, or control not presently included in the technical specfications: for example, a more stringent surveillance requirement. The proposed changes fit this example in that (a) the Limiting Condition for Operation would be more restrictive in that it would require that each 125 volt D.C. bus is energized from "its" associated full capacity charger, supplied from "its" associated 480 volt A.C. vital bus, rather than from "an" alternate charger supplied from another vital bus, (b) an additional, restrictive Action Statement would be added to Specification 3.8.2.1 requiring that the battery/charger system be in a configuration wherein each charger is powered from its associated 480 volt bus within 14 days, if the condition of more than one charger receiving power simultaneously from a single vital bus is not rectified, and (c) the supply source (A.C. vital bus) would be added to Specification 3.8.2.2 in accordance with the restrictive changes in (a) and (b) above. Also, clarification would be added to the Bases for the Electric Power System.

The proposed changes are consistent with the NRC Staff position as described in the May 15, 1985, letter from Hugh L. Thompson of the NRC to PG&E regarding the Diablo Canyon Technical Specifications, and subsequent discussions with PG&E. Further justification for the acceptability of operation in the alternate charger alignment for a period of 14 days was provided in PG&E letter DCL–84–214, dated June 14, 1985.

The proposed changes are similar to example (ii) of 48 FR 14870 in that the proposed changes constitute an additional limitation, restriction, or control not presently included in the technical specifications. By revising the Limiting Condition for Operation and adding an Action Statement to the technical specifications, the proposed changes make the technical specifications more restrictive and, therefore, are similar to example (ii) of 48 FR 14870.

On this basis, the NRC proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room Location: California Polytechnical State University, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 85064.

NRC Branch Chief: George W. Knighton.

Pacific Gas and Electric Company, Docket No. 50–275 and 50–323, Diablo Canyon Nuclear power Plant, Units 1 and 2, San Luis Obispo County, California

Date of Amendment Request: September 6, 1985 (Reference LAR 85–09).

Description of Amendment Request: The proposed amendment would revise the Diablo Canyon Units 1 and 2 combined Technical Specifications to implement relaxed axial offset control (RAOC) for Unit 1 after 8000 MWD/MTU burnup in Cycle 1. The revision would add Technical Specification 3/4.2.1, "Axial Flux Difference," to include RAOC for unit 1 and would modify the existing Technical Specification 3/4.2.1, "Axial Flux Difference," to be applicable to Unit 2 only. Related Bases information would be added or revised, as appropriate, and administrative changes would be made to make each specification applicable to the appropriate unit.

These changes to implement RAOC would commence at 8000 MWD/MTU for Unit 1 and continue to the end of Cycle 1 for Unit 1 based upon the Westinghouse-performed analysis for Cycle 1. The NRC approved procedure outlined in the Westinghouse report WCAP–10216–PA was used for the analysis, which confirmed that the full range of normal and accident conditions possible with RAOC meets the assumptions of the related safety analysis in the Diablo Canyon FSAR Update.

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 of the examples of actions involving no significant hazards considerations is example (iv) which involves a relief granted upon demonstration of acceptable operation from an operating 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 request for relief have been established in a prior review and that it is justified in a satifactory way that the criteria have been met. The proposed change fits this example in that it reflects a relaxation in the axial flux difference specification that has been analyzed and found to meet the assumptions of the related safety analysis in the Diablo Canyon FSAR Update. The requested relief is based upon meeting the requirements of WCAP–10216–PA, previously reviewed and approved by the NRC. Thus, the proposed change is similar to example (iv) of 48 FR 14870 of actions not likely to involve a significant hazards consideration.

Local Public Document Room Location: California Polytechnical State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 95064.

NRC Branch Chief: George W. Knighton.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of Amendment Request: September 20, 1985 (Reference LAR 85–10).

Description of Amendment Request: The proposed amendment would revise the Diablo Canyon combined Technical Specifications for Units 1 and 2 to allow performance of the first inservice snubber visual inspection for Unit 2 following completion of the power ascension program. Technical Specification 4.7.7.1b presently requires the inspection to be performed after 4 months but within 10 months of commencing Power Operation. The change requested would revise Technical Specification 4.7.7.1b to allow performance of the first inspection after completion of the power ascension test program or after four months, but within ten months, of commencing Power Operation. As defined in the Diablo Canyon Technical Specifications, "Power Operation" is operation at a power level greater than five percent of rated thermal power.

Power Operation of Unit 2 is presently targeted for early October 1985. The power ascension test program is scheduled for approximately 12 weeks to be followed by the strainer removal outage. PG&E desires to perform the snubber visual inspection of Technical Specification 4.7.7.1b during the outage following the power ascension test program.

Although this change would revise the Units 1 and 2 combined Technical Specifications, it only affects Unit 2 since the first inservice visual inspection for Unit 1 has been completed.

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 changes are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP).

PG&E has already performed a Unit 2 snubber walkdown and visual inspection for all mechanical snubbers following plant heatup in accordance with IE Bulletin 81–01. Minor problems found during the inspection were corrected and the snubbers were reinspected. The Unit 2 will experience load swings, trips, and other transients during the approximately three-month long power ascension test program that will cause movement of snubbers typical of that expected throughout the life of the plant. Therefore, a snubber inspection at the conclusion of the power ascension testing and trip from 100% power is appropriate. No additional information on snubber performance would be gained by delaying the visual inspection of snubbers for one additional month while the unit is in steady state commercial operation (as would be required under the current Technical Specification).

The proposed amendment is designed to allow performance of the first inservice snubber visual inspection for Unit 2 during the outage following the power ascension test program. This change would not necessitate physical alteration of the plant or changes in parameters governing normal plant operation and would provide adequate information on snubber operability. The proposed change is also in conformance with ANSI/ASME Standard OM4–1982, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)". Section 3.2.3 of the standard, Inservice Examination Frequency, states: "The initial inservice examination of all snubbers shall be initiated after at least 2 months of power operation and shall be completed prior to 12 calendar months after initial criticality."

The inspection will be performed after Unit 2 has been subjected to an acceptable number of plant transients. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated and will not involve a significant reduction in a margin of safety. Accordingly, the proposed change is similar example (vi).

Therefore, the staff proposes to determine that performance of snubber surveillance in accordance with the proposed revision 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. Accordingly, the Commission proposes to determine that this change involves no significant hazards considerations as defined by 10 CFR 50.92.

Local Public Document Room Location: California Polytechnical State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 95064.

NRC Branch Chief: George W. Knighton.

Pennsylvania Power & Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 31, 1985 as supplemented on September 13, 1985.

Description of amendment request: In January 1984 the licensee experienced ice formation on the spray nozzles of the spray pond. On August 31, 1984 the licensee provided to the staff a long-term solution to preclude freezing problems in the spray pond. The licensee's proposed solution would add an automatic start capability to the recently installed self-priming pumping system. This modification will allow draindown of the spray arrays without operator action. A new motor operated valve will be installed in each spray array drain line to isolate the spray arrays from the drain pumps. These new drain valves will be interlocked with the drain pumps and riser level monitoring instrumentation to allow automatic pumpdown of the spray risers.

This plant modification is reflected in a proposed change to Table 3.8.4.2–1 of the Technical Specifications for both Units 1 and 2. The licensee has proposed to add these valves to Table 3.8.4.2–1 (MOTOR OPERATED VALVES THERMAL OVERLOAD PROTECTION). These valves are safety related and the valves have thermal overload protection devices; however, this protection is continuously bypassed except during testing. By design all safety related valves have their thermal overload protection devices continuously bypassed except during testing so that the valves can perform their safety related function beyond that which the thermal overload protection would limit

Basis for Proposed No Significant Hazards Consideration Determination: The licensee in his letter dated July 31, 1985, as supplemented on September 13, 1985 stated that:

(1) The proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated. Neither the drain pumps nor the level detection system are safety related since these systems are used only to maintain the spray arrays in an operable condition. The drain valves provide a boundary between the ASME Section III Residual Heat Removal Service Water (RHRSW) Emergency Service Water (ESW) piping and the non-quality drain pumps and are safety related. The safety function of the drain valves is to close when the spray array isolation valves open and an interlock is provided that prevents the drain valves from opening unless the spray array isolation valves are 100% closed.

The drain valves are designed to ASME Section III Class 2 and are Seismic Category I. The motor operators are Class 1E and are powered from existing Class 1E motor control centers. Since the level instrumentation system is non-Class 1E, proper separation between Class 1E and non-Class 1E circuits is provided.

A fire will not jeopardize the safe shutdown of the plant due to the installation of the automatic drain system. This modification was analyzed with respect to fire protection and was found to be consistent with the Fire Hazards Analysis for the plant.

The proposed modification will allow automatic pumpdown of the spray arrays, thereby providing protection against freezing. This decreases the dependency on operators and thus contributes to safety. This modification does not jeopardize the capability of the spray arrays, ESW or RHRSW of performing its intended safety functions. Therefore, this modification will not increase the probability of occurrence or the consequences of an accident or malfunction of equipment related to safety as previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed action does not alter the function or operation of any safety related systems. This change does not compromise separation criteria nor does it allow a single failure to prevent any safety related systems from performing their intended safety functions. This design is consistent with the design philosophy as described in the FSAR and does not create a possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR.

(3) The proposed change does not involve a significant reduction in a margin of safety, since this modification does not affect the ability of the Spray Pond, ESW or RHRSW to provide sufficient cooling nor does it affect the redundancy of these systems.

The NRC staff agrees with the licensee's evaluation in this regard and proposes to find the proposed change to not involve a significant hazards consideration. In addition, the Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards consideration, example (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. Since the licensee has proposed to add valves subject to controls and requirements to the Technical Specifications, this change is encompassed by the example (ii). Based on the above, the staff proposes to find that this change does not involve a 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 and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: W. Butler.

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 1, 1983 as revised October 26, 1983.

Description of amendment request: Amendment 11 to Facility Operating License No. DPR-18 for the R.E. Ginna Nuclear Power Plant was issued July 30, 1985, and addressed a majority of the proposed Technical Specifications (TS) changes requested in the August 1, 1983 submittal. A portion of the proposed changes was not covered by the initial notice published in the **Federal Register** on November 22, 1983 (50 FR 52824). In the letter dated August 1, 1983, Rochester Gas and Electric (RG&E) proposed that the Ginna TS 4.6.2.e be added, requiring the performance of a battery discharge test at least once each 60 months. In a second letter dated October 26, 1983, RG&E proposed that the Ginna TS 4.6.2.f be added, requiring the battery discharge test to be performed annually for any battery that shows degradation. Degradation is indicated when the battery capacity drops more than 10% of rated capacity for its average on previous discharge tests, or is below 90% of the manufacturer's rating.

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). Example (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the TS. Both of the proposed changes are a result of the Systematic Evaluation Program (SEP) for the R.E. Ginna Nuclear Power Plant. Each of the changes introduces an additional restriction or control which does not currently exist. Because the proposed addition of TS 4.6.2.e and 4.6.2.f is encompassed by example (ii), the staff proposes to determine that the requested action does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry H. Voigt, Esquire, LaBoeuf, Lamb, Leiby and MacRae, 1333 New Hamphire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

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 amendment request: October 8, 1982; April 26, 1984; August 2, 1985; September 25, 1985.

Description of amendment request: The amendment would revise Technical Specification (T.S.) Table 3.6-1, "Containment Isolation Valves," and bases section 3/4.6.1.2, "Containment Leakage." Two valves are being deleted from T.S. Table 3.6-1 because they are going to be removed from the plant and their lines capped. Eight valves listed in T.S. Table 3.6-1 will be footnoted to indicate that they are not subject to Type C leak tests. Also, the bases section is being changed to clarify that conservatism exists in the methods to demonstrate a water seal.

Basis for proposed no significant hazards consideration determination: The two valves being removed will have their lines capped. Those caps will ensure containment isolation better than the two valves provided. The eight valves being footnoted to indicate that they do not require Type C leak tests will remain sealed with water during a loss of coolant accident and do not

constitute potential containment atmosphere leak paths. This is consistent with 10 CFR 50 Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors," which does not require Type C, leak tests for valves that will remain sealed with water during a loss of coolant accident. Finally, the bases is being changed to clarify that methods used to demonstrate water seals are conservative. The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because a loss-of-coolant accident is not made more probable, the caps will be better containment isolation than the two valves, and the eight valves will have water seals that they do not consitute potential containment atmosphere leak paths.

Also, it will not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the closed valves that are being changed to pipe caps never have to be open during plant operation.

Finally, it will not (3) involve a significant reduction in a margin of safety because the pipe caps and water seals will maintain effective containment isolation in case of the design basis loss-of-coolant accident. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph L. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 28218.

NRC Branch Chief: Elinor G. Adensam.

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: January 25, 1984 and August 20, 1985 (Reference PCN–91); May 23, 1984, August 7, 1984 and August 20, 1985 (Reference PCN–137).

Description of amendment request: The proposed changes would revise Technical Specifications 3/4.8.1.1, "Electrical Power Systems—A.C. Sources—Operating," and 3/4.8.1.2, "Electrical Power Systems—A.C. Sources—Shutdown," as follows: 1) PCN–91 would delete Technical Specification 4.8.1.1.1.d.6, a diesel generator surveillance requirement, to test reloading of a diesel generator following its failure with offsite power not available, consistent with the recommendation of Generic Letter 83–30; 2) PCN–137 would revise Technical Specification 3/4.8.1.2 to include only those limiting conditions for operation (LCO's) and surveillance requirements which directly relate to the operability of the A.C. Power sources required under shutdown and refueling conditions.

Basis for Proposed No Significant Hazards 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 in the probability or consequences of a previously-analyzed accident or may reduce in some way a safey 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. Each proposed change discussed below is similar to Example (vi) of 48 FR 14870. Therefore, it is proposed that these changes do not involve significant hazards considerations. The following is 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.

Specific Changes Requested and Basis for Proposed No Significant Hazards Determination: 1. Proposed Change PCN–91.

The proposed change would delete Surveillance Requirement 4.8.1.1.2.d.6 of Technical Specification 3/4.8.1, "A.C. Sources," which defines the operability requirements for A.C. electrical power sources. T.S. 4.8.1.1.2 states the requirements for demonstrating diesel generator operability. Surveillance Requirement 4.8.1.1.2.d.6 states that once every eighteen months, during shutdown, loss of both offsite and diesel generator power must be simulated in order to verify that in this situation all loads depending on the diesel generators will be shed and the diesels will be reloaded in accordance with design requirements. The proposed change would delete this surveillance requirement.

The proposed change is similar to Example (vi) of 48 FR 14870 in that it relates to a change that 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. Generic Letter No. 83–30, "Deletion of Standard Technical Specification Surveillance Requirement 4.8.1.1.2.d.6 is based on its inconsistency with 10 CFR 50, Appendix A, General Design Criterion 17, "Electrical Power Systems," Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants," and the Standard Review Plan Sections 8.2, "Offsite Power System," and 8.3.1, "A.C. Power Systems (Onsite)." These references, which delineate the requirements for diesel generators, do not require diesel generator operability tests such as that currently specified by T.S. 4.8.1.1.2.d.6. Because the result of this change would make the technical specifications conform with all acceptance criteria, it is similar to Example (vi) of 48 FR 14870.

2. Proposed Change PCN–137.

The proposed change would revise Technical Specification 3/4.8.1.2, "Electrical Power Systems—A.C. Sources—Shutdown," which defines the requirements for A.C. electrical power source operability during operating Modes 5 and 6. The surveillance requirements governing emergency diesel generator (EDG) operability in Modes 5 and 6 currently prescribe all those surveillances required in Modes 1 through 4 with one exception. The proposed change would revise T.S. 3/4.8.1.2 and T.S. Bases 3/4.8 to include only those limiting conditions for operation and surveillance requirements which verify operability of the A.C. sources required under shutdown and refueling conditions (Modes 5 and 6, respectively). The following functions are not required to be performed by the EDG during Modes 5 and 6 and, on that basis the surveillance requirements relating to these functions would be deleted by the proposed change. The items to be deleted are: 1) automatic start of the EDG on an emergency safety features (ESF) signal, on loss of offsite power in conjunction with an ESF signal, or from a test mode; and 2)

automatic load sequencing on a ESF signal. Also proposed to be deleted is the surveillance requirement specifying the maximum auto-connected loads applicable in Modes 1, through 4, since in Modes 5 and 6 no loads except the permanently connected shutdown loads are automatically connected to the EDG. In addition, it is proposed that the specification stating the minimum volume of diesel generator fuel to be stored be revised to require a minimum of 37,600 gallons of fuel rather than 47,000 gallons of fuel.

The proposed change is similar to Example (vi) of 48 FR 14870 in that it may result in some increase in 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).

SRP Section 8.3.1, "A–C Power Systems (Onsite)," delineates the acceptance criteria regarding A.C. electrical power sources. For specific guidelines it references Regulatory Guides 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electrical Power Systems at Nuclear Power Plants," and Regulatory Guide 1.137, "Fuel Oil Systems for Standby Diesel Generators." Regulatory Guide 1.108 states that diesel generator design should include provisions so that the testing of the units will simulate the parameters of operations that would be expected if actual demand were to be placed on the system. The first part of the proposed change revises the T.S. 3/4.8.1.2 surveillance requirements to more accurately reflect the parameters of operation that would be expected if an actual demand were to be placed on the diesel generator with the plant in cold shutdown or refueling modes. Regulatory Guide 1.137 states that the calculation of fuel-oil storage requirements may be based on the time-dependent loads of the diesel generator. For this calculational method, the minimum required capacity should include the capacity to power the engineered safety features. The second part of the proposed change reduces the minimum required volume of fuel storage system fuel for operation in Modes 5 and 6. The largest anticipated load in Mode 5 and 6 (considering all loads required to mitigate the consequences of the range of postulated accidents and all loads which facilitate plant operation maintenance) has been calculated to be less than 80% of the EDG full rated capacity. Therefore, in accordance with Regulatory Guide 1.137, less fuel is required to be stored during Modes 5 and 6 operation since the maximum diesel generator load during these modes is only 80% of full rated capacity. This part of the proposed change is also consistent with Regulatory Guide 1.108 since it more accurately reflects the parameters of operation (i.e., operation in Modes 5 and 6 only) specified for this technical specification.

Based on the above discussion, the NRC staff proposed to determine that these changes meet the SRP acceptance criteria and are similar to Example (vi) of 48 FR 14870.

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.

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 requests: February 14, 1979, as supplemented September 21, 1982 and August 30, 1985.

Description of amendment requests: The amendment revises Technical Specifications (TS) 4.0, 4.1, 4.2, 4.3, 4.5, 4.7, 4.8 and 4.11 to add Surveillance Requirements to ensure that inservice testing of ASME Code Class 1, 2 and 3 pumps and valves and inservice inspection of ASME Code Class 1, 2 and 3 components will be performed in accordance with a periodically updated version of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda. The amendment request was initially noticed on August 23, 1983 (48 FR 38428). By letters dated February 14, 1979 and September 21, 1982, Virginia Electric and Power Company submitted proposed license amendments for NRC review and approval which reflected changes to the surveillance requirements.

This notice includes changes requested in a subsequent submittal dated August 30, 1985. This submittal updates the previous submittals and provides supplemental information and clarification as requested by the staff's May 28, 1985 request for additional information.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples (48 FR 14870). One of these examples relates to changes which constitute an additional limitation, restriction, or control. The licensee has submitted an updated version of the Inservice Inspection and Testing Program for Units 1 and 2. The Technical Specification changes are requested to ensure that the revised program is in accordance with the applicable ASME Code and Addenda as required by 10 CFR 50.55, "Codes and Standards." Since the proposed changes add requirements to ensure compliance with the regulations, these changes fall within example (ii) of actions not likely to involve significant hazards considerations. On this basis, the staff proposes to determine that the application does 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.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: August 30, 1985.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to: (1) Correct typographical errors and make clarifications; (2) remove reference to three loop operation; (3) revise the maximum allowable core inlet temperature; (4) revise the Linear Heat Generation Rate (LHGR) limit; (5) revise the control-rod-motion-related peaking multipliers that are applied to measured LHGR for comparison to the LOCA limit; (6) modify the method for combining the independent uncertainty parameters applied to the measured LHGR, and (7) modify the Safety Injection Acutation Signal (SIAS) setpoint.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a no significant hazards consideration exists by providing certain examples (48 FR 14870). The examples include: (i) A purely administrative change to the TS to achieve consistency throughout the TS, correct errors or to change nomenclature; and (iii) 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, and assuming no significant changes are made to the acceptance criteria for the TS, that the analytical methods used to demonstrate conformance with the TS and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

Item (1) is encompassed by example (i) of actions not likely to involve a significant hazards consideration.

Minor changes to the code and code assumptions for performing LOCA analyses have resulted in proposed changes to the TS. In addition, the results of the core reload analyses have resulted in additional proposed changes to the TS. Items (4), (5) and (6) above are encompassed by example (iii) of the Commission's examples of amendments not likely to involve a significant hazards consideration. Item (4) proposes a revised LHGR limit based on the core reload analysis that takes into account worst-case axial power shapes to demonstrate compliance with Appendix K to 10 CFR Part 50. Item (5) proposes to modify peaking multipliers related to control rod motion, based on revised analyses for LHGR. Item (6) proposes to modify the method identified in the TS for combining the uncertainty parameters associated with determining LHGR. The method is being changed from a multiplicative to a statistical combination of the uncertainty parameters.

The staff has reviewed Items (2), (3) and (7) of the licensee's submittal in accordance with the standards of 10 CFR 50.92 and has determined that should these revisions be implemented, they would not (1) involve a significant increase in the probability or consequences of an accident previously identified, 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 to safety. The basis for this determination follows:

Item (3) proposes to increase the TS maximum allowable core inlet temperature by 5 °F, from 515 °F to 520 °Φ, to allow for increased flexibility in future plant operations. In addition, the licensee proposes in item (7) to reduce the SIAS setpoint from 1700 psig to 1650 psig to reduce the likelihood of inadvertent safety injection actuations following a reactor trip (i.e., an unnecessary challenge to safety equipment). The core reload analysis shows that modifying these two TS parameters has a minimal effect on the consequences of accidents previously evaluated, and the margin to thermal limits remain well within applicable acceptance criteria.

Item (2) of the licensee's submittal proposes to remove a reference to three-loop operating parameters from one of the TS tables. Operation of Yankee with three loops is not allowed, and removal of references to three loop operations will make the TS consistent with allowed operating conditions.

Based on the above discussions, the staff proposes to determine that none of the requested actions would involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: John A. Zwolinski.

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 bi-weekly notice. They are repeated here because the bi-weekly 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.

Conaumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix Counyy, Michigan

Date of amendment request: August 16, 1985 as revised on September 24, 1985.

Description of amendment request: The proposed amendment accommodates the reactor core reload I1 fuel design.

Date of publication of individual notice in **Federal Register:** October 1, 1985 (50 FR 40076).

Expiration date of individual notice: October 31, 1985.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: June 18, 1985.

Brief description of amendment: The amendment changes the Technical

Specifications by changing the Reactor Low Water Level (inside shroud) trip requirement to "greater than or equal to 307 inches above vessel zero (approximately ⅔ core height)."

Date of issuance: October 9, 1985.

Effective date: 30 days after issuance.

Amendment No.: 90.

Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1985 (50 FR 32788)

The Commission's related evaluation of the amendment is contained in Safety Evaluation dated October 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket No. STN 50-454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: June 26, 1985.

Brief description of amendment: The amendment approves Technical Specification changes relating to administrative controls for access to high radiation areas during certain emergency situations and replaces a page inadvertently omitted in the printing of the Technical Specifications.

Date of issuance: October 1, 1985.

Effective date: October 1, 1985.

Amendment No.: 1.

Facility Operating License No. NPT-37. Amendment revised the Technical Specification.

Date of initial notice in Federal Register: July 31, 1985 (50 FR 31067).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation, dated October 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: April 17, 1985.

Brief Description of amendments: The proposed amendments to Operating License NPF-11 and Operating License NPF-18 would the La Salle Units 1 and 2 Technical Specifications to incorporate the following: (1) Correction of typographical and administrative errors and inclusion of a limit curve when the end-of-cycle reactor pump trip is inoperable; (2) a statement that Specification 3.0.4 does not apply in Specification 3.6.3 by permitting reactor startup as long as assurance is provided that a system inoperable would not affect plant safety; (3) clarification to indicate required action on failure of either "Full In" or "Full Out" reactivity position and specifying system surveillance of "Full In" indication; (4) correction allowed for time decay of liquid effluent batch releases for lower limit of detection; (5) new method of calculating the kilowatt capacity for electric heaters in the control room emergency air make-up train; and (6) the reactor core isolation cooling differential temperature instrumentation with respect to set points surveillance requirements and required remedial actions.

Date of issuance: October 2, 1985.

Effective date: October 2, 1985.

Amendment Nos.: 26 and 14.

Facility Operating Licenses No. NPF-11 and NPF-18 Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 4, 1985 (50 FR 107)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 10, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to remove the requirement of waiting 400 continuous hours after shutdown before unloading more than one region of fuel assemblies. The amendment permits the discharge of the entire reactor core after a continuous interval of 131 hours following shutdown, the current time constraint for movement of only one region of fuel assemblies.

Date of Issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 98.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20973)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 18, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to limit overtime for critical shift job positions, changes the audit frequency of the Emergency Preparedness Program and Safeguards Contingency Plan, and clarifies the Quality Assurance Record retention requirements.

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 97.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1985 (50 FR 34936)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 31, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to permit a one- time extension of the surveillance interval limits for various systems and components. Specifically the Technical Specifications are modified to extend the 3.25 total time interval limit over three consecutive surveillance intervals to allow testing to be performed during the scheduled 1986 refueling/maintenance outage rather than requiring a special plant shutdown solely to perform these tests

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 99.

Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1985 (50 FR 34937)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: November 14, 1984, as revised on January 17, 1985.

Brief description of amendment: The amendment modifies the Big Rock Point Technical Specifications by implementing a definition of operability and incorporating Limiting Conditions for Operation of redundant safety systems.

Date of issuance: October 2, 1985.

Effective date: October 2, 1985.

Amendment No.: 78.

Facility Operating License No. DPR-6. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20974).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of application for amendment: March 21, 1984.

Brief description of amendment: The amendment adds a new paragraph 4.2.23 to the Technical Specification to require the Demineralized Virgin Water Tank to be operable with a minimum water level of 1 foot. In addition the amendment adds a surveillance requirement to verify the minimum water level in the tank at least once per 7 days, and adds a basis for the above requirements.

Date of Issuance: October 8, 1985.

Effective date: October 8, 1985.

Provisional Operating License No. DPR-45. Amendment revised the Appendix A Technical Specifications.

Date of initial notice in Federal Register: May 23, 1984 (49 FR 21829).

The Commission's related evaluation for the license amendment is contained in a Safety Evaluation dated October 8, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 9, 1985.

Brief description of amendments: The amendments change Technical Specification surveillance requirements related to the inservice inspection program for snubbers.

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment Nos. 46 and 27.

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1985 (50 FR 34939).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendment: May 31, 1985.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to support the operation of Oconee Unit 3 at full rated power during the upcoming Cycle 9. The amendments change the following areas: 1) Core Protection Safety Limits (TS 2.1); 2) Protective System Maximum Allowable Setpoints (TS 2.3); 3) Rod Position limits (TS 3.5.2); and 4) Power Imbalance Limits (TS 3.5.2).

Date of issuance: September 19, 1985.

Effective date: September 19, 1985.

Amendments Nos.: 142, 142, 139.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1985 (50 FR 29009).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: February 10, 1983.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to allow the use of the Reactor Coolant System (RCS) inservice leak and hydrostatic test heatup and cooldown limitations during the performance of leak tests of connected systems when the RCS pressure-temperature limits are controlling.

Date of issuance: October 9, 1985.

Effective date: October 9, 1985.

Amendments Nos.: 143, 143 and 140.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 21, 1983 (48 FR 56502).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 1985

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

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: July 25, 1984.

Brief description of amendment: This amendment deletes Surveillance Requirement 4.8.1.1.1.a.2 which requires that the operability of the sump pumps in the tunnel containing the DC control supply to the 230kv switchgear be verified at least once per seven days.

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 83.

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45949).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

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: September 28, 1984.

Brief description of amendment: The amendment corrects errors and inconsistencies and clarifies certain radiological effluent Technical Specifications.

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 84.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: August 31, 1984, as supplemented September 13, 1985.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate restrictions required by NUREG–0737 Item I.A.1.3.1, regarding overtime for plant operators.

Date of issuance: October 10, 1985.

Effective date: October 10, 1985.

Amendment No.: 126.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 24, 1984 (48 FR 42827).

Subsequent to the initial notice, the licensee, by a letter dated September 13, 1985, clarified the wording of the Technical Specification change and made it clearly consistent with the description of the requested change as described in the August 31, 1984 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: July 15, 1985.

Brief description of amendment: This amendment corrects a typographical error on Figure 3.2.–2a of the Technical Specifications.

Date of issuance: October 3, 1985.

Effective date: October 3, 1985.

Amendment No.: 105.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32787 at 32798).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1985.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: May 29, 1985.

Brief description of amendment: This amendment deletes Appendix B in its entirety and provides new Appendix A Technical Specifications sections defining limiting conditions for operation and surveillance of radioactive effluents, concentration and treatment and total dose.

Date of issuance: October 1, 1985.

Effective date: January 1, 1986.

Amendment No. 106.

Provisional Operating License No. DPR–21. This amendment revised the Technical Specifications related to radioactive waste management, i.e., Radiological Environmental Technical Specifications, and the license.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32798).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 15, 1983.

Brief description of amendment: The amendment revises the Technical Specifications Section 3.13/4–13, "Fire Suppression Water Systems" to change the term "screen wash pump" to "screen wash/fire pump" and reword the bases accordingly.

Date of issuance: October 7, 1985.

Effective date: October 7, 1985.

Amendment No.: 33.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 (49 FR 25365).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1985.

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: April 10 and June 14, 1985.

Brief description of amendment: The amendment revises the Technical Specifications by raising the K-effective limit on the spent fuel storage pool from 0.90 to 0.95 and that the infinite multiplication factor be less than or equal to 1.31 for the new fuel assemblies and 1.33 for the spent fuel assemblies.

Date of issuance: October 8, 1985.

Effective date: October 8, 1985.

Amendment No.: 34.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32799).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 1985.

No significant hazards consideration comments received: No.

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 19, 1984, as supplemented October 2, 1984.

Brief description of amendments: These amendments correct errors and establish consistency in the reactor water level setpoint values, lower the main steam line isolation valve low water isolation setpoint from low-low to low-low-low, and revise the audit frequency of the Facility Emergency Plan and implementing procedures to conform with the Commission's regulations.

Date of issuance: October 2, 1985.

Effective date: October 2, 1985.

Amendments Nos.: 111 and 115.

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 29918).

Since the initial notice, the licensee supplemented the application by letter dated October 2, 1984. This submittal provided additional information concerning this amendment request as a result of certain concerns expressed by the NRC staff to the licensee during its review. This submittal did not affect the requested changes proposed in the original application dated April 19, 1984.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation October 2, 1985.

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: January 29, 1985, revised June 14, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reduce the frequency of diesel generator testing and allow the engine to be warmed up for most tests before increasing speed. The test starts from ambient conditions are to be conducted semi-annually instead of monthly. NRC letter 84–15 identified that cold fast starts of diesel generator sets contribute to premature diesel engine degradation and excessive diesel generator testing contributes to unnecessary wear.

Date of issuance: October 4, 1985.

Effective date: October 4, 1985.

Amendment No.: 107.

Facility Operating License No. NPF–1. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 27, 1985 (50 FR 12132 at 12159).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: March 16, 1979, as supplemented December 12, 1979, February 19, 1985, and April 24, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to provide conformance with the Commission's regulations governing Inservice Inspection as set forth in 10 CFR 50.55a(g). It also revises the Technical Specifications governing inspection of steam generator tubes.

Date of issuance: September 30, 1985.

Effective date: September 30, 1985.

Amendment No.: 76.

Facility Operating License No. DPR–54. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 21, 1983 (48 FR 56509) and May 21, 1985 (50 FR 20988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: July 10, 1985, as supplemented by letter dated August 9, 1985.

Description of amendment request: The amendment extends the initial 18-month surveillance interval for manual initiations of the reactor trip system and engineered safety features actuation system (ESFAS), portions of diesel generator testing, ESFAS actuations on safety injection and loss of offsite power, containment spray actuation testing, Phase A and B containment isolations, and Class 1E battery service tests.

Date of issuance: October 3, 1985.

Effective date: October 3, 1985.

Amendment No.: 8.

Facility Operating License No. NPF–30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 3, 1985 (50 FR 35626).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1985.

No significant hazards consideration comments received: No.

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.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 4, 1976 as modified January 28, 1980, October 7, 1983, December 20, 1984 and April 12, 1985.

Brief description of amendments: The amendments added limiting conditions for operation and surveillance requirements for monitoring liquid and gaseous radiological effluents. Additional environmental sampling locations have been added and additional managerial review responsibilities and reporting requirements have been added relating to radioactive releases.

Date of issuance: October 3, 1985.

Effective date: 20 days from date of issuance.

Amendment No.: 97 and 101.

Facility Operating License No. DPR–24 and DPR–27: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38382 at 38430) Renoticed November 22, 1983 (48 FR 52804 at 52840) Renoticed February 27, 1985 (50 FR 7979 at 8011) Renoticed July 31, 1985 (50 FR 31061 at 31076).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Joseph P. Mann, Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: April 17, 1984, as supplemented August 7, 1984, and revised April 5, 1985.

Description of amendment request: (1) Revise the technical specification (TS) Bases for Pressurizer Code Safety valve capacity (2) administratively removes snubbers no longer required after replacement of pressurizer code safety valves, (3) adds TS for reactor coolant system vents, and (4) adds TS for Degraded Grid voltage system.

Date of issuance: October 1, 1985.

Effective date: October 1, 1985.

Amendment No.: 84.

Facility Operating License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 14, 1984 (49 FR 20391).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland this 16th day of October 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85–25183 Filed 10–22–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30–00882, License NO. 29–05185–24 and EA 85–70]

Princeton University; Order Imposing Civil Monetary Penalties

I

Princeton University, Princeton, New Jersey 08544, (the "licensee") is the holder of License No. 29–05185–24 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to use by-product material for research and development.

II

An NRC safety inspection of the licensee's activities under the license was conducted on May 23, 1985 to review the circumstances associated with a skin exposure to an individual in excess of regulatory limits. The exposure was reported to the NRC by the licensee. During the inspection, the NRC staff verified that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated July 3, 1985. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the proposed civil penalties for the violations. Two letters, dated July 29, 1985, in response to the Notice of Violation and Proposed Imposition of Civil Penalties, were received from the licensee.

III

Upon consideration of the answers received, and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be mitigated by fifty percent (50%).

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of Two Thousand Dollars ($2,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 10th day of October 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's two July 29, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalties dated July 3, 1985, the licensee admits the three violations, but protests the proposed imposition of civil penalties. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's arguments in support of mitigation of the proposed penalties, and (3) the NRC staff's evaluation of the licensee's response and conclusion.

Restatement of Violations

A. 10 CFR 20.101(a) requires that no licensee possess, use, or transfer licensed material in such a way as to cause an individual to receive a dose to the skin of the whole body in excess of 7.5 rems per calendar quarter.

Contrary to the above, on May 7, 1985, phosphorus-32, a licensed material, was used in such a way as to cause an individual to receive a dose to the skin of the whole body of approximately 38 rems, a dose in excess of five times the stated limit for the second calendar quarter of 1985.

B. Condition 19 of License No. 29–05185–24 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the Princeton University Radiation Safety Guide, dated December 1979.

1. Paragraph 10.E of this guide, "Personal Surveys," requires thorough checks of one's person and clothing for contamination following the physical or chemical manipulation of radioisotopes.

Contrary to the above, on May 7, 1985, an individual did not perform a check (survey) of his person and clothing for contamination following the manipulation of radioisotopes involving the opening of a vial containing 1.8 millicuries of phosphorus-32.

2. Paragraph 10.G of this guide, "Protective Clothing," requires that laboratory clothing be worn when handling more than 200 microcuries of phosphorus-32 in open form.

Contrary to the above, on May 7, 1985, an individual did not wear laboratory clothing while handling 1.8 millicuries of phosphorus-32 in open form.

Collectively, these violations have been categorized as a Severity Level II problem (Supplements IV and VI).

Summary of Licensee Response

The licensee admits the occurrence of all the violations cited in the Notice of Violation and Proposed Imposition of Civil Penalties but requests mitigation of the civil penalties for the following stated reasons:

(1) The incident was promptly identified and reported to the NRC;

(2) Prompt and effective corrective actions were taken to prevent recurrence of the incident; and

(3) The enforcement history is good.

The licensee disagrees with the NRC position expressed in the July 3, 1985 letter that "timely, comprehensive, long-term corrective action to prevent recurrence had neither been planned nor initiated at the time of the enforcement conference." The licensee states that, at the time of the enforcement conference, changes in the training program, requirements for attendance, as well as an active review of enforcement procedures, were all under consideration.

NRC Evaluation of Licensee Response

The licensee has provided a sufficient basis for mitigation of a portion of the civil penalties because the licensee promptly identified, evaluated and reported the incident to the NRC, and the licensee has a good enforcement history. However, full mitigation has been deemed inappropriate because the long term corrective actions discussed at the enforcement conference were only under consideration, not planned or initiated (as admitted in one of the licensee's July 29, 1985 responses), and these long-term corrective actions are not considered comprehensive, as described herein.

The exposure in excess of the regulatory limit was received by a foreign investigator who neither wore a laboratory coat while using P-32, nor performed a survey after its use. Apparently, the licensee assumed that the foreign investigator understood proper laboratory techniques, based on his experience and education. As a result, the individual was exempt from attending training in procedures either required by the licensee or accepted as minimally sufficient by other investigators. If the individual had been trained and followed the procedures, the exposure could have been avoided.

Notwithstanding the impact that the lack of training had on the occurrence of this exposure, the licensee had not, at the time of the enforcement conference or at the time of its July 29, 1985 letters, initiated corrective actions to establish minimum criteria as to the content of training for all employees authorized to handle licensed material, nor had the licensee established uniform guidelines for principal investigators to use when evaluating the previous training of individuals wishing to use such material. Further, any corrective actions that had been initiated have been narrowly focused on users of phosphorus-32 rather than generally focused on users of all materials which present a potential source of personnel contamination and exposure.

Conclusion

In conclusion, the NRC considers 50% mitigation of the proposed civil penalties ($4,000) appropriate because of the licensee's identification and reporting of the incident, and its enforcement history. However, full mitigation has been deemed inappropriate because the corrective actions were neither prompt nor comprehensive. Absent the licensee's self-identification, reporting and prior enforcement history, a basis would have existed for escalation of the civil penalty amount. Therefore, civil penalties in the amount of $2,000 should be imposed.

[FR Doc. 85-25299 Filed 10-22-85; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co., Oconee Nuclear Station, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or staff) is considering approval of the handling of radioactively contaminated sand proposed by Duke Power Company (the licensee) for the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina. The licensee's proposal also included disposal by burial of the waste. However, such disposal in this case is subject to approval by the State of South Carolina under the Agreement entered into pursuant to section 274b of the Atomic Energy Act of 1954, as amended. Under 10 CFR 150.15(a), the Commission retains jurisdiction only as to the handling of the waste at the licensee's site.

Environmental Assessment

Identification of Proposed Action: The proposed action by the Commission would approve the handling of contaminated sand to be disposed of in trenches within the company controlled area at Oconee. The proposed action is in accordance with the licensee's request by letter dated May 29, 1984.

The material to be disposed of is sand which was used as the abrasive in the cleaning and decontamination of surfaces by abrasive blasting (sandblasting). The volume of waste sand being generated each year is projected to range from 300 to 1500 cubic feet. At the time of the application, Oconee had accumulated approximately 400 cubic feet of the sand in 55-gallon drums stored in the radwaste storage area on site.

The concentration of radioactivity in the sand is low. The licensee reports that analyses of samples of the sand identified the radionuclides in the sand and their average concentrations as follows:

Radionuclide	Average concentration (pCi/g)
Manganese-54(Mn-54)	0.634
Cobalt-60 (Co-60)	1.24
Cesium-134 (Cs-134)	14.9
Cesium-137 (Cs-137)	36.5

At a density of 120 pounds per cubic foot (about 1.9 g/cm^3), 1500 cubic feet (ft^3) of such sand would contain a total of 3.0 millicuries (mCi) Cs-137, 1.2 mCi Cs-134, 0.10 mCi Co-60 and 0.052 mCi Mn-54.

The proposed burial site is located about 1000 feet east from Oconee Nuclear Station outside the security fence but within company controlled area. The licensee proposes to make a trench about 70 feet long, 30 to 50 feet wide, and 7 to 12 feet deep, in which the contaminated sand will be poured and covered with about 3 feet of uncontaminated soil.

The licensee's proposal includes the following procedures and conditions:

Administration Procedures

1. The waste volume of each drum will be properly weighed and documented.

2. For each batch of waste generated, a composite sample from different containers will be taken for radiological analysis, and results will be documented.

3. The total waste volume and radioactivity inventories will be documented, and the total accumulating dose will be periodically evaluated.

Transportation Procedure

4. The 55-gallon drums (each drum only half full) will be transported by vehicle to the disposal site.

5. The preparation and shipment of radioactive waste will be in accordance with Station Health Physics procedures and Station Directives.

Disposal Procedure

6. During the burial process, access to the proposed burial site will be controlled.

7. The waste (sand) will be poured into a 7- to 12-foot deep trench at the proposed burial site and covered with approximately 3 feet of uncontaminated soil.

8. The workers handling the waste drums will be properly dressed in accordance with Station Health Physics procedures and Station Directives.

Radiation Protection

9. The operational procedure to minimize the risk of unexpected or hazardous exposures will follow the guidelines provided by System Health Physics Manual and Station Directives on radiation exposure control and radioactive material control. All radioactive waste release and disposal operations will be performed under the technical guidance and review of the Station Health Physicist.

The Need for the Proposed Action: The reason for the licensee's proposed disposal plan is to dispose of the sand at a substantially lower cost than the offsite disposal alternative, discussed elsewhere in this report.

Environmental Impacts of the Proposed Action: Because of the small quantities of material involved, and the ordinary nature, the potential for radiation exposure of workers and the public is the primary concern. The following radiation exposure estimates are based on burial of 1500 cubic feet of sand per year in which the sum of the activity concentrations of Cs-134, Cs-137, Co-58, Co-60 and Mn-54 does not exceed 150 picocuries (pCi) per gram.

Although the disposal location is outside the security fence, it still is on company controlled land. Thus, it is accessible to the public, but it is not likely that any members of the public will spend many hours each year where the sand is buried. The direct radiation exposure rate from the buried material is estimated to be sufficiently small that a person occupying a spot directly above the buried material for 2000 hours per year would receive a yearly dose less than 1.0 mrem to the total body.

Dust released during the disposal process could be inhaled by members of the public. The radionuclide concentrations are small, and exposure to high dust concentrations (2.6 mg/m^3 respirable) for as much as 10 days per year would result in radiation doses to the total body or to any organ of an adult that are less than 0.1 mrem.

The proposed burial location due east of the Oconee plant is in an area between the plant and the Keowee River which is totally owned by the licensee and in which the surface water and groundwater both migrate toward the Keowee River. There is no expected impact on either ground or surface water usage by the proposed method of disposal, both because of the isolation of the location and because of the small quantity (12.3 mCi maximum) to be buried each year. A drinking water dose is highly unlikely.

Because the burial location is on company controlled land, it is unlikely that there would be an ingestion pathway of significance. It has been estimated, however, that even if crops were raised at the burial site at some future time, the whole body dose to an adult from ingestion of such crops would be unlikely to be greater than 1 mrem/year, because of the small growing area and because of the depth of burial. The equivalent dose to any organ would be about 2 mrem/year.

The estimated exposure rates to the public are small fractions of the limits specified in 10 CFR Part 20 and 40 CFR Part 190.

Occupational radiation exposure for the proposed procedure should also be relatively small. Assuming 10 minutes handling time per drum of sand, the disposal should involve not more than 160 man-hours of worker exposure per year. At the maximum (i.e., if the sand contained 150 pCi of Co-60 per gram), the annual total body gamma dose to the workers would be about 0.07 person-rem; at the average radionuclide concentrations reported by the licensee, it would be only 0.006 person-rem. Doses from inhalation of dust would be insignificant, less than 0.1 person-rem per year, to the total body or to any organ of the workers. It is expected that the exposure rate to the plant workers involved would be less than the average rate reported for nuclear plant workers for 1983, and well within the limits of 10 CFR Part 20.

Table 1 summarizes the above estimates of annual radiation doses from implementing the proposed disposal procedure.

TABLE 1.—ESTIMATED ANNUAL RADIATION DOSES FROM IMPLEMENTATION OF THE PROPOSED DISPOSAL PROCEDURE

Exposure mode	Dose rate
(1) Public	
External gamma radiation to the total body.	≤1.0 mrem/year.
Inhalation doses to the total body or to any organ.	≤1.0 mrem/year.
Ingestion doses (future):	
To the total body.	≤1.0 mrem/year.
To any organ (adult).	≤2.0 mrem/year.
(2) Nuclear station workers	
External gamma radiation to the total body.	≤0.07 person-rem/year.
Inhalation doses to the total body or to any organ.	≤0.1 person-rem/year.

With regard to the nonradiological environmental impacts of the proposed procedure, it is observed that in the licensing review of the potential environmental impacts of the Oconee Nuclear Station, due consideration was given to waste disposal, for both radioactive and nonradioactive wastes.

The wastes that are the subject of this proposed disposal procedure will be buried on site rather than in a burial ground licensed for the disposal of low-level radioactive waste. The local environmental impacts consist of the impacts of trucking the material to the burial location, the impact of the operation of burying the material, and the impact of disturbing a small area of ground for the burial. These impacts are ordinary in their characteristics, and will involve small quantities each year. Based on these considerations, it is judged that the nonradiological environmental impacts of the proposed procedure are insignificant.

Based on our review and evaluation of the proposed disposal procedure and handling, we conclude that:

1. The radiation exposures to the nuclear station workers involved in the disposal are small compared to the routine occupational exposures at the Oconee Nuclear Station;

2. The possible radiation risks to members of the general public as a result of such disposal are well below regulatory limits and small in comparison to the doses they receive

each year from natural background radiation; and

3. The nonradiological environmental impacts of the proposed procedure are minor.

To assure consistency in implementation of the proposed procedure with the considerations provided by the licensee's letter of May 29, 1984 and enclosures thereto and with the considerations of the staff's evaluation, we make the following additional requirement: Analysis of each batch of waste sand shall be completed and documented, confirming that its average redionuclide concentration is less than 150 pCi/g, before moving it to the burial location. With respect to disposal, the staff recommends the following conditions be observed:

1. No batch of waste sand should be buried under this procedure if the sum of the average activity concentrations in it of Cs–134, Cs–137, Co–58, Co–60 and Mn–54 exceeds 150 pCi per gram;

2. Disposal at the Oconee Nuclear Station by this procedure should be limited to 1500 cubic feet of sand per year; and

3. Measures should be taken to prevent removal of the sand from the burial location for unauthorized purposes, e.g., sand trucked to the burial location shall be promptly poured in the trench and promptly covered with soil.

Alternatives to the Proposed Action: An alternative to onsite burial would be to ship and dispose the sand at Barnwell. The overall benefit for the proposed method for the disposal of this slightly contaminated sand will be a cost saving of approximately $17,000 and a saving of burial site space, which can be used for other radwaste. Considering the generation rate of this type of material (300 to 1,500 cubic feet per year), the total cost saving could range from $13,000 to $64,000 per year and saving burial site space from 600 to 3,000 cubic feet per year.

Alternative Use of Resources: The principal action involving use of resources not previously considered in connection with the Final Environmental Statement for Oconee Nuclear Station, Units 1, 2 and 3, is a minor change in land use associated with operating support of the facility. As noted above, this change also involves a minor addition to the operational radiological monitoring and recordkeeping program during plant operation.

Agencies and Persons Consulted: The staff reviewed the licensee's request and has consulted the Bureau of Radiological Health in the State of South Carolina.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for approval dated May 29, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 10th day of October 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85–25300 Filed 10–22–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

General Public Utilities Nuclear Corp. Three Mile Island Nuclear Station, Unit 2; Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR–73, which has authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

By letter dated April 18, 1985, the licensee requested exemptions from 10 CFR 30.51, 40.61, 70.51(d), 70.53, and 70.54 regarding the requirements for record keeping, inventorying, and reporting of core special nuclear, source and byproduct materials. Specifically, 10 CFR 30.51 and 40.61 specify the requirements for keeping records which show the receipt, transfer and disposal of source and byproduct material. 10 CFR 70.51(d) specifies the requirements for the periodic conduct of a physical inventory of all special nuclear material in possession. 10 CFR 70.53 specifies the requirements for the periodic submittal of a Material Balance Report and Physical Inventory Listing of special nuclear material possessed by the licensee. 10 CFR 70.54 specifies the requirements for submitting Nuclear Material Transaction Reports for the transfer or receipt of special nuclear material. In meetings with the licensee held subsequent to the April 18, 1985 exemption request, staff representatives of the NRC and Department of Energy (DOE) have determined that the licensee will have sufficient information to comply with the requirements of 10 CFR 70.54 and that an exemption from this regulation is not necessary.

III

The accident at Three Mile Island Unit 2 severely damaged the reactor core. Video inspections and topography measurements indicate a cavity in the upper core region which represents approximately 26% of the total original core volume. No more than 2 of the original 177 core fuel assemblies remain intact and only 42 assemblies have any full length fuel rods. The core damage extends radially all the way out to the core former walls. As a result of the accident induced embrittlement of virtually all fuel rods, no fuel assemblies are expected to be withdrawn intact. There is a significant amount of core debris in ex-core region locations (e.g., an estimated 10 to 20 tons in the lower reactor vessle head) and much of the core byproduct material has been released from the fuel. For example, analyses of core debris bed samples indicate that, on the average, only about 13% of the original Cs–137 inventory remains in the fuel although the percentage retained can vary considerably from sample to sample.

During the defueling of the damaged core, the fuel debris will be collected in canisters by vacuuming or "pick and

place" techniques. However, as a result of the damaged condition of the core, the licensee will have no means of accurately characterizing (e.g., U–235 enrichment and total uranium content, fission product radionuclide content and distribution, plutonium content) the fuel debris during the defueling sequence. The capability for characterizing the collected fuel debris in each canister would require sophisticated hot cell and laboratory facilities with the means to homogenize, sample, weigh, and analyze the contents of each canister. Such facilities do not exist at Three Mile Island. Given the damaged conditions of the core and lack of sophisticated hot cell and laboratory facilities, there is no practical means for the licensee to perform the measurements or precise calculations necessary to comply with the Commission's regulations related to accountablity of special nuclear, source and byproduct materials. The staff therefore concludes that exemptions from the requirements of 10 CFR 30.51, 40.61, 70.51(d), and 70.53 are appropriate. As previously stated in Section II of this evaluation, staff representatives of the NRC and DOE have determined that the license will have sufficient information to comply with the transfer requirements of 10 CFR 70.54 and that exemption from this regulation is not necessary.

The granting of these exemptions does not mean the licensee will not provide any record keeping or reporting of the canister core debris which is intended to be transferred to the custody of the DOE for research and/or storage at DOE facilities in Idaho. In lieu of the reporting requirements of 10 CFR 70.53, the licensee will provide to the DOE all available information describing the physical contents of each canister including: the canister identification number, canister type (i.e., knockout, fuel, or filter), date of shipment, the shipment number, the empty weight of the canister, the loaded weight of the canister, the dewatered weight of the canister, maximum total curies, the canister pressure, general physical description of the canister contents including videotape data (if available), and any additional information based on mutual agreement between the license and the DOE. Further, following the completion of defueling and the offsite shipment of the packaged fuel debris, the licensee will be in a position of comply with the requirements of 10 CFR 70.53 and the license will be required to submit a Material Balance Report and Physical Inventory Listing at that time.

In lieu of the requirement in 10 CFR 70.51(d) for the periodic conduct of a physical inventory of all special nuclear material, the licensee will conduct such an inventory upon the completion and analysis of a post-defueling survey.

In lieu of the record keeping requirements of 10 CFR 30.51 and 40.61, the licensee will maintain records of each fuel shipment in accordance with the requirements of 10 CFR 71.91. Such records will include an identification of the shipment packaging, the maximum total curies, the total quantity of each shipment, and the date of shipment.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 30.11, 40.14, and 70.14, these exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Commission hereby grants exemptions from the requirements of 10 CFR 30.51, 40.61, 70.51(d), and 70.53. The exemption from 10 CFR 70.53 shall expire following the completion of the defueling effort, including an assessment of any fuel fines and debris which remain within the plant, and the subsequent offsite shipment of all packaged fuel debris.

It is further determined that the exemptions do not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.30 through 51.32, issued September 20, 1985, it was concluded that the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

Effective Date: October 17, 1985, Dated at Bethesda, Maryland.

Issuance Date: October 17, 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–25301 Filed 10–22–85; 8:45 am]

BILLING CODE 7590–01–M

Metropolitan Edison Co. et al.; Cancellation of Oral Argument

In the matter of Metropolitan Edison Company, et al. Docket No. 50–289 SP (Management Phase), (Three Mile Island Nuclear Station, Unit No. 1).

Notice is hereby given that, in accordance with the Appeal Board's order of October 21, 1985, oral argument on the appeals of Three Mile Island Alert, Inc., and the Union of Concerned Scientists from the Licensing Board's May 3, 1985, partial initial decision on licensed operator training (LBP–85–15) scheduled for October 24, 1985 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland, is *cancelled.*

Dated: October 21, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–25423 Filed 10–22–85; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Adminstration, Overseas Private Investment Corporation, Suite 461, 1615 M Street, NW., Washington, D.C. 20527; Telephone (202) 457–7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–7231.

Summary of Form Under Review:

Type of Request: Revision.
Title: Project Information Report.
Form Number: OPIC-71.
Frequency of Use: On occasion—a function of the sampling criteria.
Type of Respondent: Business or other institutions (except farms).
Standard Industrial Classification Codes: All.
Description of Affected Public: Business and other institutions.
Number of Responses: 50 per year.
Reporting Hours: 1½ hrs per application.
Authority for Information Collection: Section 23(k) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Robert C. O'Sullivan,
Office of the General Counsel.
[FR Doc. 85-25240 Filed 10-22-85; 8:45 am]
BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-23862; 70-7147]

Columbia Gas System, Inc. and Columbia Gas Transmission Corp.; Proposal to Issue and Sell First Mortgage Bonds by Subsidiary; Issue Common Stock by Subsidiary and Sell to Parent; Acquire First Mortgage Bonds by Subsidiary; Guaranty by Parent; Repurchase First Mortgage Bonds by Subsidiary; Purchase First Mortgage Bonds by Parent

October 17, 1985.

Columbia Gas System, Inc. ("Columbia"), 20 Monchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia Gas Transmission Corp. ("Transmission"), 1700 MacCohle Avenue, Charleston, West Virginia 25314, a wholly owned subsidiary engaged in producing, purchasing, transporting, storing and selling natural gas, have filed an application-declaration in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12 (b) and (f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45 and 50(a)(5) thereunder.

Transmission has initiated a program under which a total of $800 million in cash payments is being offered to certain Southwest high-cost natural gas producers ("Producers") in exchange for contract amendments to reduce Transmission's cost of purchased gas and to reduce its take-or-pay obligations, ("Settlement Agreement"). In addition, Transmission will agree to an indemnification of accepting Producers with respect to excess royalty claims resulting from acceptance of the offer. In Transmission's evaluation, exposure as a result of this indemnification should not be material. If the offers are accepted by the Producers in total, the $800 million will be paid to producers over the next 2¼ years and will be amortized to expenses over the next ten years as gas is received under the amended contracts.

Offers were made to 23 Producers whose projected volumes of delivered gas priced in excess of $3.00 exceed a net present value of $5 million. The proposed Settlement Agreement is conditioned upon acceptance by Producers representing 70% of the present value of gas priced over $3.00 ("non marketable gas"). Columbia and Transmission represent that the renegotiation of contracts with the Producers, would represent a settlement of contracts of 98% of the non marketable gas in the Southwest. An estimate of gas which is nonmarketable was arrived at by multiplying the contract volumes of high-cost Southwest gas which Transmission is obligated to purchase from July 1, 1985 through 1989, times the difference between an assumed market clearing price of $3.00 and the average price. In using this formula it is estimated by Columbia and Transmission that the aggregate nonmarketable portion of the cost to Transmission over the coming ten years as represented by the 98% figure, exceeds $5 billion. After ten years, it is asserted by Transmission, volumes still under contract will be relatively minor. The remaining 2% of such high-cost gas, which would involve approximately 150 additional producers, could cause an additional $130 million of excess cost through 1994. Transmission states that such an amount, if, and as incurred over the nearly ten-year period, would have a negligible impact on Transmission's ability to market its gas.

In consideration for the contract renegotiation, Transmission will issue Series C First Mortgage Bonds ("Bonds") under its Indenture of Mortgage and Deed of Trust ("Mortgage") aggregating $800 million. If less than all producers accept the proposal, only a proportionate part of the $800 million will be issued. The Bonds would be noninterest bearing but would commence to bear interest at a rate equal to 2% over prime if unpaid at maturity. It is proposed that in order to effectuate the Settlement Agreement participating Producers will agree to simultaneously sell the Bonds upon receipt from Transmission, to Producer Settlement Corporation ("PSC"), a new special purpose Columbia subsidiary. Columbia states that under the terms of Columbia's debenture Indentures formation of PSC is necessary as the Bonds may only be issued by Transmission to Columbia or a Columbia subsidiary and also, the Bonds may only be pledged by a subsidiary. Columbia asserts that the structure proposed, consistent with the terms of the Indentures, affords the Producers both the unsecured subordinated credit of Columbia pursuant to the Columbia guarantee and the collateral security pursuant to the pledge of PSC's secured claim against Trasnmission evidenced by the Bonds.

Three Bonds will be issued to each Producer to mature at the same time as payments by PSC are scheduled. One Series C First Mortgage Bond in a principal amount equal to 20% of the total due each participating Producer would be issued with a maturity of December 1, 1985, one in an amount equal to 40% with a maturity of December 1, 1986, and the third, in an amount equal to 40% with a maturity of December 1, 1987. Under the terms of the proposed Settlement Agreement, Transmission will agree to limit the total aggregate principal amount of first mortgage bonds of any series which may be outstanding to $1.2 billion until the Producers have been paid.

Under a Bond Purchase and Sale Agreement each participating Producer will agree to sell, simultaneously with its receipt thereof from Transmission, the Bonds to PSC. In exchange, PSC will agree on a nonrecourse basis to pay cash on December 1, 1985 equal to 20% of the amount owed to each participating Producer and to pay cash on December 1 of 1986 and 1987 equal in each case to 40% of the amount owed. Default in the payment of any installment will result in acceleration of the due date of subsequent installments.

PBC will pledge the bonds as security for its obligation to make the scheduled payments. In addition, Columbia will guarantee, on a subordinated basis, PSC's nonrecourse obligation to the participating Producers.

PSC will obtain the funds with which to make payments to the participating Producers either by cash received from Transmission upon the respective maturities of its Bonds or throught the sale of the Bonds by PSC to Columbia.

Transmission's repayments of the Bonds would in turn be funded in part by sales of additional Series B First Mortgage Bonds to Columbia and to some extent by a loan from a group of ten independent banks secured by a mortgage on certain production properties (the "Production Loan"). Transmission's projected total external sources of financing for the years 1985 and 1986 are a $350 million Production Loan and $350 million from Series A and B First Mortgage Bonds, approved by order of the Commission dated August 30, 1985 (HCAR No. 23813). Authorization for these sources for 1985 and 1986 was sought pursuant to needs arising due to Transmission's anticipated loses for 1985 and 1986 in the absence of settlements with Producers. If settlements with Producers are agreed to, Transmission's cash need due to losses will be reduced so that these financing sources may be used for repurchases of the Bonds. Further authorization will be sought for 1987 when total projected needs are more definite.

Columbia anticipates that it will be able to fund any necessary purchase from Transmission of Series B First Mortgage Bonds or from PSC of Series C first Mortgage Bonds in 1985 through internally generated funds. If external financing is required, an equity offering would be made, subject to the approval of this Commission. Any external long-term financing required by Columbia in 1986 and 1987 is expected to be primarily by debenture offerings, also subject to the approval of this Commission.

To meet its minimal needs for funds aside from dealings in the Bonds, PSC proposes to issue and Columbia proposes to acquire, as funds are needed by PSC, up to 2,000 shares per year of PSC common stock, $25 par value during the years 1985, 1986 and 1987. At present, it appears that PSC's primary need for funds (other than for payments to Producers) will be for the payment of trustee fees.

The application-declaration 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 November 12, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549, and serve a copy on the applicant-declarant 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 application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-25223 Filed 10-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-23866; 70-7161]

Eastern Utilities Associates; Proposed Acquisition of Joint Ownership Interests in Nuclear Generating Project and Related Transactions

October 15, 1985.

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

EUA, through Montaup Electric Company ("Montaup"), a wholly owned generation and transmission company, presently has a 2.89989% joint ownership interest in the Seabrook nuclear generating project ("Seabrook Project"). There are fifteen other owners which are tenants in common with Montaup ("Participants") under an agreement for Joint Owership, Construction and Operation of New Hampshire Nuclear units, dated as of May 1, 1973, as amended from time to time (the "JOA"). EUA proposes, if necessary approvals are received, to acquire through a new, wholly owned New Hampshire subsidiary, EUA Power Corporation ("EUA Power"), the interests of four Participants: Bangor Hydro-Electric Company ("Bangor") 2.17391%; Central Maine Power Company ("CMP") 6.04178%; Central Vermont Public Service Company ("Central Vermont") 1.59096%; and Maine Public Service Company ("MPSC") 1.46056%, (collectively, "Sellers").

The JOA provides for the construction of two nuclear generating units, denominated Unit No. 1 and Unit No. 2, each having a capacity of 1,150 megawatts. Primary responsibility for the construction and operation of the Seabrook Project was accorded by the JOA to Public Service Company of New Hampshire ("PSNH"), the largest Participant with a 35.56942% interest. Under the JOA, each Participant is required to furnish its percentage share of the costs of construction and operation and will be entitled to the same percentage share of the capacity and output of the units.

It is stated that, as with many nuclear generating projects, the Seabrook Project has experienced substantial cost increases over original estimates due to, among other things, design changes, changes to Nuclear Regulatory Commission regulations, periods of extraordinarily high interest rates, inflation, and delays in construction and in securing necessary state and federal regulatory approvals. Unit No. 1 is now approximately 91% complete. The Participants presently estimate that total costs of construction of Unit No. 1 will be $4.56 billion, with a commercial operation date of October 31, 1986, and that the cash cost remaining to be expended on Unit No. 1 from June 1, 1985, to the completion date is $617.5 million. Because of a regulatory restraint which has limited expenditures by PSNH, funding by Participants of Unit No. 1 construction costs is currently at less than the considered optimum rate. Expenditures on Unit No. 2 were reduced to a minimum preservation level in September 1983, and EUA considers that that unit has in effect been cancelled.

In June 1984, the Participants unanimously approved the phased transfer (subject to regulatory approvals) of responsibility for the construction and operation of the Seabrook Project from PSNH to a new corporate entity, New Hampshire Yankee Electric Corporation ("New Hampshire Yankee"), on whose board all of the Participants will be represented. (Pending receipt of full regulatory approval, that responsibility is now being exercised by a substantially independent New Hampshire Yankee division of PSNH.) EUA Power proposes to acquire a portion of the common stock of New Hampshire Yankee in accordance with its ownership share of the Seabrook Project. If EUA Power acquires the full 11.26721% aggregate ownership interests of the four Sellers, it would expect to acquire 112.6721 of the 1,000 authorized shares of common stock of New Hampshire Yankee for a price approximating $70 per share, or a total price of approximately $7,887.

The sixteen Participants are subject to regulation as to financing of the Seabrook Project and other matters by state utility commissions in five of the

six New England states. The commissions of Massachusetts, Maine, and Vermont have formally questioned the desirability of continued participation in the Seabrook Project on the part of Participants subject to their respective jurisdictions, and actions of those commissions have raised doubts as to the ability of some of the Participants to fund their ownership shares of the remaining cost of Unit No. 1. On December 13, 1984, the Maine Public Utilities Commission ("MPUC"), after conducting a generic investigation initiated by it, issued an interim order to the three Maine Participants, Bangor, CMP, and MPSC, to make efforts to sell their ownership interests. On May 3, 1985, the Vermont Public Service Board ("VPSB") ordered each Vermont utility having ownership interests in the Seabrook Project (such interests aggregating approximately 2%) to initiate and pursue all reasonable steps to achieve cancellation of the project or of their liability with respect to it, and to announce that their interests are for sale.

Recognizing the uncertainties for the Seabrook Project raised by actions of the Maine and Vermont commissions, EUA proposes to assist in efforts to assure the completion of Unit No. 1 by acquiring the ownership interests of all of the Maine Participants and of Central Vermont at a very low cost. It is stated that the completion and commercial operation of Unit No. 1 are of great importance to the EUA holding company system, both in terms of preserving Montaup's investment in that unit (approximately $109 million at June 30, 1985, including nuclear fuel and allowance for funds used during construction) and also in terms of assuring availability of the Unit No. 1 capacity, on which the EUA system is relying in its load and capacity forecasts for the period after the unit's estimated 1986 completion date. Those forecasts also indicate that the EUA system will have a further need for capacity additions starting early in the 1990s. If the proposed transactions are carried out and Seabrook Unit No. 1 is completed, EUA believes that the unit could provide an unusually low-cost source of electric power for EUA.

The following table sets forth the percentage ownership share to be conveyed by each of the Sellers and the stated base purchase price to be paid in cash for each Seller's ownership interest at May 31, 1985. Such payment will be made at the time of the closing.

	Bangor	CMP	Central Vermont	MPSC	Totals
Percent ownership	2.17391	6.04178	1.59096	1.46056	11.26721
Cash payments (000,000's omitted)	$12.6	$35.0	$9.3	$8.5	$65.4

The payment obligations of EUA Power will consist of four components: (a) A stated base purchase price for each Seller's undivided ownership interest at May 31, 1985; (b) reimbursement for progress payments made by the Seller after May 31, 1985, through the closing date; (c) carrying charges on the purchase price and progress payments; and (d) certain specified future payments for each month that the closing date is delayed beyond October 31, 1985. The aggregate stated purchase price of $65.4 million, exclusive of additional payments required as described in items (b), (c), and (d) above, compares with an aggregate estimated investment of $463.3 million by the Sellers in Unit No. 1 as of May 31, 1985, including both plant under construction and fuel. Of the total $65.4 million base purchase price, $29.4 million is to be allocated to the purchase of nuclear fuel and the balance to the purchase of the plant under construction, that is for Unit No. 1, since further construction of Unit No. 2 has been indefinitely deferred.

On the assumption that closing of the four purchases occurs on March 31, 1986, the progress payments referrd to in item (b) above are estimated to amount to $54.5 million, the carrying charges referred to in item (c) are estimated to amount to $10.9 million, and the delayed closing payments referred to in item (d) will amount to $18.0 million. Payment of the sum of the four components will be due at the date of closing and will thus, on that assumption, be $148.8 million.

After the acquisition, EUA Power will be obligated to make progress payments on its share of the remaining construction costs. If those costs are as now projected and completion occurs as scheduled on October 31, 1986, EUA Power's estimated progress payments and additional carrying charges at an assumed rate of 25% per annum after a March 31, 1986, closing of the four proposed purchases will be $39.4 million, which, when added to the payments at the closings, results in an estimated cost to EUA Power of $188.2 million or its 11.26721% share of the completed unit. Based on the 80%–20% ratio described below, this $188.2 million estimated cost will require the raising of approximately $151 million in debt and $37 million in equity. It is possible that a fuel leasing arrangement will be entered into whereby the nuclear fuel will be acquired by a leasing company (thus reducing by approximately $40 million EUA Power's total cash requirements) and EUA Power will make payments to the leasing company as the fuel is consumed.

EUA proposes to be the sole stockholder of EUA Power, which was organized under the name of NuMaineCo Corporation but renamed EUA Power Corporation. EUA Power will have authorized capital consisting of 5,000,000 common shares having a par value of one cent per share and 500,000 shares of 25% preferred stock having a par value of $100 per share. It is anticipated that EUA Power will be capitalized initially with a debt/equity ratio of approximately 80% to 20%. EUA will subscribe to 10,000 shares of EUA Power's common stock at a price of $1.00 per share. The remaining equity will be represented by preferred stock to be purchased by EUA in one or more series from time to time at a price of $100.00 per share. EUA's total equity investment in EUA Power (based on the $188.2 million cost estimate set forth above) would aggregate $37 million, and EUA Power is seeking from the Federal Energy Regulatory Commission ("FERC") approval of a rate of return of 25% per annum (in the case of cost-based rates) on so much of EUA's investment in its common and preferred stock as is made prior to commercial operation of Unit No. 1. EUA believes that a 25% equity return is commensurate with the risks of equity ownership assumed by the company and is in line with the returns earned by companies bearing similar risks in the general economy.

EUA expects that funds for its equity investment in EUA Power will be provided by the sale of common shares under EUA's Dividend Reinvestment and Common Share Purchase Plan and under its various employee share purchase plans, together with short-term borrowings from banks. EUA requests authorization to issue and renew short-term notes to banks in an aggregate amount not to exceed $50 million outstanding at any one time. Such notes will be renewed from time to time as funds are required during the period ending December 31, 1986. None of the notes will mature later than September

30, 1987. The effective cost of borrowing will range from 9.5% to 10.10% per annum assuming a prime rate of 9.5%.

EUA Power proposes to issue, in one or more series from time to time, up to $151 million in principal amount of notes which will bear interest at a rate to be negotiated but which may be as high as 30% per annum. The notes will not be secured or guaranteed, and their payment will depend on the completion and operation of Unit No. 1. EUA Power expects that it will be precluded from refinancing the notes until at least three years after the date of issue; it expects that such refinancing will be at more nearly conventional interest rates. EUA has entered into an agreement with Merrill Lynch Capital Markets ("Merrill Lynch") whereby Merrill Lynch will act as financial advisor in connection with these proposed transactions and as EUA's agent to place the notes with one or more institutional or other private investor. EUA requests that an exception from the competitive bidding requirements be granted pursuant to Rule 50(a)(5) with respect to these notes.

EUA states that unanticipated delays in achieving completion and commercial operation of Unit No. 1 could adversely affect the cost of the unit. Therefore, it requests that authorization be granted to EUA Power to issue up to $170 million of its notes (an increase of $19 million above the estimated $151 million) and for EUA Power to issue and sell and EUA to acquire up to $50 million of EUA Power's stock (an increase of $13 million above the estimated $37 million).

The application-declaration 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 November 8, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant 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 application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-25226 Filed 10-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22536; File No. SR-PSE-85-30]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated; Relating to the listing and trading of Financial News Composite Index Options

October 17, 1985.

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 October 7, 1985, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange 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 this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its rule filing, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to list and trade put and call options on the Financial News Composite Index ("FNCI" or "Index"). The FNCI is a price weighted index of thirty stocks designed to track the overall stock market. Individual issues were selected from the more highly capitalized, publicly traded issues on the New York Stock Exchange, American Stock Exchange and National Association of Securities Dealer's National Market System.

The PSE states that the value of the FNCI is derived from adding the prices of the thirty securities and applying a divisor to the result. The current divisor is 1.12280. It is anticipated that the divisor will only be modified if an underlying security is subject to a stock split or stock dividend amounting to 10% or more of the current outstanding shares. In keeping with Exchange Rule XXI section 5, the divisor will only be adjusted when necessary to maintain continuity of Index values, and will not be adjusted for other reasons.

The FNCI value will be calculated and disseminated at least once each minute during market hours.

Due to the breadth of the FNCI and the variety of industries represented, the PSE proposes to apply its existing broad based index option rules to the trading of the contracts. In addition, quotes will be in fractions and the Index multiplier will be the same as that provided for in Rule XXI, section 2. The PSE anticipates however, to have ten point strike intervals and that the option be traded on the March cycle with two near month and two far months.

The PSE proposes that the FNCI contract be a European style option in that no exercises may be effected prior to the day proceeding expiration. As a result, the PSE hereby proposes to amend Rule XXI, Section 15 of the Rules of the Board of Governors. (Brackets indicate language to be deleted; italic indicates new language.)

Rule XXI

Index Options

The introduction and Sections 1 through 14 are not amended.

Exercise of Option Contracts

Sec. 15. The provisions of Rule VI, Section 30, shall apply to index options, except as follows:

With respect to *all* index option contracts *except those on the Financial News Composite Index*, Clearing Members must follow the procedures of the Clearing Corporation for tendering exercise notices. Members or Member Organizations also must follow the procedures set forth below:

(a) through (f) No change.

With respect to Financial News Composite Index option contracts, no Member or Member Organization shall accept or tender to the Options Clearing Corporation an exercise notice prior to the opening of business on the day before such option contracts will expire.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The FNCI is a composte index which was developed by the Financial News Network ("FNN") as a leading market indicator.

The PSE is proposing to trade options on the FNCI in order to provide additional hedging and trading opportunities to investors, institutions and traders. The FNCI has a broad scope and has strong correlation with other major market indices, and is a general indicator of overall market performance. In addition, through its broadcasts the FNN disseminates the FNCI value over its television network to 22 million potential viewers every ninety seconds, making it widely available to the investing public.

The FNCI has a broad scope, concise construction and high correlation to other major indices. Consequently, the PSE FNCI option contracts will provide investors, institutions and other traders with a vehicle to offset broad market risk.

The proposed Index is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and rules and regulations thereunder in that the availability of this Index will provide investors with added trading and hedging opportunities, and thus should enhance market liquidity. Therefore, the proposed changes are consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the Rules of the PSE be designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes on burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on September 26, 1985.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By November 27, 1985, or within such longer period (i) as the Commission may designate up to [insert date 90 days after date of publication of this notice] if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PSE 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by November 13, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1985.

John Wheeler,

Secretary.

Appendix A

THE FINANCIAL NEWS COMPOSITE INDEX (FNCI) COPYRIGHT 1985 ALL RIGHTS RESERVED

Market	Symbol	Name
NYSE	ALD	Allied/Signal.
NYSE	AA	Alum. Co. of Amer.
NYSE	AXP	American Express.
NYSE	AHP	American Home Prod.
NYSE	T	Amer. Tel. & Tel.
NYSE	BLS	Bell South.
NYSE	BS	Bethlehem Steel.
NYSE	BA	Boeing Co.
NYSE	CCI	Citicorp.
NYSE	KO	Coca-Cola.
NYSE	DAL	Delta Air Lines.
NYSE	DOW	Dow Chemical.
NYSE	EK	Eastman Kodak.
NYSE	XON	Exxon.
NYSE	GE	General Electric.
NYSE	GM	General Motors.
NYSE	GT	Goodyear Tire.
NMS	INTC	Intel Corp.
NYSE	IBM	Int'l Bus. Machines.
NYSE	IP	International Paper.
NYSE	JNJ	Johnson & Johnson.
NMS	MCIC	MCI Communications.
NYSE	MRK	Merck & Co.
NYSE	MER	Merrill Lynch.
NYSE	MMM	Minesota Mng/Mfg.
NYSE	MO	Philip Morris.
NYSE	RCA	RCA.
NYSE	SLB	Schlumberger, Ltd.
NYSE	S	Sears, Roebuck & Co.
AMSE	WAN B	Wang Laboratories.

THE FINANCIAL NEWS COMPOSITE INDEX (FNCI) COPYRIGHT 1985 ALL RIGHTS RESERVED—Continued

[FR Doc. 85-25225 Filed 10-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22530; SR-NYSE-85-29]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change

On August 19, 1985, the New York Stock Exchange, Inc. ("NYSE") submitted a proposed rule change, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend NYSE Rule 759 to permit the entry of opening orders in the cabinet, at a limit price of $1.00 per contract, under certain circunstances. Currently, NYSE Rule 759 permits cabinet orders to be entered for closing transactions only. Under the proposed rule change, specialists shall effect all cabinet transactions by pairing closing purchase or sale orders which have been placed in the cabinet or, provided there are no closing purchase or sale orders in the cabinet to be paired, by pairing closing purchase or sale orders in the cabinet with opening purchase or sale orders. The proposed rule change would permit specialists, customers, firms and traders to enter opening orders only in cases where closing orders already exist in the cabinet. All such opening orders, however, would have to yield to any matching closing order in the cabinet and thus opening orders only would be permitted to the extent there is no matching closing bid or offer. For example, under the proposal, if the cabinet already contains a closing sell order but no closing buy order, then a person may enter an opening buy order in the cabinet, and the closing sell order will be executed.

Specialists effect cabinet transactions as an accommodation to investors by pairing off closing purchase and sale orders. A closing order will remain unexecuted, however, if there is no closing cabinet order with which it can

[1] 15 U.S.C. 78s(b) (1)(1962).

[2] 17 CFR 240.19b-4 (1985).

be paired. The NYSE states that the proposed rule change will increase the likelihood that closing cabinet orders can be matched by permitting opening orders to be paired with closing orders in the cabinet under certain circumstances. In addition, because the low premiums make these contracts attractive to investors and professional traders, the NYSE believes the rule change will enhance liquidity in the options market. The NYSE states that the statutory basis of the proposed rule change is section 6(b)(5) of the Act.

The Commission is publishing this release to solicit comment on the proposed rule change. Persons interested in commenting on the proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the Federal Register. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule change, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the NYSE.

The Commission finds that the proposed rule change may facilitate the closing out of cabinet orders and thereby accommodate investors who wish to close out positions in inactive, out-of-the-money options series for which there are no displayed bids or offers at the lowest fractional price per contract. For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act applicable to a national securities exchange and, in particular, the requirements of section 6.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposal is substantially similar to a rule change proposed by the Philadelphia Stock Exchange, Inc. ("Phlx") that was published for comment and approved by the Commission.[3] No comments were submitted in response to the Phlx and Amex rule proposals.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-25297 Filed 10-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22537; File No. 4-285]

Self-Regulatory Organizations; Notice of Filing of Proposed Plan by the Pacific Stock Exchange, Inc., Relating to the Quarterly Reporting of Minor Disciplinary Rule Violations

Pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder,[1] notice is hereby given that on September 6, 1985, the Pacific Stock Exchange, Inc. ("PSE") submitted copies of a proposed plan specifying those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[2]

As explained more fully in its proposed rule change,[3] in accordance with paragraph (c)(2) of Rule 19d-1, the PSE proposes to designate certain specified rule violations as minor rule violations. The PSE requests that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The PSE proposes to include the following violations under its proposed plan:[4] (1) Floor broker failed to properly record the time of receipt, change in limit or increase in size of an order (Rule VI, section 42); (2) floor broker failed to use due diligence in the handling or execution of an order (Rule VI, section 62(a), Options Floor Procedure Advice ("OFPA") A-8); (3) floor broker improperly executed a cross transaction (Rule VI, section 63, OFPA A-6); (4) member failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade (Rule VI, section 40, OFPA (D-9); (5) market maker or floor broker violated procedures concerning the market maker use of a floor broker to effect transactions (Rule VI, sections 62(a), 64, OFPA B-6, OFPA A-9) (6) market maker failed to respond to demands for bids and/or offers (Rule VI, section 79); (7) market maker failed to respond to a call for market makers by an order book official (Rule VI, section 67, OFPA B-7); (8) improper communication on the floor by the use of hand signals or other means or devices (Rule VI, sections 47, 62(.02), OFPA F-5); (9) improper vocalization of a trade by a member (Rule VI, sections 46, 55(.01), OFPA G-10); (10) member failed to time-stamp an execution in which he participated as a seller (Rule VI, section 55(.01); (11) failure to meet the market maker obligation to maintain 50 percent of contract trading volume in the option classes primarily assigned (Rule VI, section 79(.04); OFPA B-9); (12) failure to meet market maker obligation to execute at least 40 percent of his/her

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[3] *See* File No. SR-Phlx-84-20, Securities Exchange Act Release Nos. 21390 (October 10, 1984), 49 FR 40752 (October 17, 1984) and 21515 (November 21, 1984), 49 FR 46859 (November 28, 1984). The Commission also approved, on an accelerated basis, a similar proposal submitted by the American Stock Exchange, Inc. ("Amex"). *See* File No. SR-Amex-85-7, Securities Exchange Act Release No. 21936 (April 11, 1985), 50 FR 15258 (April 17, 1985).

[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23828, the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person at the SRO with respect to the matter has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Commission has approved minor disciplinary rule plans by the American Stock Exchange, Inc. (Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (File No. 4-260) and the New York Stock Exchange, Inc. (Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (File No. 4-284).

[2] In a letter dated September 5, 1985, the PSE submitted its plan to report certain rule violations and related disciplinary actions on an abbreviated and periodic basis. *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated September 5, 1985. *See also* letter from John Katovich to Michael Cavalier, dated October 7, 1985, amending the above-referenced plan and rule filing.

[3] The PSE is establishing a simplified procedure ("Procedure") for the disposition of minor rule violations, pursuant to Article XI, section 2 of the Exchange Constitution. *See* Securities Exchange Act Release No. 22539 (October 17, 1985) (File No. SR-PSE-85-24).

[4] As illustrated in Exhibits D and E of the PSE's filing, the PSE shall serve the person against whom a fine is imposed a written notice setting forth the rule or rules alleged to have been violated, the act or omission constituting each such violation, the fine imposed for each violation and the date within 10 business days following receipt of the notice of sanction by which such determination becomes final and such fine due and payable or such determination must be contested.

total transactions in person on the trading floor (Rule VI, section 79, OFPA B–5); and (13) specialist has not disseminated a quotation in assigned local issues prior to 7:30 a.m. Pacific Time (Equity Floor Procedure Advice ("EFPA") 2–B).

The sanctions applicable to these minor rule violations are outlined in Exhibit C of the PSE's filing and in the PSE letter, dated October 1, 1985, amending the filing.[5] The PSE notes, however, that in issuing or imposing a citation, there exists total discretion at all levels of the process to judge a particular incident as meriting more formal disciplinary action than merely a citation. The Options Floor Trading Committee has the ability to institute formal disciplinary action against a violator if the violation is considered particularly onerous or if the violator has been found to have repeated the violation beyond the stated fine schedule.

By properly amending its Procedure and plan,[6] the PSE may periodically include additional minor disciplinary rule violations within its proposed minor rule violation plan. From time to time the PSE shall prepare and announce to its members and member organizations a listing of the Exchange rules as to which the Exchange may impose sanctions as provided in this Procedure. Such listing shall also indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation.

According to the PSE, the quarterly report of actions taken on minor rule violations, which under the PSE's procedure would be submitted to the SEC, would list for each violation the PSE's internal file number for the case, the SEC's file number, the name(s) of the individual and/or member organization, the nature of the violation, the specific rule provision violated, the date of the violation, the sanction imposed on each individual and/or member organization, an indication of whether the fine is joint and several, the number of times the rule violation has occurred, and the date of disposition.

In order to assist the Commission in determining whether to approve the proposed plan or institute proceedings to determine whether the proposed plan should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from 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 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 4–285.

Copies of the submission, all subsequent amendments, all written statements with respect to the plan which are filed with the Commission, and all written communications relating to the plan 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, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–25296 Filed 10–22–85; 8:45 am]

BILLING CODE 8010–01–M

[5] The fines applicable to PSE Rule VI violations (except for Rule VI, sections 79, 55(.01), and 79(.04)) are $50 for the first offense, $100 for the second offense, and $250 for the third offense. Other applicable sanctions are as follows: PSE Rule VI, section 70 violations: $250 per offense; PSE Rule VI, section 55(.01): (1) $25, first offense, (2) $50, second offense, (3) $100, third offense; PSE Rule VI, section 79(.04): (1) letter of caution, letter of awareness or letter of probation, first offense, (2) letter of probation and possibility of fine according to set formula, second offense, (3) letter of restriction prohibiting opening transactions outside primary assignment for a stated period of time and fine based on set formula, third offense (4) letter of super restriction, prohibiting any opening transaction for stated period and fine ($1,500 minimum) based on set formula, fourth offense; PSE Rule VI, section 79 (OFPA B–5): (1) letter of caution, first offense, (2) $250 minimum fine, second offense, (3) $500 minimum fine, third offense, (4) $1000 minimum fine, fourth offense; and EFPA 2–B: $25, sixth and subsequent offenses.

[6] To amend the Minor Rule Violation List the PSE would first amend its Procedure and then send a letter to the Commission requesting approval to amend the original plan.

[Rel. No. 22539; File No. SR–PSE–85–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Reporting of Certain Rule Violations and Related Disciplinary Actions on an Abbreviated and Periodic Basis

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 September 6, 1985, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange 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 this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") is establishing a simplified procedure ("Procedure") for the disposition of minor rule violations, pursuant to Article XI, section 2 of the Exchange Constitution.[1] A summary of the Procedure is set forth below. In addition, the PSE has attached the full text of the procedure as an exhibit to its filing with the Commission.

Under the Procedure, Minor rule violations will include the following:[2] (1) floor broker failed to properly record the time of receipt, change in limit or increase in size of an order (Rule VI, section 42); (2) floor broker failed to use due diligence in the handling or execution of an order (Rule VI, section 62(a), OFPA A–8); (3) floor broker improperly executed a cross transaction (Rule VI, section 63, OFPA A–6); (4) member failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade (Rule VI, section 40, OFPA D–9); (5) market maker or floor broker violated procedures concerning the market maker use of a floor broker to effect transactions (Rule VI, sections 62(a), 64, OFPA B–6, OFPAA–9) (6) market maker failed to respond to demands for bids and/or offers (Rule VI, section 79); (7)

[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23828, the Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person at the SRO with respect to the matter has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Commission has approved minor disciplinary rule plans by the American Stock Exchange, Inc. (Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (File Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (File No. 4–284).

[2] *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated October 7, 1985, amending the proposed rule change.

market maker failed to respond to a call for market makers by an order book official (Rule VI, section 67, OFPA B–7); (8) improper communication on the floor by the use of hand signals or other means or devices (Rule VI, sections 47, 621(.02), OFPA F–5); (9) improper vocalization of a trade by a member (Rule VI, sections 47, 55(.01), OFPA G–10); (10) member failed to time-stamp an execution in which he participated as a seller (Rule VI, section 55(.01); (11) failure to meet the market maker obligation to maintain 50% of contracted trading volume in the option classes primarily assigned (Rule VI, section 79(.04); Options Floor Procedure Advice ("OFPA") B–9); (12) failure to meet market maker obligations to execute at least 40% of his/her total transactions in person on the trading floor (Rule VI, section 79, OFPA B–5); (13) specialist has not disseminated a quotation in assigned local issues prior to 7:30 a.m. Pacific Time (Equity Floor Procedure Advice ("EFPA") 2–B).

If a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization has been cited as violating one of the rules defined above as "minor," and has agreed to an appropriate sanction not exceeding $2,500 [3] and waived any rights to contest the charge, the Exchange will then categorize said violation as a "minor rule violation" and treat it accordingly with respect to the filing requirements of Rule 19d–1, under the Securities Exchange Act of 1934.[4]

[3] The fines applicable to PSE Rule VI violations (except for Rule VI, sections 79, 55(.01), and 79(.04)) are $50 for the first offense, $100 for the second offense, and $250 for the third offense. Other applicable sanctions are as follows: PSE Rule VI, section 79 violations: $250 per offense; PSE Rule VI, section 55(.01): (1) $25, first offense, (2) $50, second offense, (3) $100, third offense; PSE Rule VI, section 79(.04): (1) letter of caution, letter of awareness or letter of probation, first offense, (2) letter of probation and possibility of fine according to set formula, second offense, (3) letter of restriction prohibiting opening transactions outside primary assignment for a stated period of time and fine based on set formula, third offense (4) letter of super restriction, prohibiting any opening transaction for stated period and fine ($1,500 minimum) based on set formula, fourth offense; PSE Rule VI, section 79 (OFPA B–5): (1) letter of caution, first offense, (2) $250 minimum fine, second offense, (3) $500 minimum fine, third offense, (4) $1000 minimum fine, fourth offense; and EFPA 2–B: $25, sixth and subsequent offenses.

[4] In a letter dated September 5, 1985, the PSE submitted its plan to report certain rule violations and related disciplinary actions on an abbreviated and periodic basis. *See* letter from John Katovich, Compliance Department, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated September 5, 1985. *See also* letter frm John Katovich, to Michael Cavalier, dated October 7, 1985, amending the above-referenced plan and rule filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The addition of a minor rule violation procedure will provide a benefit in two different ways. By enabling the Exchange to categorize certain non-contested violations as "minor", and taking them out of the context of a disciplinary proceeding, the Exchange will improve its operational effectiveness. Rule 19d–1 of the Securities Exchange Act of 1934 allows Self-Regulatory Organizations to file these "minor rule violations" on a quarterly basis, rather than in a more expedited fashion. Thus, by implementing the Procedure, the Exchange will decrease its burden of multiple filings to the SEC. The SEC will also benefit by receiving the same number of cases, yet in a more concise form and abbreviated fashion. This will then benefit the SEC by saving processing time.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, which provides that rules of the Exchange be designed to foster cooperation and coordination between persons engaged in regulating the securities marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on June 27, 1985.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date 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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to file number SR–PSE–85–24 and should be submitted by November 13, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–25298 Filed 10–22–85; 8:45 am]

BILLING CODE 8010–01–M

VETERANS ADMINISTRATION

Privacy Act of 1974; Proposed Amendment of Systems Notice; Additional Routine Use Statement

Notice is hereby given that the Veterans Administration is considering adding a new routine use statement to

the following system of VA records set forth on page 715 of the **Federal Register** publication, "Privacy Act Issuances, 1984 Compilation, Volume V."

29VA11 Physician, Dentist and Supervisory Nurse Professional Standard Board Action File-VA.

It is the policy of the Veterans Administration to communicate with State licensing boards of jurisdiction about the professional performance history of licensed former employees. This includes those who have been terminated because of incompetence or who have resigned or retired and whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

The professional performance history of VA personnel is contained in a part of the VA Privacy Act system of records entitled, "Physician, Dentist, and Supervisory Nurse Professional Standards Board Action File-VA" (29VA11). Disclosures from these records to a State licensing board are currently authorized by means of a routine use. Routine use numbers 1 and 3 of the system of records have been interpreted to allow disclosures to a State licensing board of jurisdiction.

Given the sensitivity of the information being disclosed, a new routine use is being proposed for the relevant system of records which specifically contemplates the disclosure practices set out in VA policy. The proposed new routine use will permit disclosure of identifying information, including name, birthdate, social security number, address, and professional degree, to a State licensing board of jurisdiction and/or the Federation of State Medical Boards or a similar nongovernmental entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses or registrations necessary to practice an occupation, profession or specialty, in order to verify that an applicant for a VA professional position which requires a license or registration, or a VA employee in such a position, has a valid and unencumbered license or registration and is a member in good standing of the profession. The proposed new routine use will also allow the VA to disclose to a State licensing board of jurisdiction and/or the Federation of State Medical Boards or other appropriate nongovernmental entity, without their specific request for such disclosure, sensitive relevant information which may be detrimental to a terminated registered or licensed professional.

Interested persons are invited to submit comments, suggestions, or objections regarding the proposed routine use to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All relevant material received before November 20, 1985 will be considered. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address and only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 5, 1985.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective November 20, 1985.

Approved: October 10, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

In the system identified as 29VA11, "Physician, Dentist, and Supervisory Nurse Professional Standards Board Action File-VA" appearing on page 715 of the **Federal Register** publication, "Privacy Act Issuances, 1984 Compilation, Volume V," the following changes are made:

29VA11

SYSTEM NAME:

Physician, Dentist and Supervisory Nurse Professional Standards Board Action File-VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

7. Records from this system of records may be disclosed to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

* * * * *

[FR Doc. 85-25221 Filed 10-22-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 205
Wednesday, October 23, 1985

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).

CONTENTS

1

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(1)), of a special meeting of the Federal Farm Credit Board ("Federal Board").

DATES AND TIMES: The special meeting of the Federal Board is scheduled as follows: Monday, November 4, 8:30 a.m. to 4:30 p.m.

ADDRESS: Federal Farm Credit Board Special Meeting, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102-5090 (703-883-4010).

SUPPLEMENTARY INFORMATION: A special meeting of the Federal Board has been called and will be held on November 4, 1985. Parts of this meeting of the Federal Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

*1. Executive Session
**2. Update on System Supervisory Concerns and Contingency Planning Progress Report
3. Supplemental FCA Budget for Fiscal Years 1986 and 1987

*This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 552b(c)(2) and (8).

**This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 552b(c)(8) and (9).

Dated: October 18, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-25303 Filed 10-18-85; 4:42 pm]

BILLING CODE 6705-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:33 p.m. on Thursday, October 17, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank in Afton, Oklahoma, Afton, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, October 17, 1985; (2) accept the bid for the transaction submitted by Security Bank and Trust Company, Miami, Oklahoma, an insured State nonmember bank; (3) approve the application of Security Bank and Trust Company, Miami, Oklahoma, for consent to purchase certain assets of and assume the liability to pay deposits made in Farmers State Bank in Afton, Oklahoma, Afton, Oklahoma, and for consent to establish the sole office of Farmers State Bank in Afton, Oklahoma as a branch of Security Bank and Trust Company; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

(B) consider a recommendation regarding the granting of capital assistance pursuant to section 13(i) of the Federal Deposit Insurance Act.

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 H. Joe Selby (Acting 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), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-25319 Filed 10-21-85; 11:41 am]

BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 17, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, October 23, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Sedgmer, et al. v. Consolidation Coal Company, Docket No. LAKE 82-105-D. (Issues include whether the administrative law judge erred in dismissing the discrimination complaint.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-25333 Filed 10-21-85; 12:52 pm]

BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on October 16, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Wednesday, October 23, 1985,

following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement regarding credit card interest rate legislation (H.R. 1197 and H.R. 3408) to be presented to the Subcommittee on Consumer Affairs and Coinage of the House Committee on Banking, Finance and Urban Affairs.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25304 Filed 10-18-85; 4:59 am]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 28, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. 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: October 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-25305 Filed 10-18-85; 4:59 pm]

BILLING CODE 6210-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-42A and 43A]

Government in the Sunshine: Emergency Notice of Changes to the Agendas for the Meetings of October 18, 1985 and October 21, 1985.

By action jacket, INV-85-248, approved October 17, 1985, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted to cancel the meeting of October 18, 1985, and to add the following item to the agenda for the meeting of Monday, October 21, 1985.

Item 7—Investigation No. 701-TA-258/260 and 731-TA-283/285 [Preliminary] (Certain table wine from the Federal Republic of Germany, France and Italy)—briefing and vote.

Commissioners Sterm, Liebeler, Eckes, Lodwick and Rohr determined by action jacket that Commission business requires the change in subject matter of the agenda items, affirmed that no earlier announcement of the change was possible and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agendas for the October 18, or October 21, 1985 Commission meetings, please contact the Secretary of the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002).

In conformity with 19 CFR 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairwoman of the Commission.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 17, 1985.

[FR Doc. 85-25412 Filed 10-12-85; 5:12 pm]

BILLING CODE 7022-02-M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: October 30-31, 1985, 10:00 a.m.

PLACE: Red Lion Downtowner, 1800 Fairview, Boise, Idaho.

MATTERS TO BE CONSIDERED:

- Council Deliberation on Modified Model Conservation Standards Proposed Amendments.
- Council Business.
- Public Comment will follow each item.
- The record on the MCS closed on October 21, 1985; therefore, no public comment can be taken on this subject at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-25312 Filed 10-21-85; 9:55 am]

BILLING CODE 0000-00-M

federal register

Wednesday
October 23, 1985

Part II

Department of Health and Human Services

Food and Drug Administration

Policy Statement, Class II Medical Devices; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0266]

Policy Statement; Class II Medical Devices

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II, a category of devices under the Medical Device Amendments for which FDA is required to establish performance standards. At this time, however, FDA does not have the resources to establish performance standards for all class II devices. Accordingly, the policy describes the factors the agency takes into account in establishing priorities for initiating standard-setting proceedings.

DATES: The policy is effective October 23, 1985. However, the agency invites interested persons to submit written comments at any time. These comments will be considered in determining whether changes in the policy are warranted.

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

FOR FURTHER INFORMATION CONTACT: F. Alan Andersen, Center for Devices and Radiological Health (HFZ-80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3403.

SUPPLEMENTARY INFORMATION:

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Background

On May 28, 1976, the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), amending the Federal Food, Drug and Cosmetic Act (the act), became law. The amendments establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the act [21 U.S.C. 360c], establishes three categories (classes) of devices. Membership in each class depends on the regulatory controls needed to provide reasonable assurance of safety and effectiveness of a device. The three categories are as follows: class I, general controls; class II, performance standards; and class III, premarket approval.

A class I device is a device for which the general controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, and premarket notification), 516 (banned devices), 518 (notification and repair, replacement, or refund), 519 (records and reports), and 520 (general provisions, including current good manufacturing practice requirements) of the act [21 U.S.C. 351, 352, 360, 360f, 360h, 360i, 360j] are sufficient to provide reasonable assurance of the safety and effectiveness of the device [section 513(a)(1)(A)(i) of the act and § 860.3(c)(1) of the regulations (21 CFR 860.3(c)(1))].

A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which "it is therefore necessary to establish * * * a performance standard under section 514 [21 U.S.C. 360d] to provide reasonable assurance of its safety and effectiveness" [section 513(a)(1)(B) of the act and § 860.3(c)(2) of the regulations].

A class III device is a device that cannot be classified into class I or class II and that is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or that presents a potential unreasonable risk of illness or injury [section 513(a)(1)(C) of the act and § 860.3(c)(3) of the regulations]. For a device in class III, premarket approval is or will be required in accordance with section 515 of the act [21 U.S.C. 360e] to provide reasonable assurance of the safety and effectiveness of the device [section 513(a)(1)(C) of the act and § 860.3(c)(3) of the regulations].

Section 514(a)(1) of the act provides that FDA "may" by regulation establish a performance standard for a class II device. The establishment of performance standards nevetheless is required for class II device under the definition of a class II device in section 513(a)(1)(B) of the act. Also, the legislative history of section 514(a)(1) of the act shows that FDA is required to regulate class II devices by means of perofmance standards. The House Report on the Medical Device Amendments of 1976 (H. Rept. 94-853, 94th Cong., 2d Sess. 26 (1976)) states that: "Devices classified into class II eventually will be required to conform to performance standards." In addition, the Conference Report (H. Rept. 94-1090, 94th Cong., 2d Sess. 55 (1976)), in describing how the extent of regulation under each class to provide reasonable assurance of safety and effectiveness varies with each class, states that:

> This class [II] consists of devices for which general controls are determined to be insufficient to provide reasonable assurance of safety and effectiveness[,] for which there is determined to be sufficient information to establish a performance standard to provide reasonable assurance of safety and effectiveness[, and which are] to be classified into class II and made subject to performance standards.

Congress recognized that FDA does not have the resources to establish performance standards under section 514 of the act for all class II devices simultaneously. (See H. Rept. 94-853, 94th Cong., 2d Sess. 26-27 (1976).) For this reason, in section 513(d)(3) of the act, Congress authorized FDA to establish priorities that, in the agency's discretion, are to be used in applying section 514 to devices classified into class II. (See also 21 CFR 860.84(g).) Furthermore, in section 513(c)(2)(A) of the act, Congress directed that where a classification panel has recommended classification of a device into class II,

the panel shall, to the extent practicable, recommend the assignment of a priority for applying to the device the requirements of section 514 of the act. This notice sets forth FDA's policy concerning the factors the agency considers in setting these priorities.

FDA has long recognized that, because of the procedures required by section 514 of the act, establishment of performance standards is a lengthy, resource-intensive process. The resources the agency has needed to establish performance standards for electronic products under section 358 of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), suggest that FDA will have to devote extensive resources to establish performance standards for medical devices. To develop a standard under the RCHSA, the agency has expended an average of 40 staff years over an average period of 38 months. In issuing a standard for an electronic product under the RCHSA, the agency is required to consult with an advisory committee and to follow the notice-and-comment rulemaking provisions of the Administrative Procedure Act (the APA) (5 U.S.C. 553). These procedures are far less burdensome that those, set out in section 514 of the act and Part 861, that govern the establishment of performance standards for class II medical devices.

More than 475 devices have been classified into class II under section 513(d) of the act, and FDA estimates that approximately 625 more devices will be classified into class II in the future. In view of this large number of devices, FDA has on two occasions, in 1980 and 1981, proposed policies to help ensure the safety and effectiveness of class II devices until performance standards can be established under section 514 of the act. These proposed policies, comments received on them, and FDA's responses to these comments are set forth below.

Summary of Policy

When setting priorities for initiating proceedings to establish performance standards for class II medical devices under section 514 of the act, FDA will consider the following factors: the seriousness of questions concerning a device's safety or effectiveness; the risks associated with the use of the device; the significance of the device to the public health; the present and projected use of the device; the recommendations of FDA's advisory committees; the impact of an FDA guideline or recommendation; the effect of a Federal standard or other regulatory controls under an authority other than the act; the impact of voluntary standards; the impact of activities authorized under the general controls provisions of the act; the effect of dissemination of information and educational efforts; the sufficiency of voluntary corrective actions; valid scientific evidence developed since classification; the existence of a petition for reclassification; and the impact of other factors that affect the device's safety or effectiveness such as the likelihood of developing an FDA guideline or adequate voluntary standard. The policy, set forth at the end of this notice, elaborates on these factors.

In April 1985, H.R. 2177 (99th Cong. 1st Sess.) was introduced in the U.S. House of Representatives. The bill is a legislative proposal of the Department of Health and Human Services. Among other things, the bill would (1) amend the act to eliminate the statutory category of class II, (2) make the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamline the procedure for establishing standards set out in section 514 of the act. If this bill becomes law, there will be but two categories of devices, class I (general controls) and class II (premarket approval, formerly class III). Class II devices would be redesignated as class I devices. Even if the bill is enacted into law, however, FDA will still need the policy announced at the end of this notice to set priorities for establishing performance standards, although a few provisions of the policy, e.g., section f., which addresses the impact of activities authorized under the general controls provisions of the act, may require some revision.

A. 1980 Proposed Endorsement Policy

In the **Federal Register** of February 1, 1980 (45 FR 7490; Docket No. 79N–0345), the agency proposed a policy (the 1980 proposed policy) for FDA involvement in the development, support, endorsement, and use of voluntary standards for devices. The 1980 proposed policy would have described the relationship between performance standards established under section 514 of the act and voluntary standards developed by industry. The 1980 proposed policy was based on FDA's belief that, under certain circumstances, voluntary standards could help ensure the safety and effectiveness of class II devices for which there were not any performance standards in effect. FDA also believed that its participation in, and support of, the development of voluntary standards would expedite the development of and adherence to voluntary standards that could serve as the basis for future performance standards.

FDA proposed to "endorse" voluntary standards that met the "Criteria for Endorsement of Voluntary Standards" discussed in the February 1 notice (see 45 FR 7491). FDA's 11 proposed criteria for "endorsement" included the extent to which: (1) A voluntary standard provided reasonable assurance of the safety and effectiveness of a device; (2) the process for development of the voluntary standard included consideration of sound scientific and technical information and permitted revisions on the basis of new information; (3) the process for development of the voluntary standard permitted meaningful participation by manufacturers (especially small manufacturers), distributors, consumers, and regulatory agencies having jurisdiction over the device to which the standard applied; and (4) manufacturers were likely to adhere to the voluntary standard.

Under the 1980 proposed policy, FDA would have reviewed a voluntary standard proposed for endorsement against the 11 criteria; made a determination as to whether all or part of the standard was adequate and sufficiently adhered to by the device industry to help ensure safety and effectiveness; and then endorsed the standard or that portion of the standard that was adequate and necessary. FDA would periodically have published in the **Federal Register** a list of FDA-endorsed voluntary standards.

Once a voluntary standard had been endorsed, FDA would have promoted the standard to consumer groups, individual health care professionals, health care organizations, hospital and clinical administrators and managers, medical device manufacturers and distributors, and other interested persons, such as regulators, insurers, and lawyers. FDA intended to promote endorsed standards by (1) issuing press releases to medical, technical, legal, and consumer journals; (2) publishing technical articles on individual voluntary standards; (3) supplying lists of FDA-endorsed voluntary standards to interested persons; (4) encouraging adherence to endorsed voluntary standards in the Government-Wide Quality Assurance Program; and (5) encouraging manufacturers of devices that conformed to FDA-endorsed standards to label their products as conforming, e.g., "Meets Federally Endorsed * * * Standard * * *."

The 1980 proposed policy would have represented a change from FDA's existing policy, described in a policy statement published in the Federal Register of August 12, 1976 (41 FR 34099), in which FDA said that voluntary standards could not substitute for standards established under section 514 of the act. Under the 1980 proposed policy, FDA would have deferred the establishment of a performance standard under section 514 of the act if the device industry adhered to an endorsed voluntary standard.

The agency believed that endorsing and then promoting specific voluntary standards would have (1) encouraged manufacturers, voluntary standards organizations, and other interested persons to continue to develop voluntary standards in their areas of expertise; (2) provided a strong incentive to manufacturers to adhere to voluntary standards because device purchasers would be inclined to purchase devices that conformed to FDA-endorsed standards; (3) resulted in a greater number of standards being established more rapidly with fewer FDA resources than if standards were established only in accordance with section 514 of the act; and (4) permitted FDA to concentrate on the development of performance standards for class II devices that were not the subject of adequate voluntary standards and that were selected for their impact on the public health.

Under the 1980 proposed policy, FDA would have provided both direct and indirect financial support for the development of voluntary standards that met the 11 criteria set out in the notice. FDA's indirect support for the development of such standards could have included: (1) Providing scientific and technical information and an identification of device hazards and risks; (2) providing technical assistance, including research and engineering support, for the devlopment of voluntary standards; (3) assisting in the dissemination of information about the provisions of voluntary standards and their applications; (4) evaluating a proposed voluntary standard to determine its effectiveness in reducing the risk of injury associated with a device; (5) investigating the extent to which devices that would be subject to the voluntary standard adhered to the standard; and (6) developing test methods to determine adherence to the voluntary standard.

In the proposed policy, FDA stated that it also would provide financial assistance in the form of travel funds and per diem costs to qualified consumer representatives when consumer participation would improve the development of a standard.

Interested persons were given until May 1, 1980, to comment on the proposed policy. The agency received 47 comments on a wide variety of issues. The following is a summary of the significant comments and the agency's response to them.

General Comments

1. Several comments supported the 1980 proposed policy. Some of the comments stated that under the policy the voluntary standard-writing process could have greater potential for significant participation by health care providers, small manufacturers, and consumers than could a proceeding to establish a performance standard under section 514 of the act. Other comments supported FDA's participation in the development of voluntary standards, and said that timely involvement by FDA in reviewing evolving standards was essential. A comment claimed that, especially in times of Federal budget constraints, FDA should make every effort to use the voluntary standards process.

The final policy on class II devices, described later in this notice, is different from the 1980 proposed policy in several major respects. The final policy identifies the factors FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. Among the factors FDA considers is the existence of an adequate, adhered to voluntary standard. The policy does not include a provision for endorsement of voluntary standards nor does it provide for promotion of such standards.

FDA eliminated the endorsement provision from the final policy primarily because the agency received many comments stating that the endorsement and promotion provisions of the 1980 proposed policy gave the appearance of subtantive rulemaking (see paragraph 2 of this notice). These comments argued that a voluntary standard endorsed and promoted by FDA would be perceived by manufacturers and consumers as mandatory. Although FDA did not intend that an endorsed standard would have the force and effect of law, FDA has been convinced that endorsement of a standard, taken together with FDA's promotion of the endorsed standard, could have misled manufacturers and consumers to believe the standard was mandatory.

The provisions of the 1980 proposed policy may have been misleading because the proposed policy appeared to state that the endorsement of voluntary standards might in some cases be a substitute for the establishment of performance standards under section 514 of the act, and suggested that the existence of an endorsed standard would alone be a basis for deferring initiation of a proceeding to establish a performance standard under section 514 of the act. Under the final policy, FDA will not conclude that a performance standard is unnecessary solely on the basis of the existence of an adequate, adhered to voluntary standard. Rather, under the final policy, the existence of an adequate, adhered to voluntary standard would be one of several factors that FDA takes into account in setting priorities for initiating a proceeding to establish a performance standard.

FDA now believes that it should focus its limited resources on setting priorities for, and initiating proceedings to establish, performance standards, rather than on endorsement and promotion of voluntary standards. FDA agrees, however, that the agency can play a valuable role in voluntary standards writing. FDA will continue to participate in voluntary standards activities.

Participation in outside standard-setting activities by FDA employees is governed by § 10.95 of its administrative practices and procedures regulations (21 CFR 10.95). Such activities include the development of performance characteristics, testing methodology, manufacturing practices, scientific protocols, compliance criteria, ingredient specifications, labeling, and other technical or policy criteria. FDA will continue to encourage employee participation in outside standard-setting activities, subject to § 10.95 of its regulations, and the revised Office of Management and Budget (OMB) Circular A-119 "Federal Participation in the Development and Use of Voluntary Standards" (47 FR 49496; November 1, 1982).

Legal Objections

2. Many comments argued that endorsement of voluntary standards would have exceeded FDA's authority under the act. The comments argued that Congress did not provide for endorsement, either in the statutory criteria under section 513 of the act for classification of a device into class II or in the provisions under section 514 of the act for establishing a performance standard. Many comments also contended that the policy would have violated the APA because endorsement and promotion of voluntary standards would convert voluntary standards into substantive rules without observance of

APA requirements for notice-and-comment (informal) rulemaking. One comment suggested that the endorsement policy might conflict with the OMB policy, set forth in OMB Circular No. A–119 "Federal Participation in the Development and Use of Voluntary Standards" (January 17, 1980), requiring that agencies disclaim Federal endorsement of voluntary activities in which the agencies participate.

The OMB policy referred to in the comment does not require disclaimers. The policy states only that "Federal agency participation in voluntary standards bodies and standards developing groups will not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies." In any event, FDA's final policy on class II devices does not include an endorsement provision. The policy merely sets forth the factors FDA considers in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA will not endorse voluntary standards, promote endorsed voluntary standards, or use endorsed voluntary standards as substitutes for performance standards, as described in the 1980 proposed policy. Accordingly, FDA does not believe that it is necessary to respond to these objections to endorsement. A few of the legal objections to endorsement, however, might also apply to the final policy. FDA's response to these objections is set out in paragraphs 3a, 3b, 4, and 5 of this notice.

3a. Some comments argued that even if endorsement of voluntary standards would not impose any legally enforceable obligations on manufacturers or other persons, endorsement would significant affect the rights and interests of private parties. These comments contended that FDA has significantly power to persuade consumers to use endorsed standards in making purchasing decisions. Competitive pressure would require medical device manufacturers to comply with voluntary standards endorsed by FDA. The result might be (i) premature abandonment of devices that did not pose an unreasonable risk or (ii) economic disadvantage to small manufacturers that could not afford to modify their devices to make them comply with an endorsed standard. In addition, these comments argued, competitive pressure would compel manufacturers to include in the labeling for their devices a statement that the devices complied with the endorsed standards. If a device so labeled did not comply with a voluntary standard, the device would violate the misbranding provisions in section 502 of the act. In a legal action against a device alleged to be misbranded, the only question would be whether the device complied with the standard; there would not be any opportunity to contest the validity of the standard itself.

For the reasons explained in paragraph 1 of this notice, the final policy does not include an endorsement provision and FDA will not endorse any voluntary standard. Under the final policy, however, the factors FDA takes into account in setting priorities to initiate proceedings to establish a peformance standard under section 514 of the act include the adequacy of and adherence to applicable voluntary standards. Setting priorities on the basis of, among other things, the existence of an adequate, adhered to voluntary standard necessarily involves FDA's evaluation of, and judgment about, the voluntary standard. This information could become publicly available through such means as a Federal Register notice announcing FDA's decision to initiate a proceeding under section 514 of the act, FDA's dissemination of a written report to the National Technical Information Service, and letters or other agency documents made available during the course of business or under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and Part 20 of FDA's regulations governing disclosure of agency records (21 CFR Part 20).

Although FDA may disclose its evaluation of specific voluntary standards, FDA will not endorse or promote any such standards. FDA does not believe that disclosure of its evaluation of standards, without endorsement or promotion, will generate the "competitive pressure" to comply with them feared by the comments. In addition, the information FDA may disclose or disseminate will not have a conclusive effect in any future administrative or judicial proceeding. The disclosure or dissemination of information about voluntary standards, as described above, is thus not tantamount to the issue of a performance standard. See *National Ornament and Electric Light Christmas Ass'n, Inc. (NOEL)* v. *CPSC*, 526 F.2d 1368, 1371–1372 (2d Cir. 1975).

FDA's authority to disseminate information, without informal rulemaking, derives from several sources. Section 705(b) of the act (21 U.S.C. 375(b)) provides that nothing in section 705 "shall be construed to prohibit [FDA] from collecting, reporting, and illustrating the results of [its] investigations * * *." The legislative history surrounding enactment of section 705(b) of the act shows that Congress intended to continue the authority FDA's predecessor had exercised for 30 years or more to disseminate information. (See, e.g., S. Rept. 361 to accompany S. 5, 74th Cong., 1st Sess. 31 (1935).) The case law on section 705(b) of the act also supports this view. See *Hoxsey Cancer Clinic* v. *Folsom, supra*, 155 F. Supp. 376, (D.D.C. 1957) (section 705(b) "place[s] within the express scope of the duties of [FDA] something that was one of [its] implied functions"). Dissemination of information about or public education with respect to investigations FDA has conducted about the products for which FDA is responsible is an exercise of the agency's implicit authority under section 705(b) of the act. *Id.* See also *Ajay Nutrition Foods, Inc.* v. *FDA*, 378 F. Supp. 210 (D.N.J. 1974), *aff'd*, 513 F.2d 625 (3d Cir. 1975).

FDA's implicit or explicit authority to disseminate information under section 705(b) of the act is not accompanied by any procedural requirements, and the argument that informal rulemaking is necessary to disseminate information relating to the public health and safety has been rejected by the courts. See *Pharmaceutical Manufacturers Ass'n (PMA)* v. *Kennedy*, 471 F. Supp. 1224, 1226–1233 (D. Md. 1979). Indeed, the court in *PMA* v. *Kennedy* found, and the court in *NOEL* v. *CPSC* suggested, that disclosure of information, other than confidential information, does not constitute "agency action" for which the APA affords review. 526 F.2d at 1373. Accord, *Hearst Radio*, v. *FCC*, 167 F.2d 225 (D.C. Cir. 1948).

Sections 310(b) and 311(a) of the Public Health Service Act (the PHS act) (42 U.S.C. 242*o*(b) and 243(a)) also authorize FDA to disseminate public health information about the products it regulates. Section 310(b) directs the Secretary of Health and Human Services to issue "information related to public health, in the form of publications or otherwise, for the use of the public" and to publish "other pertinent health information for the use of persons and institutions concerned with health services." Section 311(a) directs the Secretary to "advise the several States on matters relating to the preservation and improvement of the public health." The Secretary's responsibilities under section 310(b) and 311(a) of the PHS act, as they relate to matters within the authority of FDA, have been delegated to FDA (21 CFR 5.10(a)(2) and (19)).

Because the adequancy of, and level of adherence to, voluntary standards has some effect on the safety and effectiveness of class II devices, sections 310(b) and 311(a) of the PHS act authorize FDA to disseminate information on such standards. Neither section 310(b) nor section 311(a) requires FDA to engage in rulemaking before disseminating information related to the public health. Furthermore, FDA is authorized to adopt a voluntary standard as a guideline under § 10.90(b), without rulemaking (see paragraph 8 of this notice).

For all these reasons, FDA concludes that it has ample authority to disclose without informal rulemaking its evaluation of a voluntary standard and to disclose its reliance on an adequate voluntary standard to which manufacturers are adhering as one factor in setting priorities to initiate a proceeding to establish a performamce standard.

3b. Several comments claimed that endorsement of voluntary standards would constitute substantive rulemaking under the APA, citing *PMA* v. *Finch*, 307 F. Supp. 8568 (D. Del. 1970); *St. Francis Memorial Hospital* v. *Weinberger*, 413 F. Supp. 323 (N.D. Cal. 1976); *Pacific Gas & Elec. Co.* v. *FPC*, 506 F.2d 33 (D.C. Cir. 1974).

In the cases cited by the comments, the courts used the "substantial impact" test to determine the applicability of the notice-and-comment (informal) rulemaking provisions of the APA by asking whether the agency action had an impact on the rights and interests of private parties. In *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519 (1978), however, the Supreme Court expressly cautioned against judicial imposition of nonstatutory procedural requirements. The words "substantial impact" do not appear in the APA, and simply because agency action has such an impact does not mean that it is subject to notice and comment if it is otherwise expressly exempt under that act. See *Cabias* v. *Egger*, 690 F.2d 234, 237 (D.C. Cir. 1982); *Jean* v. *Nelson*, 711 F.2d 1455, 1476–1480 n.20 (11th Cir. 1983); *Energy Resources Group, Inc.* v. *DOE*, 589 F.2d 1082, 1096–1098 (Emer. Ct. App. 1978). "In other words, as an *independent* basis for determining the applicability of APA procedures, the substantial impact test has no validity." *Cabias* v. *Egger*, *supra*, 690 F.2d at 237. (Emphasis in original.) The test is but one of several factors used to determine whether a substantive rule has issued. *Id.*

A substantive rule is one which creates new rights and obligations. *British Caledonian Airways, Ltd.* v. *CAB*, 584 F.2d 982, 989–991 (D.C. Cir. 1978). A substantive rule, if valid, binds the courts. *Energy Consumers & Producers Association* v. *DOE*, 632 F.2d 129, 139 (Temp. Emer. Ct. App.), *cert. denied*, 449 U.S. 832 (1980, that is, establishes standards of conduct which have the force of law. The only question in subsequent proceedings is whether the facts conform to the rule. See *Pacific Gas & Electric Co.* v. *FPC*, *supra*, 506 F.2d at 38.

Endorsement of voluntary standards under the 1980 proposed policy would not have constituted a substantive rule. It would not have established a standard of conduct having the force of law in subsequent proceedings, nor would it have established a binding norm. In any event, the final policy, which does not include an endorsement provision, plainly is not a substantive rule. It simply is a general statement of policy which does not establish a binding norm but simply announces what an agency intends to establish in subsequent proceedings. In such proceedings, the agency has to support the policy by evidence and reasoning. The purpose of a policy statement is to advise the public of the position the agency will take in given circumstances, to facilitate long-range planning within the regulated industry, and to promote uniformity. *Pacific Gas & Electric Co.* v. *FPC*, *supra*, 506 F.2d at 38.

An agency pronouncement is a general statement of policy if the pronouncement (1) leaves the agency and its decisionmakers free to exercise discretion and (2) provides prospectively a guide as to how the agency will act. *American Bus Association* v. *United States*, 627 F.2d 525 (D.C. Cir. 1980); see also *Guardian Federal Savings & Loan Association* v. *Federal Savings & Loan Insurance Corp.*, 589 F. 2d 658, 666–667 (D.C. Cir. 1978); *Pacific Gas & Electric Co.* v. *FPC*, *supra*, 506 F.2d at 38.

The final policy leaves FDA and its decisionmakers free to excercise discretion in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. Moreover, the final policy is prospective in nature; it is not finally determinative of rights and obligations, nor does it establish a binding norm. It announces only how the agency sets priorities; it does not create a standard of conduct such that the only question in subsequent proceedings is whether the facts conform to the standard.

4. A comment argued that endorsement of voluntary standards could, in some circumstances, violate the Agreement of Technical Barriers to Trade (19 U.S.C. 2532), which prohibits any Federal agency from engaging in any standard-related activity that creates unnecessary obstacles to the foreign commerce of the United States. The comment claimed that many voluntary standards include provisions unrelated to safety and effectiveness, or future-oriented provisions unsuitable for regulatory use. If such standards were endorsed, the comment argued, they would place unnecessary burdens both on foreign manufacturers who wished to do business in the United States and on domestic manufacturers, whose products might increase in price and become less competitive abroad.

FDA agrees that endorsement of inappropriate standards might impose unnecessary burdens on foreign commerce. As stated in paragraph 1 of this notice, the final policy, unlike the 1980 proposed policy, does not include an endorsement provision and FDA will not endorse any voluntary standard. FDA's assessment of the adequacy of voluntary standards as one of several factors in setting priorities will not compel manufacturers to adhere to, or label their products as complying with, voluntary standards. Accordingly, the final policy will not impose unnecessary obstacles to foreign commerce.

FDA recognizes that some voluntary standards may include provisions unrelated to safety and effectiveness or provisions that set forth optimal or ideal standards for performance and that are intended as goals for developing device technology. In assessing the adequacy of voluntary standards under the final policy, FDA limits its consideration to those provisions of voluntary standards that relate to the safety and effectiveness of devices. In addition, in developing a performance standard under section 514 of the act, FDA considers only those provisions that are necessary "to provide reasonable assurance of the safety and effectiveness" of class II devices as those terms are defined in section 513(a)(2) and (3) of the act.

5. A comment objected to endorsement of voluntary standards on the ground that hospitals might incur increased liability for injuries caused by devices that did not adhere to an FDA-endorsed standard, even if the device in question was manufactured before endorsement.

FDA disagrees with the comment. FDA will not endorse any standard under the final policy. It is unlikely that a court would accept, even as prima facie evidence of the standard of care, an FDA determination, made for the sole purpose of setting priorities, that a

voluntary standard was adequate. A few courts have held that directions for use and warnings in FDA-approved labeling for approved new drugs were prima facie evidence of the standard of care, for the purpose of malpractice actions. These courts have relied on certain facts supporting the reliability of labeling: (1) Labeling is based on stringent FDA tests for marketing approval, (2) the expanding number of new drugs on the market has made it necessary for physicians to rely on the labeling, and (3) manufacturers prepare the labeling with the purpose, in part, of avoiding liability for failure to warn of possible dangers. See, e.g., *Mueller* v. *Mueller*, 221 N.W. 2d. 39 (S. Ct. S.D. 1974); *Julien* v. *Barker*, 272 P. 2d. 718 (S. Ct. Idaho 1954). An FDA determination that a voluntary standard is adequate for the sole purpose of setting a priority for initiating a proceeding to establish a performance standard for one device over another device would not meet these criteria of reliability.

6. Several comments argued that FDA may not consider the existence and adequacy of, or level of adherence to, voluntary standards in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. These comments concluded that FDA does not have authority to substitute voluntary standards for performance standards established under section 514 of the act.

FDA disagrees with these comments. Section 513(d)(3) of the act and § 860.84(g)(2) of the regulations governing classification expressly authorize FDA to establish priorities which, in the agency's discretion, are to be used in applying section 514 of the act to devices classified into class II. Furthermore, section 513(c)(2)(A)(ii) of the act and § 860.84(d)(5) of the regulations direct that where an FDA advisory committee has recommended classification into class II, the committee shall, to the extent practicable, recommend the assignment to the device of a priority for the application of a performance standard.

Voluntary standards are part of the regulatory environment and FDA believes that the existence of a voluntary standard that helps ensure safety and effectiveness, if adhered to, affects the immediacy of the public health need for a performance standard to provide reasonable assurance of the safety and effectiveness of a device. FDA accordingly concludes that, in exercising its statutory authority to set priorities for initiating proceedings to establish performance standards, it may take voluntary standards into account. Indeed, FDA believes that it could not responsibly set priorities, or properly allocate its limited resources to protect the public from the risks of class II devices, if it did not take such standards into account.

7. A comment argued that when Congress enacted section 514 of the act, Congress was aware of voluntary standards writing organizations but, in requiring performance standards for class II devices, chose not to rely on voluntary standards to ensure the safety and effectiveness of these devices. Another comment argued that Congress intended FDA to use voluntary standards only as proposed performance standards under section 514(c) of the act.

FDA agrees that, in enacting section 514 of the act, Congress did not intend for FDA to rely on voluntary standards to ensure the safety and effectiveness of class II devices. The legislative history of the amendments reveals that Congress believed that, in making use of nongovernmental expertise in the development of standards, it was necessary to "guard against a potential conflict of interest which might result if a standard were developed by a party having a proprietary interest in the nature of that standard." (S. Rept. 94–33 94th Cong., 1st Sess. 12 (1975).)

During the House debates, Representative Waxman cautioned that "the performance standards which are developed [are] not to be consensus standards—representing what most manufacturers agree to, rather than what consumer safety requires—instead of true safety standards." (122 Congressional Record H1730 (daily ed., March 9, 1976).) Congress therefore enacted section 514(c)(1) of the act to authorize FDA to use voluntary standards as proposed performance standards or as the basis upon which proposed performance standards may be developed, if FDA determines that such voluntary standards are "based upon scientific data and information" and have been "subjected to scientific consideration" (section 514(d)(1) of the act).

Under the final policy, FDA will not conclude that an adequate, adhered to voluntary standard makes a performance standard under section 514 of the act unnecessary for a class II device. FDA does not believe nor does the legislative history suggest, however, that Congress intended that FDA could not consider the existence of adequate, adhered to, voluntary standards in setting priorities for the initiation of proceedings under section 514 of the act. As noted in paragraph 6 of this notice, FDA believes that such standards affect the degree of risk to the public health from class II devices, and that their existence could not responsibly be ignored in allocating FDA's resources to the establishment of performance standards. Consistent with the legislative history, FDA will only deem "adequate" a voluntary standard that, if adhered to, would help provide reasonable assurance of the safety and effectiveness of a device.

Guidelines And Recommendations

8. Four comments objected to the statement in the 1980 proposed policy that FDA may develop a standard as a guideline under § 10.90(b) of the agency's administrative practices and procedures regulations. Each of these comments discouraged the use of guidelines because of alleged confusion about the regulatory status of guidelines. One comment argued that FDA guidelines create confusion because, although not always adhered to by manufacturers, they may be used by FDA investigators to assess compliance. This comment suggested that any final policy include a statement that adoption of standards as guidelines will be considered only if other means available to FDA for standards development have been exhausted. Another comment argued that the uncertain regulatory status of a guideline would confuse device purchasers.

FDA wishes to dispel the confusion about guidelines expressed in these comments. Guidelines state procedures or standards of general applicability that are not legal requirements but practices that a person can be assured are acceptable to the agency. FDA guidelines state general procedures or standards and do not include decisions or advice limited to particular situations. A guideline represents FDA's formal position on the matter involved, and, except in unusual situations involving an immediate and significant danger to health, obligates the agency to follow it until it is amended or revoked. A guideline does not, however, obligate any person other than the agency to follow it. Thus, if FDA were to adopt a voluntary standard as a guideline, a person could rely on the guideline with the assurance that a conforming device would not be considered adulterated or misbranded under the act. A person also could follow different procedures or standards, because even though a guideline may be used in administrative or court proceedings to illustrate acceptable procedures or standards, a guideline may not be used as a legal requirement.

If manufacturers of a class II device voluntarily agree to change an aspect of the device so as to help provide reasonable assurance of its safety and effectiveness, but with FDA's prior assurance that the change is acceptable, FDA may issue a guideline incorporating the change. The effect of the guideline would be to assure the manufacturers that FDA would consider devices meeting the guideline to be in compliance with the act. Under the final policy for class II devices, the existence of an agency guideline which manufacturers are following is a factor FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act.

In addition to guidelines, FDA often makes recommendations about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency. If FDA were to disseminate a voluntary standard as a recommendation, a person could rely on the recommendation with the assurance that a conforming device would be acceptable to the agency. FDA has published recommendations for the use of specific area gonad shielding on patients during medical diagnostic x-ray procedures (21 CFR 1000.50), recommendations for quality assurance programs in diagnostic radiology facilities (21 CFR 1000.55), and recommendations on administratively required dental x-ray examinations (21 CFR 1000.60).

As a guideline or a recommendation, a voluntary standard simply would represent FDA's public position on a matter. And, like all Federal agencies, FDA has implicit authority to issue public statements of policy with respect to matters of public interest and concern, without subjecting them to rulemaking. See *Hoxsey Cancer Clinic* v. *Folsom, supra; cf Barr* v. *Mateo*, 360 U.S. 564 (1959) (a public statement of agency policy with respect to matters of wide public interest is standard agency practice and therefore action in the line of duty for the purpose of official immunity). See also the other cases cited in paragraphs 3a and 3b of this notice.

Criteria for Endorsement

9. Several comments objected to one or more of the "Criteria for Endorsement of Voluntary Standards" (see 45 FR 7491 and the introductory paragraphs to Section A of this notice) or offered suggestions for alternative criteria. Other comments urged additional mechanisms for revising voluntary standards, or sought additional procedural safeguards in the process by which FDA would select voluntary standards for endorsement.

Although FDA will not endorse voluntary standards, the agency believes that these and related comments are relevant to the determination that FDA makes under the final policy as to the adequacy of a voluntary standard, as one factor in setting priorities for initiating proceedings to establish performance standards. When assessing the adequacy of a voluntary standard, FDA considers the extent to which:

a. Documentation supports the rationale for the safety and effectiveness provisions of the standard and identifies other factors considered by the drafters in developing or revising the standard;

b. Devices covered by the standard actually adhere to it;

c. The standard does not create anticompetitive effects or promote restraints of trade and does not contain excessively restrictive provisions that would hinder manufacturing of the device;

d. The process for the development of the standard includes consideration of sound scientific and technical information and permits revisions based on new information;

e. The process for standards development permits meaningful participation by manufacturers (especially small manufacturers), distributors, health professionals, consumers, other interested persons, and regulatory agencies having jurisdiction over the device to which the standard applies;

f. The adequacy of the standard is subject to periodic and timely review;

g. The standard stresses performance rather than design;

h. There are provisions for appeal by an interested person who objects to all or part of the standard;

i. The process for review of the standard considers the involvement of such devices in injury patterns; and

j. The standard includes provisions for testing to determine whether devices adhere to the standard.

10. Two comments argued that FDA's proposed criteria for determining whether to endorse a voluntary standard did not include sufficient requirements for review and justification of a voluntary standard during its development. These comments stated that: (i) Standards development committees are not obligated to justify their decisions, which results in many standards that are technically unsound; (ii) standards developers tend to write "ideal" standards toward which manufacturers of a product are expected to strive, and do not apply cost-benefit principles; (iii) many voluntary standards are not written with sufficient precision and clarity to judge adherence; and (iv) users of products are not adequately represented on standards development committees, while special interests with a financial stake in capital-intensive hardware or in obsolete product features tend to be over-represented.

As discussed in paragraph 9 of this notice, FDA will consider the technical soundness of voluntary standards and, in particular, documented rationale for the safety and effectiveness provisions of the standard in evaluating the influence of voluntary standards in setting priorities for initiating proceedings under section 514 of the act.

The process for development of voluntary standards usually involves participation by manufacturers which have a vested interest in ensuring that standards be practicable. Therefore, FDA does not believe that standards developers tend to write "ideal" standards to which cost-benefit principles have not been applied. FDA does not regard as adequate any voluntary standard that lacks provisions for testing to determine whether devices meet the standard. When evaluating the adequacy of a voluntary standard, FDA also evaluates the standard-setting process to assure that all interested persons, including manufacturers, distributors, consumers, and regulatory agencies, were given the opportunity to participate in its development.

11. A comment objected to the absence of provisions in the 1980 proposed policy concerning the manner in which FDA would provide for partial endorsement of voluntary standards, effective dates for endorsed standards, postendorsement revisions of voluntary standards, and mechanisms for emergency deviations from endorsed standards.

FDA believes that, having eliminated endorsement from the final policy, there is not any need for the provisions suggested by the comment. FDA assumes that a manufacturer that labels its device as conforming to a voluntary standard will include in the labeling the effective date of the standard or any revisions.

FDA advises that it will monitor changes in voluntary standards for the purpose of reevaluating its priorities for initiating proceedings to establish performance standards under section 514 of the act.

12. Two comments suggested that FDA endorse only those provisions of a

voluntary standard that specify performance or safety characteristics.

Although FDA will not endorse any voluntary standard, FDA agrees with these comments to the extent that they apply to FDA's determination under the final policy that certain voluntary standards are adequate. In assessing adequacy, FDA considers only the provisions of a voluntary standard that relate to safety and effectiveness.

13. A comment objected to the criterion in the 1980 proposed policy which would require that a voluntary standard provide reasonable assurance of the safety and effectiveness of a device. The comment urged that FDA recognize "baseline" safety standards, e.g., standards concerned only with electrical safety in devices that are electrically powered. The comment noted that the preamble to the final rule governing FDA's procedures for performance standards development (45 FR 7474, 7478; February 1, 1980) expressly states that baseline standards may be established under section 514 of the act.

FDA affirms the statement in the preamble to the February 1980 final rule that the agency may establish a baseline safety standard under section 514 of the act. In assessing the adequacy of voluntary standards when it sets priorities for initiating proceedings under section 514 of the act, FDA considers the existence of baseline voluntary safety standards, and may consider such a standard adequate for a device whose only risk is addressed by the standard. Under the amendments, however, a performance standard is required to provide reasonable assurance of the effectiveness, as well as the safety, of a class II device.

14. A comment stated that voluntary standards for dental devices would, in most cases, violate the endorsement criterion in the 1980 proposed policy which would require that a standard stress performance-oriented, rather than design-restrictive, requirements. The comment urged FDA to require that, before endorsement, all rationales and data supporting each provision of a voluntary standard be submitted to FDA. Another comment urged that a rationale be part of any voluntary standard considered for endorsement, and that additional documentation be publicly available.

Although FDA will not endorse voluntary standards, FDA believes that rationales supporting provisions of voluntary standards are important (see paragraph 9 of this notice). FDA also believes that recently developed medical device consensus standards contain rationales justifying the provisions of the standards. Indeed, the procedures of voluntary standards organizations such as the American National Standards Institute, Inc. (ANSI), the American Society for Testing and Materials (ASTM), and the National Committee for Clinical Laboratory Standards (NCCLS) require such rationales. Performance standards versus design-restrictive standards are discussed in paragraph 23 of this notice.

15. A comment said that it was unlikely that many voluntary standards written to date were developed in accordance with the proposed criteria for endorsement set out in the 1980 proposed policy. The comment urged that FDA, in evaluating existing standards, carefully scrutinize the procedures used to develop those standards to ensure that the developers actually have complied with the procedures outlined in the 1980 proposed policy.

Although FDA will not endorse voluntary standards, FDA agrees that the procedures used in developing such standards are important considerations in the agency's assessment of the adequacy of existing standards (see paragraph 9 of this notice). When a deficiency in organization's procedures raises a question about the adequacy of a voluntary standard, FDA may decide that standard is not adequate.

16. Two comments characterized as inadequate the endorsement criterion in the 1980 proposed policy which would require provisions for appeal by an interested person who objects to all or part of a voluntary standard. One of the comments argued that voluntary standards organizations often follow procedures intended to give consumer representatives a voice, but then disregard the substance of consumer opinion. The comment stated that an adequate appeals system must offer *de novo* consideration of dissenting views and that the appeals panel must (i) have jurisdiction over questions of procedure and substance; (ii) include, or have access to, independent technical expertise; and (iii) have a genuine balance of interests and be independent.

FDA believes that the provisions suggested by the comment are addressed in the provisions of the final policy discussed in paragraph 9 of this notice. Those provisions state that in assessing the adequacy of a voluntary standard, the agency considers the extent to which the development process permits meaningful participation by interested persons, including consumers, and the extent to which interested persons, including consumers, who object to all or part of the standard may appeal.

17. A comment contended that meaningful participation by small manufacturers in the development of voluntary standards requires that (i) not less than one-third of the members of any panel developing a voluntary standard be from small or new companies in the field, (ii) the public or independent members of panels be subject to the approval of other participating panelists, and (iii) the voluntary standard not become final unless approved independently by each group of panelists, e.g., large manufacturers, small manufacturers.

FDA believes that meaningful participation by all interested persons, including small manufacturers, is important in the development of voluntary standards. The adequacy of a voluntary standard could be compromised if any interested person is excluded from participating in its development. FDA disagrees, however, that the provisions suggested by the comment are necessary, because the existing procedures of voluntary standards organizations generally provide broad opportunities for meaningful participation by all interested persons.

18. A comment argued that FDA should consider for endorsement only standards written by organizations conforming with the procedures of ANSI and those provided by OMB in Circular A–119 for the development and approval of voluntary standards.

FDA will not endorse any voluntary standard. As stated in paragraph 15 of this notice, however, the procedures used in the development of voluntary standards are important considerations in the agency's assessment of the adequacy of voluntary standards.

FDA notes that OMB Circular No. A–119, originally issued January 17, 1980, has been rescinded. OMB Circular No. A–119-Revised (see 47 FR 49496; November 1, 1982) establishes the policy to be followed by executive agencies in working with voluntary standards organizations and also establishes the policy to be followed by executive branch agencies in adopting and using voluntary standards. The current circular reflects several changes from the original one, including expansion of the scope of the Circular to encourage Federal use of voluntary standards for regulatory and other purposes—not just procurement usage.

19. A comment argued that FDA should include in any final policy a mechanism for the affirmation, amendment, or withdrawal of endorsed voluntary standards. The comment argued further that any final policy

should explain how voluntary standards organizations and FDA will interact when such an organization amends an endorsed standard.

Because FDA will not endorse any voluntary standards under the final policy, there is no need to include in the policy the procedures suggested by the comment. FDA will, however, periodically reevaluate its determination that a voluntary standard is adequate (see paragraph 11 of this notice).

Content of Standards Under Section 514 of the Act

20. Two comments disputed a statement in the 1980 proposed policy that initiating a proceeding under section 514 of the act may be necessary if an aspect of safety or effectiveness common to more than one device is involved. The comments stated that commonality should not be the sole criterion for initiating a proceeding to establish a standard. One of the comments questioned whether a standard addressing a common characteristic of several devices would cause the "automatic reclassification into class II" of a class I device that shared the common characteristic.

Under the final policy, neither commonality nor any other criterion is the sole criterion for setting a priority for initiating a proceeding to establish a performance standard. FDA considers many factors, set forth in this policy in setting such priorities. FDA advises that a generic standard that addresses a common characteristic of many devices will not cause the "automatic reclassification into class II" of a class I device that shares the common characteristic.

21. A comment claimed that because voluntary standards do not preempt State and local requirements, especially fire and safety code requirements, there is little incentive for manufacturers to "comply" with voluntary standards. The comment urged FDA to establish standards under section 514 of the act which include the requirements set out in national fire, safety, and electrical codes, to preempt all State and local requirements. The comment claimed that Federal preemption of State and local requirements would better enable manufacturers to compete on the basis of product attributes, price, and quality.

FDA considers a number of factors including State and local requirements when setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA does not have the resources to establish a performance standard under section 514 of the act just to ensure uniformity. Any performance standard that FDA establishes under section 514 of the act, however, preempts any State or local requirement with respect to a device intended for human use if the requirement (i) is different from, or in addition to, the standard and (ii) relates to the safety or effectiveness of the device or to any other matter that is included in the standard and that is applicable to the device (section 521(a) of the act, 21 U.S.C. 360k(a)), unless FDA exempts the requirement from preemption (section 521(b) of the act, 21 U.S.C. 360k(b)).

22. A comment argued that FDA may not establish a standard under section 514 of the act which does anything more than set out minimum performance characteristics that are required to be met "to control identified risks to health and thereby assure the safety and efficacy of a device." The comment claimed that voluntary standards often contain provisions that are not directly related to controlling identified risk to health. The comment contended that any such provisions should be excised from a standard being considered for endorsement or for adoption as the basis of a standard under section 514 of the act.

FDA agrees in part and disagrees in part with the comment. FDA agrees that, as required by section 514(a)(2)(B) of the act, the provisions incorporated into a performance standard established under section 514 should not go beyond those "necessary to provide reasonable assurance of [the] safe and effective performance" of the device in question.

FDA disagrees, however, with the assertion that Congress intended the requisite assurance of safety and effectiveness to come from standards that establish "minimum performance characteristics" limited to controlling "the identified risks to health" from the device. The comment appears to have based its argument on a requirement in section 514(c)(2)(B) of the act ("Invitation for Standards") that FDA publish in the **Federal Register** a notice inviting submission of, or offers to develop, standards. The notice is required to include, among other things, "a statement of the nature of the risk or risks associated with the use of the device and intended to be controlled by a performance standard." Section 514(c)(2)(B) of the act relates only to the content of a notice issued under that section and cannot be read as an implicit limitation on FDA's authority to include in standards provisions designed to assure the effectiveness of devices.

Sections 513(a) and 514(a) of the act expressly require FDA to assure the effectiveness, as well as the safety, of class II devices. Section 513(a)(1)(B) of the act defines a class II device as one for which it is "necessary to establish for the device a performance standard under section 514 to provide reasonable assurance of its safety and effectiveness." Section 514(a)(2)(A) of the act requires that a performance standard "include provisions to provide reasonable assurance of [a device's] safe and effective performance." Section 514(a)(2)(B) of the act specifies the provisions that are to be included in a standard where necessary to provide such assurance. Section 513(a)(2) of the act provides that for purposes of section 514:

> * * * the safety and effectiveness of a device are to be determined—
>
> (A) With respect to the persons for whose use the device is represented or intended,
>
> (B) With respect to the conditions of use prescribed, recommended, or suggested in the labeling of the device, and
>
> (C) Weighing any probable benefit to health from the use of the device against any probable risk of injury or illness from such use.

Section 513(a)(3) of the act provides that for purposes of section 514, the effectiveness of a device is to be determined on the basis of evidence from well-controlled investigations, unless FDA determines that the effectiveness of a device can be determine from other valid scientific evidence.

It is clear from each of these sections of the act that a performance standard is to include provisions designed to ensure the effectiveness as well as the safety of class II devices, and that FDA, in determining whether a performance standard ensures safety and effectiveness, is not limited to considering whether the standard controls "identified risks of the device."

23. A comment contended that requirements in a voluntary or mandatory standard as to composition, design, test method, and labeling must be flexible so the standard does not restrict design or innovation. Another comment stated that standards should be performance-oriented, and not design-restrictive.

Although FDA agrees that device standards should stress performance rather than design, in the case of performance standards under section 514 of the act the legislative history reveals that Congress intended that performance standards include design-related requirements when necessary:

> Although use of the term "performance standard" reflects a preference for standards which allow the fullest use of technological alternatives, the Committee does not intend

the term to be construed as excluding design-related requirements, as it is when it is used in the engineering community. Design-related requirements that are necessary to provide reasonable assurance of safe and effective performance or that improve device safety and effectiveness by reducing the likelihood of human error should be included in a performance standard.

(H. Rept. 94-853, 94th Cong., 2d Sess. p. 26 (1976).)

FDA intends that design as well as composition, test method, or labeling requirements be included in a performance standard where necessary to assure the safety and effectiveness of devices subject to the standard.

24. A comment contended that many aspects of the safety and effectiveness of class II devices can be controlled under the general controls provisions of the act and that a performance standard under section 514 of the act should not address such aspects.

FDA disagrees with this comment. Congress, in section 514(a)(2) (B) and (C) of the act, expressly authorized FDA to include, as provisions of a performance standard, requirements that FDA would also be authorized to impose under the general controls sections of the act. (See paragraphs 29 and 44 of this notice.) In setting priorities for initiating a proceeding to establish a performance standard under section 514 of the act, however, FDA considers, among other factors, the extent to which application of the general controls provisions of the act can be expected to help ensure safe and effective performance of the device.

25. One comment argued that FDA should not itself develop a standard for a device for which a voluntary standard exists, even if the standard is inadequate, unless FDA has first provided the developer of the voluntary standard an opportunity to revise the standard to eliminate the inadequacies.

FDA disagrees with the comment. Section 514(d) of the act governs acceptance of an existing standard as a proposed performance standard. Section 514(d)(1) states that FDA "may" accept an existing standard, but only if FDA—

(A) Determines that a performance standard has been issued or adopted or is being developed by any Federal agency or by any other qualified entity or receives a performance standard submitted pursuant to a notice published pursuant to subsection (c), and

(B) Determines that such performance standard is based upon scientific data and information and has been subjected to scientific consideration.

Thus, if an existing voluntary standard does not satisfy the criteria in section 514(d)(1) of the act, FDA may not accept the standard under section 514(c)(1)(A) of the act, even if the developer of the standard were willing to correct its deficiencies. Under section 514(c)(1)(B) of the act, however, FDA might treat the voluntary standard as an offer to develop a performance standard. FDA would then determine whether to accept the offer in accordance with the criteria set out in section 514(e) of the act, if the standard's inadequacies did not preclude its acceptance under the act. FDA is not required to accept any standard offered, and would remain free to reject the standard under section 514(d)(2) of the act, as long as the agency provides its reasons for the rejection and publishes them in the **Federal Register.**

Labeling

26. Several comments responded to the statement in the 1980 proposed policy that FDA would encourage manufacturers of devices that adhered to endorsed voluntary standards to include in the devices' labeling a statement that they conformed to the standard (see 45 FR 7492). Three comments supported the agency's intent to encourage manufacturers to label their devices as conforming to a voluntary standard. Two of the comments suggested that the name of the organization that established the voluntary standard should be included on the label, to allow comparison of the device with the standard. Another comment argued against "self-certification," i.e., allowing manufacturers to label their devices as conforming to a standard on the basis of their own evaluation. This comment urged FDA to encourage third-party or some other form of certification.

Under the final policy, the existence of an adequate, adhered to voluntary standard is only one of many factors FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA will not endorse any voluntary standards. Although manufacturers may label their devices as conforming to voluntary standards, so long as the labeling does not make the devices adulterated or misbranded, under the final policy the significance attached to labeling claims of conformance to a voluntary standard will be greatly diminished. For this reason, the final policy does not explicitly encourage manufacturers to make such labeling claims. FDA will, however, consider the extent to which manufacturers label their devices as conforming to a voluntary standard as evidence of the level of adherence to an adequate voluntary standard, for the purpose of setting priorities for initiating proceedings to establish performance standards under section 514 of the act for those devices. If a device is labeled as conforming to a voluntary standard, the label should identify both the standard and the organization that established the standard.

FDA disagrees that "self-certification" should be discouraged. A manufacturer's certification that a device conforms to a voluntary standard could be monitored and evaluated during periodic inspections of the manufacturer's facility to determine compliance with the current good manufacturing practice (CGMP) regulations (21 CFR Part 820). If a device certified by the manufacturer as conforming did not do so, the device would be misbranded under section 502(a) of the act and could be adulterated under section 501(c) of the act. The device and the manufacturer would be subject to enforcement action under the act.

27. Two comments argued that any labeling claims should not include the phrase "Federally Endorsed," meaning endorsed by FDA, because the phrase would mislead users and consumers into believing either that the device was approved by FDA, or that FDA was involved in assuring compliance with the standard referred to in the labeling.

Because FDA will not endorse any voluntary standards under the final policy, there will not be any lawful use of the phrase "Federally FDA Endorsed" and, therefore, no potential for its misinterpretation.

28. A comment stated that, for a manufacturer that had labeled its devices as conforming to a voluntary standard, the 1980 proposed policy was unclear as to how the manufacturer would know when FDA considered a revised standard to be effective. The comment argued that a mechanism for handling compliance with revisions of standards is necessary, because a manufacturer could be held criminally liable for a false claim that a device conformed to a voluntary standard.

FDA would not even consider seeking criminal penalties against a manufacturer that had labeled its devices as conforming to a voluntary standard which, without the manufacturer's knowledge, had been revised, unless the manufacturer had been warned that its labeling was false or misleading and had failed to correct the error. A device would, however, be misbranded under section 502(a) of the act, and subject to seizure and its shipment subject to injunction, if its labeling erroneously claimed

conformance to a voluntary standard that had been revised. Such a device also might be adulterated under section 501(c) of the act. Even if FDA were only considering civil action against the device under the misbranding or adulteration provisions, FDA would give the manufacturer an opportunity to take corrective action.

FDA recognizes that there may nevertheless be inconvenience associated with making a labeling claim of conformance to a voluntary standard if the drafters of the standard do not make clear the effective date of any revisions. FDA assumes, however, that if a manufacturer voluntarily makes such a claim, it will take into account whether the organization that developed the voluntary standard periodically revises the standard and publicizes the effective dates of such revisions. FDA encourages any manufacturer that labels a device as conforming to a voluntary standard to include in the device's labeling the date of the standard.

29. A comment suggested that any final policy should promote the use of disclosure standards, because performance standards "freeze" technology.

FDA disagrees that performance standards necessarily would freeze device technology. The process of developing standards can encourage the developers to organize and evaluate new data as they accumulate. In addition, developing and using a new standard help to identify deficiencies in technology and can facilitate communication among those concerned with device development, with supporting technology, and with fundamental research. The agency will work closely with all the parties in the standards-setting process to ensure that the provisions of performance standards established under section 514 of the act do not become obsolete. In addition, FDA will amend such standards as required by changing technology. Voluntary standards also undergo revision as new technology becomes available.

"Disclosure standards" require manufacturers to disclose the performance of a device for identified characteristics when tested in accordance with specified methods. So defined, "disclosure standards" are not standards at all, but labeling requirements imposed by regulation on a class of device under various sections of the "general controls" provisions of the act, e.g., sections 502(a), 201(n), and 701(a) of the act (21 U.S.C. 352(a), 321(n), and 371(a)), without reliance on section 514 of the act.

Although disclosure provisions in performance standards can be useful, "disclosure standards" cannot by themselves satisfy the requirement in section 514 of the act that a performance standard for a class II device provide reasonable assurance of the device's safe and effective performance. Section 513(a)(1)(B) of the act defines a class II device as one for which general controls, including labeling requirements, are inadequate to ensure the safety and effectiveness of the device. FDA believes, therefore, that labeling cannot be the primary approach to ensuring the safety and effectiveness of class II devices. However, in setting priorities for initiating proceedings to establish performance standards under section 514 of the act, FDA takes into account labeling changes made by manufacturers which help provide reasonable assurance of safety and effectiveness.

30. Four comments stated that any final policy respecting class II devices should include consideration of relevant international standards. One comment stated that the General Agreement on Tariffs and Trades (GATT) requires consideration of international standards. Another comment contended that harmonizing international and domestic standards would ultimately reduce the number of standards and lead to monetary savings at a time when health care costs keep rising.

FDA agrees with these comments. Under the Agreement on Technical Barriers to Trade implementing the GATT, agencies of the U.S. Government should give first consideration to international standards and, if appropriate, base their standards or regulations on international standards except for urgent reasons of national safety or health or particular national circumstances. Consistent with the GATT, FDA will consider the adequacy of and level of adherence to relevant international standards in setting priorities for initiating proceedings to establish performance standards under section 514 of the act.

FDA Participation in and Support of Voluntary Standards Development

31. A comment favored FDA's indirect support for voluntary standards development, stating that the Government's presence and active involvement in the development of a standard help to focus and speed up the standard-writing process. The comment urged that, when FDA becomes involved in development of a specific voluntary standard, it provide the developers with a clear definition of the task, including (i) specific safety and effectiveness attributes to be addressed by the standard, (ii) the bases for selecting these attributes, (iii) the available statistical data, (iv) an assessment of the strengths and weaknesses of existing standards, (v) a description of areas of controversy or uncertainty, (vi) suggested approaches to the standard, and (vii) to the extent known, the desired levels of safety and effectiveness that an acceptable standard should assume.

FDA's participation in voluntary standards development will continue to be conducted according to the requirements outlined in the agency's regulations in 21 CFR 10.95. In addition, FDA will adhere to the policy set forth in OMB Circular No. A-119—Revised (see paragraph 18 of this notice). When participating in voluntary standard-setting activities, FDA employees should participate actively on a basis of equality with private sector representatives. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions, voting at each stage of standards development unless prohibited from doing so by law or by FDA, and, if selected, serving as chairpersons or in other official capacities. The comment's specific suggestions for FDA's role in voluntary standards development can be considered only if the context of efforts to develop a particular voluntary standard. FDA may provide information to a voluntary standards group on some, all, or none of the items identified in the comment, as appropriate.

32. A comment urged that, if FDA disseminates information about a voluntary standard, it do so to the general public as well as to the medical establishment. The comment stated that, in many cases, the most suitable vehicle for disseminating to patients information about a standard would be a label or disclosure statement, packaged with the device or designed for distribution by physicians or hospital personnel.

FDA agrees that it is often useful to disseminate information about voluntary standards to patients and believes that dissemination by manufacturers, on a wholly voluntary basis, is appropriate, provided the information is accurate and not misleading. FDA, exercising the authority discussed in paragraph 3a of this notice, may disseminate information about standards in general and voluntary standards in particular. Whether FDA will disseminate information to the public in general or to health care professionals alone will

depend on the facts and circumstances of each case.

33. A comment stated that FDA's limited resources should be directed to assessing the adequacy of voluntary standards to assure safety and effectiveness, rather than to investigating the extent to which devices already adhere to the provisions of a proposed voluntary standard under development. The comment added that the focus on present practice as a starting point for the content of a voluntary standard could have the effect merely of codifying the status quo.

The existence of an adequate, adhered to voluntary standard is only one of the factors that FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA evaluates the provisions of a voluntary standard to assess whether adherence to that standard would improve device safety and effectiveness. The extent to which devices actually adhere to a voluntary standard is also important, however, in determining the impact of that standard on device safety and effectiveness. For this reason, FDA has established a "conformance assessment program." Under this program, FDA selects standards that have been in effect long enough for manufacturers to have made their devices conform. FDA then selects a sample of devices covered by such a standard and, using the test procedures set out in the standard, tests the devices against the standard to determine whether they conform. FDA's conformance assessment program is directed as final standards, not proposed standards under development.

FDA agrees that a focus on present practice could have the effect of codifying the status quo, but only if the focus is on design rather than performance.

34. Several comments on FDA's proposal to provide direct financial assistance supported some form of direct funding. Two comments argued that FDA should fund the participation of small manufacturers, as well as consumers. One comment argued that small manufacturers of class II devices, with annual sales of less than $2 million, should be reimbursed for out-of-pocket expenses incurred in participating in the development of voluntary standards for their devices. One comment favored financial assistance in the form of travel funds and per diem costs for consumer representatives, but only if such representatives are individuals who do not represent any consumer organization. The comment argued that the cost of participation by a consumer who is a member of a consumer organization should be borne by the organization. One comment urged FDA to provide voluntary standards organizations sufficient financial support to fund the attendance of experts at standard-writing meetings and to record the deliberations to develop the standard. Two comments argued that consumer representatives should receive funds to obtain technical research, laboratory testing, and other services needed for effective participation. One comment opposed direct financial assistance. This comment argued that FDA's support of voluntary standards development should be limited to "indirect" assistance, because direct financial assistance would encourage the initiation of grants, subsidies, and other funding. The comment asserted that this would invite huge expenditures and discourage initiative and productivity.

FDA believes that it is important for all interested persons to be represented during voluntary standards development. The change in FDA's role from endorser of specific voluntary standards to supportive participant, however, necessarily alters its original plans concerning financial support. Because FDA is considering voluntary standards only to set priorities for initiating proceedings to establish performance standards under section 514 of the act, direct financial support will not be provided. FDA expects to continue technical support, within budget constraints, that clearly furthers the agency's mission and responsibilities. Such support may include providing scientific and technical information, identifying device risks and hazards, and assisting in the development of test methods or other means to determine adherence to voluntary standards. If FDA initiates a proceeding to establish a performance standard under section 514 of the act, it may agree to contribute to the cost of developing the standard (section 514(e)(3); 21 CFR 861.32).

35. One comment argued that financial assistance to participate in the development of voluntary standards should be available to anyone qualified to receive reimbursement under 21 CFR Part 10, Subpart C (see 44 FR 59174; October 12, 1979).

In the Federal Register of March 26, 1982 (47 FR 12951) the agency removed the regulations in Part 10 which established a pilot program for reimbursement of public participants in certain FDA administrative proceedings. The pilot reimbursement program was terminated because the United States Court of Appeals for the Fourth Circuit held that FDA does not have authority to reimburse public participation in its administrative proceedings. *Pacific Legal Foundation* v. *Goyan*, 664 F.2d 1221 (4th Cir. 1981). As discussed in paragraph 34 of this notice, however, section 514 authorizes FDA to contribute to the cost of developing a performance standard under that section.

36. Two comments questioned whether consumer representatives would make significant contributions to the development of voluntary standards for other than over-the-counter devices. One comment suggested that financial assistance to a participant in voluntary standards writing be awarded on the basis of the participant's ability to make a substantial contribution to the standard. The comment stated that, in most cases, useful information comes from manufacturers. Both comments argued that, except for standards for over-the-counter devices, health professionals could make a better contribution to standards writing than consumers.

FDA believes that significant contributions are made by consumer representatives, as well as manufacturers and health professionals, in the development of voluntary standards for medical devices. For the reasons discussed in paragraph 35 of this notice, direct financial support will not be provided for voluntary standards development activities.

37. Two comments favored publication in the Federal Register of a notice of FDA's intent to participate in the development of a voluntary standard. The comments stated that the notice should describe the device or the subject of the voluntary standard, identify the voluntary standards organization writing the standard, and provide a mechanism for interested persons to participate.

Announcements of FDA participation in voluntary standards development are published in the U.S. Department of Commerce, National Bureau of Standards "Standards Activities of Organizations in the U.S." which is publicly available upon request. Also, under § 10.95(d)(2), all FDA approval forms and all pertinent background information concerning FDA participation in voluntary standards are included in the public file on standard-setting activities. For these reasons, FDA does not believe that publication in the Federal Register is necessary.

B. The 1981 Draft Standards Policy

In response to the comments on the 1980 proposed policy, FDA developed a new draft standards policy without an

endorsement provision (the 1981 draft policy). FDA provided copies of the draft policy to manufacturers, trade associations, consumer groups, and other interested persons in November 1981 and announced its availability in the Federal Register of December 24, 1981 (47 FR 62543) and December 29, 1981 (47 FR 62955). The 1981 draft policy was discussed at a public medical device forum held by FDA on January 26, 1982 (announced in the December 24 and 29 Federal Register notices), and at a national consumer exchange meeting held by FDA on January 22, 1982 (announced in the Federal Register of January 12, 1982 (47 FR 1332)). A copy of the 1981 draft policy is on file in the Dockets Management Branch under Docket No. 81N-0392 and is available for public review from 9 a.m. to 4 p.m., Monday through Friday.

The 1981 draft policy stressed FDA's use of cost-effective alternatives to performance standards to provide reasonable assurance of the safety and effectiveness of class II devices. The alternatives included requesting that manufacturers voluntarily solve device problems, publicizing particular device problems, providing educational and technical information directed at device use, participating in the development of voluntary standards, and developing FDA guidelines. The 1981 draft policy detailed FDA's intent to evaluate, participate in the development of, and support voluntary standards; described FDA's public information efforts and interaction with manufacturers; discussed whether general controls under the act are sufficient to provide reasonable assurance of the safety and effectiveness of class II devices for which there exist Federal standards established under statutes other than the act; and outlined the impact that problem-solving alternatives could have on the reclassification of a class II device into class I or class III. If one or a combination of these alternatives would begin to remedy a device problem, FDA would, under the 1981 draft policy, defer initiating a proceeding to establish a performance standard under section 514 of the act for that device. If there were instances of illness or injury related to or significant defects in a device, FDA could take appropriate compliance action to correct the problem immediately, initiate a proceeding under section 514 of the act, or both. Each year, under the 1981 draft policy, FDA would have published a cumulative "priority listing" designating (1) class II devices that had the highest priority for initiating proceedings to establish a performance standard under section 514 of the act and (2) class II devices for which such proceedings had been deferred.

FDA received 26 comments on the 1981 draft policy. Fifteen comments generally supported the draft policy while four generally opposed it. These four and the remaining seven comments raised issues about the policy. The following is a summary of the significant comments and the agency's response to them.

General Comments

38. A comment stated that FDA is required to establish performance standards for all class II devices and questioned the legality of the 1981 draft policy, which the comment characterized as an illegal delegation to standard-writing organizations of the agency's obligation to establish performance standards under section 514 of the act. The comment further argued that in violation of the APA, FDA intended to substitute voluntary standards for performance standards and to adopt voluntary standards without informal rulemaking. Two other comments likened the 1981 draft policy to the 1980 proposed policy, and argued that endorsement and promotion of voluntary standards are illegal, unnecessary, and unwise.

FDA agrees that the act requires the agency to establish performance standards for devices classified into class II and acknowledges that neither section 514 nor any other provision of the act authorizes FDA to delegate its standard-setting responsibilities for such devices to standard-writing organizations. Contrary to the comments, however, the 1981 draft policy did not provide for the endorsement or promotion by FDA of voluntary standards. To the extent that the 1981 draft policy suggested otherwise, or suggested that FDA would use voluntary standards or any other alternatives to performance standards as substitutes for them, or that FDA would endorse or promote voluntary standards, these suggestions in the 1981 draft policy do not represent agency policy.

Congress did, however, authorize the agency to set priorities for initiating proceedings under section 514 of the act for the development of such standards (see the "Background" section of this notice). In exercising this authority, FDA, in the final policy, has articulated the factors, including the existence of an adequate, adhered to voluntary standard, which the agency takes into account in setting those priorities.

The final policy thus differs substantially from the 1981 draft policy, as well as from the 1980 proposed policy. Like the 1981 draft policy, the final policy does not include an endorsement provision, nor does it provide for the promotion of voluntary standards. Unlike the 1981 draft policy, however, the final policy does not address alternatives to performance standards, nor does it provide that FDA will rely solely on the existence of an adequate, adhered to voluntary standard. Voluntary standards are an important part of the environment in which device manufacturers and users operate, however, and FDA will consider the impact of such standards on device safety and effectiveness as one of the factors considered in setting priorities for initiating proceedings to establish performance standards under section 514 of the act.

39. A comment said that FDA does not have the resources to establish performance standards for all class II devices in the foreseeable future and argued that as a companion to, not a substitute for, performance standards, enforcement would be legal and would serve the public interest. The comment claimed, however, that the 1981 draft policy, unlike the 1980 proposed policy, favored "considered inaction" in that in lieu of endorsing "deserving" voluntary standards, the 1981 draft policy would have merely provided a policy justification for not developing performance standards. The comment recommended that the policy be revised to make it plain that FDA will establish performance standards.

For the reasons stated throughout this notice, the final policy does not include an endorsement provision and FDA will not endorse—or promote—any voluntary standards. Under the final policy, FDA simply will take into account, among other things, the existence of adequate, adhered to voluntary standards in exercising its statutory authority to set priorities for applying section 514 of the act to devices classified into class II. The agency's commitment to establish performance standards is shown by the publication in the Federal Register of notices under section 514(b) of the act initiating proceedings to establish such standards for 11 devices (see 48 FR 27723 and 31387-31397; June 17 and July 8, 1983). In the near future, FDA will continue the proceedings by publishing in the Federal Register notices under section 514(c) of the act inviting interested persons to submit existing standards as proposed standards or to offer to develop such standards.

Reclassification

40. Several comments supported reclassification of a device from class II into class I when a problem-solving alternative (other than general controls) to a performance standard exists and is remedying or beginning to remedy the problem. Another comment argued that FDA may not reclassify a device from class II into class I or classify a device into class I except on the basis of the criteria in the act for reclassification and classification.

Section 513 of the act and Part 860 of FDA's regulations establish detailed criteria for the reclassification of devices. Apart from the sufficiency of the general controls provisions of the act to provide reasonable assurance of the safety and effectiveness of a device, those criteria do not include consideration of whether there is a problem-solving alternative (other than general controls) to a performance standard, unless there is an existing Federal standard that is adequate to provide reasonable assurance of the safety and effectiveness of the device and certain other conditions are satisfied (see paragraph 43 of this notice). FDA may reclassify a device into class I only if (i) general controls are sufficient to provide reasonable assurance of the safety and effectiveness of a device, or (ii) there is "insufficient information" from which to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance, but the device is not life-supporting or life-sustaining or for a use which is of substantial importance in preventing impairment of human health, and the device does not present a potential unreasonable risk of illness or injury (section 513 of the act; § 860.3(c)(1)).

41. Nine comments supported reclassification of a device from class II into class I if the general controls provisions of the act, by themselves, are sufficient to provide reasonable assurance of the safety and effectiveness of a device. Three comments supported reclassification of a device from class II into class III if a performance standard cannot provide reasonable assurance of the device's safety or effectiveness.

FDA agrees that where new, publicly available valid scientific evidence of safety and effectiveness shows that a device should not be classified into class II and that reclassification into class I or class III will provide reasonable assurance of the safety and effectiveness of the device, the device should be reclassified into class I or class III. FDA cautions, however, that in the absence of adequate petitions submitted under section 513(e) of the act, few agency resources are available for initiating proceedings to reclassify devices from one class into another (e.g., from class II to class I), unless reclassification is required to protect the public health (e.g., from class II to class III).

Section 513(e) of the act and § 860.130 of the regulations govern reclassification of preamendments devices (devices that were on the market before May 28, 1976, the date of enactment of the amendments, and devices marketed on or after that date that are substantially equivalent to such devices). The legal standard governing reclassification under section 513(e) of the act is discussed in detail in FDA's proposals to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic material and daily wear optically spherical (soft) contact lenses from class III into class II (47 FR 53402 and 53411, November 26, 1982) and in the agency's notices withdrawing the proposals (48 FR 56788, December 23, 1983; 49 FR 17523, April 24, 1984). Any interested person may petition FDA to reclassify any preamendments device.

42. A comment said that the inability to identify and verify reducible risks that require performance standards to provide reasonable assurance of safety and effectiveness should form the basis of a reclassification proposal.

Before FDA initiates a preceding under section 514 of the act to establish a performance standard for a device, the agency already has completed a rulemaking under section 513 of the act that classified the device into class II. As part of the earlier rulemaking, the appropriate FDA advisory committee identified the risks to health associated with the use of the device and any problems that are believed to require a performance standard to provide reasonable assurance of the effectiveness, as well as the safety, of the device. The proposed regulation to classify the device was published in the **Federal Register** for comment and included the advisory committee's recommendations as part of the preamble to the proposal. In the classification rulemaking, FDA either adopted the advisory committee's identification of risks to health or developed its own.

If, following classification of a device into class II, new, publicly available, valid scientific evidence of safety and effectiveness shows that the device should not have been classified into class II and that reclassification into class I would provide reasonable assurance of the safety and effectiveness of the device, then initiation of proceedings to reclassify the device into class I would be appropriate, as agency resources permit. FDA advises, however, that the mere absence of an identifiable, verifiable risk is not a sufficient basis for reclassifying a device from class II into class I. The absence of evidence of risk does not necessarily establish safety; where FDA has concluded that certain risks require the establishment of a performance standard for a device, affirmative valid scientific evidence would be necessary to establish safety. Moreover, the statute and the regulations require valid scientific evidence of effectiveness, as well as safety, to reclassify a device from class II into class I. The absence of identifiable risk is one of several factors, however, affecting the priority of a performance standard under section 514 for the device.

43. Four comments discussed the role of regulatory standards developed under statutes other than the act. Three of these comments agreed with the 1981 draft policy which stated that FDA would be unlikely to develop additional standards for devices adequately regulated under other Federal statutes. The other comment suggested that because of the safeguards provided by the RCHSA, the general controls provisions of the act are adequate for regulating radiation emitting devices and that all such devices should be reclassified from class II into class I or initially classified into class I.

A device is classified into class II if, among other things, the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device. The definitions of class I and class II in section 513(a)(1) (A) and (B) of the act do not address the effect of existing Federal standards on classification decisions. The legislative history of section 514 of the act shows, however, that Congress was aware that some devices are also regulated under the RCHSA, the Atomic Energy Act, and the biologics provisions of the Public Health Service Act and did not intend the agency to promulgate duplicative standards (H. Rept. 94-853, *supra*, at 15). In light of the legislative history, FDA has concluded that if an existing Federal standard is adequate to provide reasonable assurance of the safety and effectiveness of a device, the agency is not required to establish a performance standard for the device and may classify

the device into class I. If, however, the existing Federal standard is not adequate to provide such assurance, or adequately addresses some, but not all, of the aspects of the device requiring a performance standard, and the device otherwise satisfies the criteria for classification into class II, the agency will classify the device into class II.

Whether an existing Federal standard is adequate to provide reasonable assurance of the safety and effectiveness of a device depends on the penalties for failure to comply with the standard, as well as its substantive provisions. In determining whether the penalties are adequate to ensure compliance, FDA considers whether they are comparable to those available to the agency in enforcing a performance standard promulgated under section 514 of the act, either because they are similar to the enforcement mechanisms under the act, e.g., seizure, injunction, and prosecution, or because the existing Federal standard may be enforced under the act. For example, if penalties under the statute under which an existing Federal standard was promulgated do not include seizure or prosecution, but a failure to comply with the standard renders a device misbranded or adulterated under the act, FDA could seize the device or prosecute the person responsible for its shipment, using the enforcement provisions of the act. In such a case, FDA would conclude that the penalties for failure to comply with the standard were adequate.

Any performance standard that FDA establishes under section 514 of the act for a device regulated under the RCHSA or any other Federal statute will address only those aspects of the device that are not adequately regulated under the RCHSA or other Federal statute and that are necessary to address to provide reasonable assurance of the safety and effectiveness of the device.

Under the final policy on class II devices, in setting priorities for initiating proceedings to establish performance standards under section 514 of the act, FDA takes into account the extent to which regulatory controls established by or pursuant to the RCHSA or any other Federal statute are sufficient to provide reasonable assurance of the safety and effectiveness of a class II device.

Scope of the Policy

44. Several comments pointed out that the 1981 draft policy did not define what FDA meant by the term "class II medical device problems" as used in the introductory paragraph of the draft policy. One of the comments recommended that such a problem be defined as "a problem that can be controlled by a class II requirement, i.e., a specific performance requirement; and [that] should be controlled by a class II requirement." This comment argued that certain device problems, e.g., manufacturing defects, can be prevented or reduced by application of the general controls provisions of the act but cannot be controlled by a performance standard.

FDA has concluded that the term "class II medical device problem" was not well chosen because, among other things, the term implied that if the general contols, e.g., labeling, CGMP regulations, could be applied to a problem, a performance standard could not be applied to the problem or could not contain labeling or manufacturing provisions. This implication is false. Accordingly, the final policy does not include the term "class II medical device problem." Instead, the policy, following the direct and unequivocal language of the statute, simply defines the term "class II device," acknowledges that FDA is required to establish performance standards to provide reasonable assurance of the safety and effectiveness of class II devices, and states that any performance standard established under section 514 of the act will include such provisions as the agency determines are necessary to provide reasonable assurance of the safety and effectiveness of the device or devices for which it is established.

Paragraphs (a)(2) (B) and (C) of section 514 make it plain that where necessary or appropriate, FDA is to include, as provisions of a performance standard, requirements that FDA is authorized to impose under the general controls provisions of the act, e.g., professional and patient labeling and related testing requirements in a regulation issued under sections 502 and 701(a) of the act. (An example of such a regulation is 21 CFR 801.420 *Hearing aid devices; professional and patient labeling.*) Section 514(a)(2)(B) (ii) and (iii) of the act and its legislative history establish that Congress intended that quality control procedures and manufacturing processes be included as elements of a performance standard (H. Rept. No. 94–853, *supra*, at 26). Adequate quality control is inseparable from manufacturing processes, and provisions regarding both will be included in a performance standard when necessary to ensure the safety and effectiveness of a device.

As explained throughout this notice, under the final policy, in setting priorities for initiating proceedings to establish performance standards under section 514 of the act, FDA considers various factors, including the existence of an adequate, adhered to voluntary standard, the likelihood of developing an adequate voluntary standard to which manufacturers will adhere, the sufficiency of voluntary corrective actions (e.g., relabeling, changes in design), and the extent to which application of the general controls reasonably can be expected to help assure the safety and effectiveness of a device.

Problem Identification and Verification

45. One comment recommended that any final policy describe the purpose of a "problem definition study," as identified in the 1981 draft policy. The comment said that many problem definition studies identify problems but do not offer solutions. The comment urged that such studies suggest appropriate solutions, whether voluntary corrective actions, standards, or application of the general controls provisions of the act.

To identify and analyze risks to health and other problems presented by a device, FDA develops "problem definition studies." Problem definition studies may include an extensive literature review, interviews of health professionals who use the device, a list of current manufacturers of the device and specifications of their products, collection and analysis of current labeling, information about medical device problems collected through FDA's Device Experience Network, medical device reporting under Part 803, or the Government-Wide Quality Assurance Program, and a review of any relevant voluntary consensus standards including test methods. During the development of a problem definition study, FDA may solicit information from manufacturers, users of the medical device, health professionals, trade and professional associations, consumers, and other interested persons.

Contrary to the statement in the comment, these studies almost invariably do recommend solutions to help ensure the safety and effectiveness of devices. For example, the objectives of an FDA defibrillator study were to document and analyze those characteristics of defibrillators that affect device performance and patient safety; to determine whether standardizing characteristics would significantly reduce the risks associated with the use of the device; and to develop a standard for defibrillator safety and performance. Using the information gathered during the study, FDA decided to classify low energy defibrillators into class II and to classify

high energy defibrillators into class III. As a result of the study, FDA developed a draft standard, which was used by the American National Standards Institute/Association for the Advancement of Medical Instrumentation (ANSI/AAMI) as the basis of their voluntary standard for defibrillators. Studies of other devices, e.g., hemodialysis systems, in vitro diagnostic reference materials, glucose in vitro diagnostic test systems, and electrocardiographs, have yielded similar results.

Since 1976, FDA has conducted more than 100 problem definition studies to document and analyze device problems and recommend possible solutions, e.g., labeling regulations or development of a performance standard. Most of these studies are available to the general public from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

46. Many comments suggested that the first priority of any final policy should be the identification and verification of risks or problems and that FDA accordingly should place more emphasis on problem identification and verification before initiating a proceeding to establish a performance standard under section 514 of the act. One comment said that FDA should not initiate or request any action with respect to a class II device, including a proceeding to establish a performance standard, until the agency has identified the problem and determined its nature and severity. This comment said that any final policy should include a section on how problems are identified, and how they are verified.

FDA agrees that important steps in assuring the safety and effectiveness of class II devices are the identification and verification of the failures of the devices to perform safely and effectively. FDA has developed "problem definition studies" to identify risks to health and other problems presented by a device and to recommend possible solutions (see paragraph 45 of this notice). The results of these studies are used by FDA as the basis for suggesting that voluntary standards be developed.

During classification proceedings, as well as in problem definition studies, FDA identifies the risks to health from the use of a device. The agency's device advisory committees and interested persons participate in classification, and interested persons participate in the development of FDA guidelines under § 10.90(b), and at several stages of any proceeding to establish a performance standard under section 514 of the act. FDA believes, therefore, that sufficient emphasis is placed on problem identification and verification.

47. A comment recommended that the agency include in any final policy commitments to consult with manufacturers and other interested persons to aid in the identification and evaluation of risks of problems associated with class II devices and to involve affected persons in solving problems of class II devices.

As is discussed in paragraph 46 of this notice, FDA provides many opportunities for interested persons to submit information to FDA in the classification process under section 513, the procedures for establishing performance standards under section 514, and in the development of problem definition studies, FDA guidelines, and FDA recommendations. FDA, therefore, does not believe that it is necessary for the final policy to contain explicit statements regarding consultation with manufacturers and other interested persons for the purposes of problem identification and evaluation or to solve problems.

Establishment of Priorities

48. Several comments asked what procedurs FDA would use in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. Six comments suggested that all interested persons should have the opportunity to submit comments on any priority listing before it is published or becomes final, or before any changes are made in it. Two comments suggested that a rationale be required for the priority assigned to those devices added to or initially included on the high priority list so that all interested persons have an opportunity to participate in the "prioritization process."

As discussed in the "Background" section of this notice, FDA is authorized under section 513(d)(3) of the act to establish priorities that, in the agency's discretion, are to be used in applying section 514 of the act to class II devices. FDA is not required to solicit comments before setting priorities. Generally, if resources and time permit, FDA will invite participation in the priority seting process for class II devices, through conferences, workshops, or other means, by reprersentatives of scientific, professional, industry, and consumer organizations. FDA advises that it will develop a rationale for its priority decision for each class II device, even though the act does not require the agency to do so.

49. Two comments said that in setting priorities for initiating proceedings to establish performance standards under section 514 of the act, FDA should take into account voluntary standards in existence or under development. Another comment stated that FDA should not identify specific voluntary standards as the basis for a decision to defer initiating proceedings to establish performance standards under section 514. Yet another comment welcomed FDA's recognition of the importance of voluntary standards and expressed the hope that the agency would perceive voluntary standards as acceptable alternatives to performance standards.

Under the final policy, the existence of an adequate voluntary standard to which devices are adhering (or the likelihood of developing an adequate, adhered to voluntary standard) is one of several factors that FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA may identify a voluntary standard in existence or under development as a factor in its decision on a device's priority for a performance standard under section 514 (see paragraph 3a of this notice). For the reasons explained throughout this notice however, FDA may not use voluntary standards as substitutes for performance standards.

Guidelines

50. A comment argued that the use of agency guidelines proposed in the 1981 draft policy is contrary to § 10.90(b) which provides that guidelines "do not include decisions or advice on particular situations". The comment also claimed that FDA guidelines would be used as substitutes for performance standards. Two comments opposed the use of guidelines for class II devices on the ground that guidelines are in effect performance standards adopted without the procedural safeguards required by section 514 of the act.

The purpose and status of FDA guidelines are described in detail in paragraph 8 of this notice; the purpose and status of performance standards are described in detail in the "Background" section of this notice. Although agency guidelines "do not include decisions or advice on particular situations," they may "relate to performance characteristics, * * * manufacturing practices, product standards, * * * labeling, or other technical or policy criteria" and, thus "state procedures or standards of general applicability" (see § 10.90(b)(1)). Under the final policy, agency guidelines will not be used as substitutes for performance standards. In setting priorities for initiating proceedings to establish performance standards under

section 514 of the act, however, FDA takes into account the existence of an agency guideline to which devices are adhering or the likelihood of developing such a guideline to which devices will adhere. Neither this use of guidelines nor the fact that they are established in accordance with procedures different from the procedures that govern the establishment of performance standards circumvents section 514 of the act.

51. Several comments favored the use of guidelines, either as permanent or temporary substitutes for performance standards, provided the guidelines are (i) compatible with other ongoing efforts to address the same questions, (ii) are developed with an opportunity for interested persons to participate, and (iii) include provisions for changing the guidelines without delay in response to new information.

FDA may not use guidelines as substitutes for performance standards but considers guidelines in setting priorities for initiating proceedings to establish such standards. Section 10.90(b)(4) of FDA's regulations provides that FDA will make its guidelines publicly available. Any notice of availability of a guideline (or draft guideline) or of an amended or revoked guideline will provide that interested persons may submit written comments on the guidelines (§ 10.90(b)(7)). Because FDA guidelines do not have the force and effect of law, persons to whom they are addressed are not required to comply with them, and the agency does not believe thay they need to include specific provisions for changes. FDA, however, attempts to revise its guidelines expeditiously as new information warrants.

52. Two comments stated that once a "significant" class II device problem has been identified which should properly be addressed by a standard, it would be inappropriate for the agency to develop a guideline as the "solution" to that problem on an "*ex parte* basis." One of the comments said that the problem should be the subject of a performance standard or should be referred to the appropriate voluntary standard-setting organization so that a solution can be developed with advice from professional users, the general public, and industry. Another comment, citing § 10.90(a), claimed that guidelines can be published as regulations and recommended that FDA treat the need for the development and application of agency guidelines in the same manner as voluntary standards in terms of evaluation, participation, and support.

For the reasons explained throughout this notice, FDA may not use voluntary standards or agency guidelines as substitutes for performance standards. The agency is authorized to set priorities for initiating proceedings to establish performance standards under section 514 of the act, however. In setting priorities, FDA may take into account the likelihood of developing an adequate voluntary standard or a guideline to which devices will adhere. The final policy does not include the term "class II medical device problem" (see paragraph 44 of this notice). Accordingly, the comment that it would be inappropriate for FDA to develop a guideline as a "solution" to a "significant" class II medical device problem is moot.

FDA guidelines are not developed on an "*ex parte* basis," although they are developed within the agency. Most guidelines are disseminated in draft form for comment by interested persons, and all guidelines are made available for public comment (see paragraph 51 of this notice). Even if FDA guidelines were developed without outside participation, however, FDA still could take them into account in setting priorities.

FDA notes that both the procedures that govern the development of a guideline and the procedures set out in § 861.30(a) for development of a proposed performance standard under section 514(e)(4) (A), (B), and (C) of the act require that supporting test data and other documents be disclosed to the public, that interested persons be provided an opportunity to participate, and that comments and other submissions be made available to the public. In any event, FDA guidelines are not legal requirements. In contrast, a proposed standard to which § 861.30(a) applies is not a voluntary standard but a standard which, if accepted by FDA, published as a proposed performance standard, and established as a performance standard in a final rule under section 514 of the act, does impose legal requirements.

The third comment misreads § 10.90, which does not state that FDA may publish guidelines as regulations. Instead, § 10.90(a) simply states that regulations may contain provisions that are intended only as guidelines which, under § 10.90(b)(1), are not legal requirements.

Labeling

53. Many comments objected to the statement in the 1981 draft policy that, in assessing the likelihood of adherence to a voluntary standard, FDA would pay particular attention to the announced intentions of industry to label conformance to a voluntary standard or to adhere either to self-certification or to third party certification programs. The comments argued that once a device is labeled as conforming, all the "volunteerism" disappears because a deviation from the standard renders the product misbranded, and a voluntary standard in effect becomes a mandatory standard. One of the comments claimed that the real significance of labeling is the "legal handle" it would give the agency with respect to devices that might not meet every provision of the voluntary standard. This comment said that finding such a "legal handle" is an inappropriate interest for FDA to pursue in the context of a standards policy.

FDA disagrees with the comments. The existence of adequate, adhered to voluntary standards is but one of several factors that FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. In determining whether a voluntary standard is being adhered to, FDA will not rely only on labeling claims that a device conforms to the standard. FDA has limited resources available to determine whether a device meets a voluntary standard, however, and devices that are labeled as conforming to a standard allow FDA to assess the likelihood of industry "compliance" with the standard without expending excessive resources. FDA believes that it is justified in relying, to some extent on such labeling statements, because a device is misbranded under section 502(a) of the act and also may be adulterated under section 501(c) of the act if the device is labeled as conforming to a voluntary standard but does not do so.

Neither the act nor the regulations require a manufacturer to label its devices as conforming to a voluntary standard. Thus, whether to label a device as conforming is a decision for a manufacturer to make, on a wholly voluntary basis. If a manufacturer claims in its labeling that its device conforms to a voluntary standard, the act and the regulations simply require that the claim be accurate and nonmisleading. In any event, the statement in the 1981 draft policy objected to by the comments was intended by FDA to enable the agency to limit the resources necessary to implement the policy effectively, not to impose "mandatory" voluntary standards or to give the agency a "legal handle."

54. A comment said that FDA's plan to pay particular attention to the announced intentions of industry to label conformance or to adhere to certification programs will not be effective because of the antitrust laws.

The comment claimed that groups of manufacturers often have been advised by counsel not to agree or act jointly in complying with voluntary standards or in certifying products. Compliance and certification, the comment argued, are more properly left to the discretion of individual companies because of the impact of compliance and certification on price and market structure.

By the phrase "announced intentions of industry" FDA did not mean to suggest that it would solicit or otherwise encourage statements or other indicia of agreements to act jointly in labeling conformance or certifying products. The agency agrees that whether to label as to conformance and whether to adhere to a certification program are decisions for each manufacturer to make on its own.

55. A comment said that using the threat of performance standards to force manufacturers to claim conformance to voluntary standards can have serious adverse consequences for the health care system. In some cases, a manufacturer could claim partial conformance to a voluntary standard and such conformance would solve whatever problems existed for the device. In other cases, a manufacturer could develop new technology that would not conform to the voluntary standard but that would avoid the problems the voluntary standard was designed to solve. In these cases, the comment said, the threat to develop a performance standard could force the manufacturer to bring its device into conformance with an inappropriate voluntary standard or to abandon the new technology because the marketplace will have come to demand conformance to the voluntary standard. Forcing manufacturers to label conformance could freeze technology, a result not desired by FDA, manufacturers, or users. Another comment stated that hospitals might refrain from purchasing innovative devices that are not addressed by a voluntary standard or that do not conform to such a standard.

FDA does not require manufacturers to label their devices as conforming to a voluntary standard, nor does FDA threaten to establish performance standards under section 514 of the act to persuade manufacturers to label conformance. The act, however, requires FDA to establish performance standards for class II devices. Under the final policy, the existence of an adequate, adhered to voluntary standard is but one of several factors FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act.

FDA advises that it does not object to a manufacturer's claiming that its device conforms to some but not all of the provisions of a voluntary standard.

FDA disagrees with the comment that voluntary or mandatory standards necessarily freeze device technology. FDA will amend performance standards as required by changing technology; voluntary standards are revised as new technology becomes available. See paragraph 55 of this notice. Furthermore, FDA limits its consideration of voluntary standards to those provisions that relate to the safety and effectiveness of devices, and is charged with establishing performance standards to provide reasonable assurance of safety and effectiveness. As noted in the "Background" section of this notice, FDA has established standards for various electronic products under the RCHSA. FDA has not received any data that show that, as a result of these RCHSA standards, device technology has been "frozen" or that a manufacturer has been required to conform to an inappropriate standard.

Dissemination of Information

56. A comment urged (i) that any final policy permit release or publication of information about a device problem only after, with the participation of all interested persons, the problem has been identified, (ii) that the policy specify the manner in which the information will be released to all interested persons, and (iii) that FDA maintain a "master list" of such public information and periodically update that list. In support of involving all interested persons in problem identification before release or publication of information, another comment claimed that some problems are the result of users' failure to follow proper instructions, carelessness, or a misunderstanding of the "application" of a device. A third comment said that because FDA received information about such problems from many sources, FDA could unintentionally rely on or publish erroneous information or misleading reports. By involving interested persons before publication, FDA can verify a problem and help establish agreement on the nature of the problem and thereby expedite its solution.

Under the final policy, FDA may consider the effect of dissemination of information concerning a device's safety or effectiveness as a result of an FDA investigation of a device's deficiencies or misuse. FDA's authority to disseminate information concerning medical devices is discussed in paragraph 3a of this notice. FDA recognizes that some device problems are due to user error and that not all the information FDA receives is entirely accurate. For this reason, although FDA is not required to permit participation of all interested persons before disseminating information about a specific device problem, when FDA develops a problem definition study (see paragraph 45 of this notice), FDA generally will invite participation, through conferences, workshops, or other means, by representatives of scientific, professional, industry, or consumer organizations. In any event, FDA will not publish information concerning a device problem unless the agency believes that such information is accurate.

The public availability of FDA records is governed by FOIA and Part 20. Unless a record requested under FOIA and Part 20 is exempt from disclosure, FDA is required by 5 U.S.C. 552(a)(3) to make the record "promptly available to any person." It would, in many cases, exceed FDA's authority to withhold disclosure of information about device problems until after the events identified in the comment. Accordingly, there is neither reason nor authority for FDA to revise the policy as requested by the comment.

FDA rejects the suggestion that it maintain and periodically update a "master list" of public information about device problems. Developing, maintaining, and updating such a list would be resource intensive and burdensome and would not provide any appreciable benefit to the public health. Under § 20.40, FDA maintains a public log of FOIA requests and responses.

57. A comment stated that when FDA has determined that a voluntary standard has solved a particular problem, the agency should not directly identify that standard. The comment argued that direct identification could appear to be an FDA endorsement of the standard in question and appear to favor one standard over another.

Under the final policy, the agency takes into account several factors, including the existence of an adequate, adhered to voluntary standard, in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. Identification of a voluntary standard in this context will not be tantamount to endorsement (see paragraph 3a of this notice). If the existence of an adequate, adhered to voluntary standard forms part of the basis of FDA's priority decision, the agency may decide to identify that standard, as its identity

may, in any event, be publicly available upon request under FOIA and Part 20.

58. Four comments supported FDA's publication of technical and educational information about risks to health associated with device use. Several other comments suggested specific types of publications in which FDA might include this information.

FDA believes that the comments support its use of such publications as the "FDA Drug Bulletin" to provide educational and technical information about device use and performance to medical and health professionals. FDA welcomes suggestions for improving its efforts to provide information to the health care community.

59. Four comments suggested that it would be inappropriate and unwise for FDA to disseminate information about voluntary standards because this activity could create the perception that FDA endorses such standards. One comment said that there are many non-Government channels available for the dissemination of information about voluntary standards and that there is not any indication that Government assistance in this area is necessary. The comment further said that given the potential for confusion and misunderstanding, FDA should generally avoid disseminating information about voluntary standards.

The final policy does not include an endorsement or promotion provision, and FDA will not endorse or promote any voluntary standards. Dissemination of information, however, is not tantamount to endorsement or promotion, and FDA, exercising the authority discussed in paragraph 3a of this notice, may disseminate information about standards in general and voluntary standards in particular.

60. A comment said that FDA should publish in the **Federal Register** the results of staff evaluations of voluntary standards and provide an opportunity for interested persons to comment on those evaluations.

FDA disagrees. FDA believes that publication in the **Federal Register** of the results of staff evaluations of voluntary standards would be burdensome and unnecessary.

61. A comment said that failure of a device to conform to a voluntary standard about which FDA has disseminated information would risk adverse Government action even if the device were not labeled as conforming to the standard.

As discussed elsewhere (see paragraphs 26, 28, and 53 of this notice) adherence by manufacturers to voluntary standards, with or without labeling, is a decision for manufacturers to make on a wholly voluntary basis. Government action would not be taken against a device simply because it did not conform to a voluntary standard.

62. A comment suggested that medical device and malpractice litigation have supplemented standards in reducing risks associated with the use of medical devices. Such litigation, as well as comparative risk assessment based on reported cases of alleged medical device failures, can be used to set priorities for developing voluntary and mandatory standards.

FDA believes that medical device and malpractice litigation can supplement standards in reducing the risks associated with the use of devices by prompting changes in device design, manufacturing, and labeling and in the manner in which physicians and other health professionals use devices. The agency also believes that comparative risk assessment could be used as a factor in setting priorities for initiating proceedings to establish performance standards under section 514 of the act. FDA advises, however, that it generally does not have available to it the kind of information detailed in the comment. To the extent such information is reported to FDA under Part 803 (medical device reporting) or otherwise, the agency will use it in setting priorities.

63. A comment supported the inclusion in voluntary standards of provisions that are intended to be adopted by FDA in a performance standard established under section 514 of the act.

If a standard-writing organization wishes to develop a standard for use by FDA in a proceeding under section 514 of the act, the standard should address whatever factors are necessary to provide reasonable assurance of the safety and effectiveness of the device. Under section 514, a performance standard is required to include provisions to provide reasonable assurance of the device's safe and effective performance.

64. Two comments addressed the impact of voluntary standards on device availability. One comment stated that voluntary standards adversely affect competition and device availability, thus increasing medical costs. Another comment requested FDA to balance the consumer's need for protection from unreasonable risks from the use of a device against the need for availability of devices in general and new devices in particular.

FDA is aware that voluntary standards play a significant role in the national marketplace, in procurement specifications, and in the international marketing of devices. However, the agency does not believe that, in general, voluntary standards for medical devices necessarily adversely affect competition or device availability or increase medical costs, and notes that information has not been submitted demonstrating that such effects have occurred.

Under section 513(a)(2) of the Act, FDA determines the safety and effectiveness of a device with respect to the persons for whose use the device is represented or intended; the conditions of use prescribed, recommended, or suggested in the labeling of the device; and the probable benefit to health from the use of the device against any probable risk of injury or illness from such use. FDA will continue to follow these statutory requirements.

65. A comment argued that even though FDA should be an active participant in voluntary standard-writing activities, the agency should not participate in the final stage of such activities so as to avoid the implication that the voluntary standard has any regulatory status as a performance standard.

As discussed in paragraphs 1, 18, and 31 of this notice, FDA's participation in voluntary standards activities is subject to the requirements in § 10.95 and OMB Circular No. A-119-Revised. FDA's participation in the planning, development, and final stage of voluntary standards activities "does not, of itself, connote [FDA] agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies" (see paragraph 7.b.(3) of OMB Circular No. A-119-Revised). Indeed the Circular states: "Agency representatives may vote, in accordance with the procedures of the voluntary standards body, at each stage of standards development * * *." For these reasons, FDA's participation in a voluntary standard-setting activity does not imply that the voluntary standard has any regulatory status.

66. A comment urged FDA to set up a task force to establish, for "voluntary groups," guidelines as to what the agency needs in or from voluntary standards. The comment said that the task force should informally review and edit some existing voluntary standards to meet the criteria set out in section 514 of the act. For standard-writing groups that may want to support a mutual or coordinated effort, the comment suggested that the FDA guidelines address (i) participants who should be included in the standard-writing process, (ii) objectives, (iii) procedures to be followed, and (iv) the potential

liabilities to the standard-writing organization and to firms whose employees are participants if the voluntary standard or specification developed proves to be in restraint of trade. Finally, the comment suggested that the guidelines include any clarification or recommendations the agency believes are needed with respect to the use of voluntary standards for foreign marketing, Government purchasing, or third party reimbursement.

FDA actively participates in voluntary standards development and does not believe that there is any need for the guidelines suggested by the comment. The criteria FDA applies when evaluating an existing standard or an offer to develop a proposed standard under section 514 of the act are outlined in Part 861. More generally, OMB Circular No. A–119–Revised provides policy and administrative guidance directly to Federal agencies, and indirectly to the private sector, on using voluntary standards for procurement and regulatory purposes, on participating with private sector organizations to develop such standards, and coordinating Executive Branch participation in the development of voluntary standards.

FDA Participation in and Support of Voluntary Standards Development

67. A comment agreed that meetings on voluntary standards development between agency personnel and outside standards organizations should be open meetings and supported the 1981 draft policy's insistence on compliance with the "due process" criteria of §§ 861.30(a) and 10.95. Another comment pointed out that the criteria in § 861.30(a) were designed for regulatory standards that would eventually be published in the Federal Register and subjected to notice-and-comment rulemaking. A third comment argued that the criteria for defining FDA participation in voluntary standards development should be supplemented with additional guidelines concerning the availability of written policies and procedures, the resolution of negative votes, and a commitment to openness and due process.

FDA will continue to participate in voluntary standard-setting activities according to the procedures described in § 10.95. These procedures ensure that there is adequate opportunity for public participation in voluntary standards development. In particular, § 10.95(d)(5)(iii) requires that the voluntary standards organization's procedures provide a means for interested persons to provide information and views on the activity and standard involved, without the payment of fees, and that the organization consider the information and views. In addition, FDA adheres to the policy and administrative guidance set forth in OMB Circular No. A–119–Revised.

FDA notes that voluntary standards groups submitting standards to ANSI or ASTM are required to adhere to those organization's procedures. Those procedures provide for the availability of written policies and procedures, the resolution of negative votes, and a commitment to openness and due process.

FDA agrees with the comment concerning the "due process" criteria in § 861.30(a). In broad outline, however, they do not differ substantially from the general standards set out in § 10.95. Nonetheless, FDA has concluded that it will not limit its participation in outside standard-setting activities to those groups "adhering" to § 861.30(a), except in the context of development of a proposed performance standard under section 514 of the act. As stated above, the procedures described in § 10.95 are adequate.

68. A comment said that any final policy should specify the requirements a voluntary standard-writing organization must meet to obtain support from the agency. Another comment stated that FDA should provide support only to the development of voluntary standards that directly contribute to the correction of identified device problems.

Paragraph 34 of this notice discusses the question of financial or technical support to voluntary standards organizations.

Criteria For Assessing the Adequacy of Voluntary Standards

69. A comment said that the criteria do not give sufficient attention to the procedures used by voluntary standards organizations in developing standards. The comment said that the provisions of § 861.30(a) are inadequate to ensure effective consumer participation or funding for such participation. As a result, the comment argued, industry will continue to dominate standard-writing organizations, which will continue to write inadequate voluntary standards.

Under the revised criteria to be used in assessing the adequacy of voluntary standards (see paragraph 9 of this notice), the agency considers the extent to which the voluntary standards process permits meaningful participation by manufacturers (especially small manufacturers), distributors, health care professionals, consumers, and regulatory agencies in the development of the voluntary standard. In addition, FDA's participation in voluntary standards organizations is limited to those organizations that conform to the procedures set forth in § 10.95. FDA therefore disagrees that the criteria for assessing the adequacy of voluntary standards give insufficient attention to the procedures used by voluntary standards organizations.

As explained in paragraph 67 of this notice, the provisions of § 861.30(a) do not apply to FDA's assessment of the adequacy of voluntary standards.

70. A comment said that the assessment criteria should require that (i) the development process permit meaningful participation by all interested persons, (ii) the standard would be unlikely to result in anticompetitive effects or excessively restrictive regulations that would tend to inhibit or foreclose device manufacturing, (iii) the process include provisions for appeal or raising objections, and (iv) adequate documentation exists to support the standard's rationale, explain the development process, and detail the standard's safety and effectiveness provisions.

FDA agrees with the comment and believes that the intent of the suggestions described in the comment has been addressed in the criteria for assessing the adequacy of voluntary standards when setting priorities for initiating proceedings to establish performance standards under section 514 of the act (see paragraph 9 of this notice).

Interactions With Manufacturers

71. Several comments asked whether and under what circumstances FDA would "interact" with (i) a specific manufacturer, (ii) several manufacturers of a device, or (iii) the device industry as a whole for the purpose of offering an opportunity to modify a device's design, performance, or labeling to solve a problem before initiating a proceeding to establish a performance standard under section 514 of the act. Another comment supported the statement in 1981 draft policy that in general FDA would review specific device problems with each responsible manufacturer and offer an opportunity to modify the device's design, performance, or labeling to solve the problem before initiating a proceeding under section 514 of the act. Three comments recommended that FDA not interact solely with manufacturers but include all interested persons, e.g., health care professionals. Other comments said that meetings with

manufacturers should be open to all affected companies.

FDA's interaction with individual manufacturers is based on the premise that each manufacturer has a responsibility to ensure that its devices are safe and effective. Some device problems are associated only with specific device products. In such cases, it is appropriate for FDA to work solely with the manufacturer of the device product to correct the problem. For this reason, FDA does not believe that it can adopt a blanket policy of interaction with all manufacturers of the product or with interested persons in general.

Whether FDA will interact with (i) a specific manufacturer, (ii) several manufacturers of a device, (iii) the device industry as a whole, or (iv) all interested persons before initiating a proceeding to establish a performance standard under section 514 of the act will depend on the facts and circumstances surrounding the device and problem involved. FDA, in setting a priority for initiating such a proceeding, takes into account the extent to which a voluntary corrective action on the part of one or more manufacturers of a device helps provide reasonable assurance of the safety and effectiveness of the device.

72. One comment argued that if a problem can be solved only by uniform action by all manufacturers, a standard is necessary and it is unlikely that the problem could be solved by FDA's interacting with one or two manufacturers.

FDA agrees that interaction with a single manufacturer may not be appropriate if a problem extends other manufacturers' devices. In such a case, other approaches, such as initiation of proceedings to establish a standard, develop a guideline, or promulgate a regulation may be appropriate. Each of these types of proceedings allows for public comment and provides an opportunity for affected manufacturers as well as other interested persons to interact with the agency.

Miscellaneous

73. Four comments suggested that any final policy should recognize the fundamental difference between diagnostic and other devices. Two of the comments said that different technical considerations apply to the development of standards for diagnostic devices than for other devices and may require a different type of standard-setting activity. According to the comments, diagnostic devices are used in a unique environment for fundamentally different purposes than most other devices. The comments suggested that FDA could, instead of establishing performance standards or taking other action that would regulate the manufacture and the performance of diagnostic devices, eliminate risks more rapidly by publishing warnings to physicians and "laboratorians" concerning the interpretation of test results after appropriate review of the data. According to the comments, in vitro diagnostic devices are used in the clinical laboratory to obtain results that aid in the diagnosis, management, and treatment of a patient. Thus, a particular test result normally is only part of the information to be considered in the evaluation and care of a patient. The comments argued that, in the real world of patient care, laboratory data, physical signs, and patient history, coupled with the attending physician's training, experience, and intuition, collectively provide the ultimate diagnosis; few test procedures used in clinical medicine are specific enough to be used by physicians for diagnosis without other information.

FDA agrees that there may be fundamental differences between diagnostic and other devices but does not believe that there is any need to reflect such differences in the final policy. FDA disagrees that publishing warnings to physicians and "laboratorians" concerning the interpretation of test results can be a substitute for a performance standard for a class II diagnostic device, although the availability to users of information about the interpretation of test results may affect the agency's priorities for establishing a performance standard for the device. Where necessary to provide reasonable assurance of safety and effectiveness, a standard will address, but need not be limited to, the performance characteristics of the device and the manufacturing processes and quality control procedures applicable to the device. A standard also may prescribe the form and content of labeling for a device, e.g., warnings, the results that may be expected if the device is used properly, and the ranges of accuracy of diagnostic information (§ 861.7).

C. Policy for Class II Medical Devices

This notice sets forth FDA's policy concerning the factors the agency uses to set priorities for initiating proceedings to establish performance standards for class II devices under section 514 of the act. A class II device is defined in section 513(a)(1)(B) of the act as a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, for which there is sufficient information to establish a performance standard to provide such assurance, and for which it is therefore necessary to establish a performance standard to provide reasonable assurance of its safety and effectiveness.

Priorities for Section 514 Standards

When setting priorities for initiating proceedings to establish performance standards, FDA will consider:

a. *The seriousness of questions concerning the safety or effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.* In applying the factors set out in this policy, FDA will rely primarily on the extent to which a device (1) presents serious questions concerning safety or effectiveness, including high risk associated with the use of the device, and (2) is in, or has the potential for, widespread use or is otherwise significant to the public health.

b. *The recommendations of FDA's advisory committees.* FDA advisory committees have considered information on the relative importance of the use of each device and the relative risks presented by each device and recommended a priority of "high," "medium," or "low" for the establishment of a performance standard for each device.

c. *The impact of an FDA guideline or recommendation.* Guidelines developed under § 10.90(b) may relate to performance characteristics, preclinical and clinical test procedures, manufacturing practices, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by FDA. If followed, a guideline may reduce concerns about the effectiveness of the device or reduce any risk to health from use of the device.

FDA may issue recommendations under § 10.90(c) about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency. For example, FDA has published recommendations for the use of specific area gonad shielding on patients during medical diagnostic x-ray procedures and for quality assurance programs in diagnostic radiology facilities. Each of these recommendations is intended to reduce unnecessary radiation exposure to patients. The gonad shielding

recommendation, for example, attempts to better define those situations where gonad shielding would be appropriate and to make practitioners aware of its utility, thus helping to minimize unnecessary genetic radiation exposure. The quality assurance recommendation addresses both radiation safety and effectiveness, in that it sets up a framework through which a diagnostic x-ray facility can help ensure more optimum functioning of equipment. This, in turn, can lead to lower radiation exposure of patients as well as better quality diagnostic images.

d. *The effect of a Federal standard or other regulatory controls under an authority other than the act.* Standards developed under authorities such as the Radiation Control for Health and Safety Act of 1968 can influence medical device safety or effectiveness. To date, nine standards for electronic products have been promulgated under the RCHSA, including standards for ionizing radiation emitting products, light-emitting products, microwave ovens, and ultrasonic therapy devices. Some medical devices may be subject to these standards or to regulatory controls under other Federal authorities. In setting priorities for initiating proceedings to establish performance standards under section 514 of the act, FDA takes into account the extent to which these standards or regulatory controls help provide reasonable assurance of the safety and effectiveness of a class II device.

e. *The impact of voluntary standards.* A number of organizations develop and establish voluntary standards for medical devices. In setting priorities for initiating proceedings to establish performance standards under section 514 of the act for particular devices, FDA takes into account the impact of existing voluntary standards on the safety and effectiveness of the devices. If adequate and adhered to, a voluntary standard can reduce concerns about device safety and effectiveness. When assessing the adequacy of a voluntary standard, FDA considers the extent to which:

1. Documentation supports the rationale for the safety and effectiveness provisions of the standard and identifies other factors considered by the drafters in developing or revising the standard;

2. Devices covered by the standard actually adhere to it;

3. The standard does not create anticompetitive effects or promote restraints of trade and does not contain excessively restrictive provisions that would hinder manufacturing of the device;

4. The process for the development of the standard includes consideration of sound scientific and technical information and permits revisions based on new information;

5. The process for standards development permits meaningful participation by manufacturers (especially small manufacturers), distributors, health professionals, consumers, other interested persons, and regulatory agencies having jurisdiction over the device to which the standard applies;

6. The adequacy of the standard is subject to periodic and timely review;

7. The standard stresses performance rather than design;

8. There are provisions for appeal by an interested person who objects to all or part of the standard;

9. The process for review of the standard considers the involvement of such devices in injury patterns; and

10. The standard includes provisions for testing to determine whether devices adhere to the standard.

The agency has undertaken and will continue a program to monitor device adherence to selected voluntary standards.

f. *The impact of activities authorized under the general controls provisions of the act.* The general controls provisions of the act, section 501 (adulteration), section 502 (misbranding); section 510 (registration, listing, and premarket notification); section 516 (banned devices); section 518 (notification and repair, replacement, or refund); section 519 (records and reports); and section 520 (general provisions, including current good manufacturing practices), apply to all devices, regardless of classification, and affect device safety and effectiveness. FDA considers the extent to which these controls help provide reasonable assurance of a device's safety and effectiveness.

g. *The effect of dissemination of information and educational efforts.* As a result of an FDA investigation of a device's deficiencies or misuse, the agency may disseminate information or engage in public education efforts concerning the device's safety or effectiveness. Such activities may include dissemination of data, e.g., problem definition studies, information received through FDA's Device Experience Network, or information received under Part 803 (medical device reporting) which is disclosable and which applies to a segment of the industry or to a problem with a generic type of device; FDA contacts, e.g., conferences, with health professional organizations, consumer groups, and manufacturers to discuss device issues; publication of articles in technical and professional journals or in Government publications, such as the "FDA Drug Bulletin"; and specific educational programs, e.g., criteria distributed to physicians on indications for certain x-ray examinations.

h. *The sufficiency of voluntary corrective actions.* Voluntary corrective actions taken by a manufacturer can help provide reasonable assurance of a device's safety or effectiveness. FDA may review a specific device problem directly with the manufacturer of a device and offer the manufacturer an opportunity to modify the device's design, performance, or labeling to help provide such assurance.

i. *Valid scientific evidence developed since classification.* FDA considers the extent to which valid scientific evidence of safety or effectiveness developed since classification tends to support or undermine the basis for the classification of a device.

j. *The existence of a petition for reclassification.* FDA considers the existence of a petition for reclassification of a device provided the agency tentatively concludes that the device should be reclassified.

k. *The impact of any other factors that affect a device's safety or effectiveness.* The agency does not intend to limit to factors a. through j. the factors used in setting priorities for initiating proceedings to establish performance standards. For example, the agency may take into account the likelihood of developing an FDA guideline to which devices will adhere or of developing an adequate voluntary standard to which they will adhere.

Invitation To Comment

Interested persons may at any time submit written comments about this notice to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 3, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-25064 Filed 10-22-85; 8:45 am]

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Wednesday
October 23, 1985

Part III

Federal Emergency Management Agency

Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants; Notice of Availability

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of a final guidance document for the evaluation of alert and notification systems for nuclear power plants and summary of comments on interim edition.

SUMMARY: FEMA is issuing FEMA-REP-10, *Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants*, incorporating public comments on the interim use draft, previously published as FEMA-43. Copies will be available for public distribution on November 1, 1985. Copies will be distributed for information and use to state and local governments with nuclear power plants operating, planned, or under construction; utilities; other affected federal agencies; and interested industry persons affected by nuclear power. Copies are available at the address listed below.

FOR FURTHER INFORMATION CONTACT: Craig S. Wingo, Chief, Field Operations Branch, Technological Hazards Division, Federal Emergency Management Agency, Washington, DC 20472 (Telephone 202-646-3026).

SUPPLEMENTARY INFORMATION: On September 15, 1983, FEMA published in the **Federal Register** a notice of the availability of FEMA-43, an interim guidance document titled *Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants*, for public comment and use pending the issuance of a final edition (48 FR 41516). This document was developed to elaborate upon the requirements of 44 CFR Part 350 related to alert and notification systems and to provide guidance regarding the evaluation of these systems. FEMA-43 intended to: (1) Assist state and local planners and utilities in understanding the acceptance criteria that FEMA will use to assess the adequacy of alert and notification systems; and (2) to assist FEMA personnel in uniformly interpreting and applying the applicable planning standards and criteria from NUREG-0654/FEMA-REP-1, Rev. 1, during actual evaluations of the alert and notification systems.

Public Comments

The notice of availability of FEMA-43 was published in the **Federal Register** on September 15, 1983, with a comment period through December 1, 1983. Specific comments were provided by six state government agencies, four individual utilities; three utility industry groups, two local government organizations, and one Nuclear Regulatory Commission (NRC) staff member. These comments and FEMA's response to them are summarized as follows:

Content of Submittals—One-half of those who provided comments, including all four of the individual utilities, two of the utility industry groups, and two of the states, expressed some concern about the level of detail required by FEMA-43 for alert and notification system design reports. These comments addressed the overall scope of the guide as well as specific aspects of the recommended format for submittals (Appendix 1) and the requirements for maps, case-by-case analyses of institutional alerting systems, presentation of the rationale for broadcast system selection, and description of the administrative means of alerting the public.

In response to these comments, FEMA re-evaluated its map requirements and eliminated the requirements for case-by-case analysis of institutional alerting systems and presentation of the rationale for broadcast system selection. FEMA-REP-10 summarizes the map requirements in Appendix 2, which includes modifications to eliminate requirements for duplicative information on map(s) and to indicate that any map(s) will be acceptable if they clearly and accurately depict required information. FEMA has also revised Appendix 1 in FEMA-REP-10 to eliminate prescriptive format requirements and to make it more useful as an aid for ensuring completeness in the preparation of alert and notification system sections of existing plans and for state and local personnel developing a plan for the first time. However, apart from those changes, editorial clarifications, and modifications made in response to other comments, FEMA believes that the level of detail required previously by FEMA-43 and now by FEMA-REP-10 is necessary and appropriate. In particular, the information required in describing the means of alerting is consonant with that specified in Appendix 3 of NUREG-0654/FEMA-REP-1, Rev. 1.

Relationship of FEMA-43 to Existing Plans and Guidance—Fourteen of the commenters raised issues concerning the relationship of FEMA-43 to existing plans and guidance. Two of the state government agencies, one utility, and the NRC staff member expressed concerns about the effect of FEMA-43 on existing plans. Four of the state and two of the local government agencies, all four utilities, and two of the utility industry groups took exception to NUREG-0654/FEMA-REP-1, Rev. 1, guidance quoted in FEMA-43. Finally, the NRC staff member noted that NUREG-0654/FEMA-REP-1, Rev. 1, is currently undergoing review and revision, and therefore, conforming changes to FEMA-43 may be required.

In response to these comments, FEMA notes that, prior to the publication of FEMA-43, approval of state plans under 44 CFR Part 350 was conditioned upon an evaluation, which could not be completed at that time on the adequacy of alert and notification systems. Those portions of such plans responsive to alert and notification requirements would be subject to review under FEMA-REP-10, and a final finding would be issued to grant full approval, if warranted. However, FEMA does not intend that FEMA-REP-10 require states to restructure or resubmit previously submitted plans (or even plans already prepared for submittal). In such cases, an attachment to the plan may be prepared addressing only the alert and notification system and referencing existing documents to the extent practical. FEMA also notes that the planning and preparedness standards and related criteria contained in NUREG-0654/FEMA-REP-1, Rev. 1, are incorporated in 44 CFR 350.5 directly and by reference. Comments concerning NUREG-0654/FEMA-REP-1, Rev. 1, are not appropriate to FEMA-43 and should have been provided in response to the publication or public comment of the proposed 44 CFR 350. Finally, FEMA agrees that criteria affecting alert and notification systems as well as other parts of 44 CFR 350 may change if NUREG-0654/FEMA-REP-1, Rev. 1, is modified at some future date.

FEMA-43 Acceptance Criteria—Twelve of those who provided comments raised issues related to acceptance criteria for specific alert and notification system components. One of those who commented felt that, overall, FEMA-43 emphasized the required content of the design report at the expense of providing specific criteria for reviewers to use in evaluating submittals. Addressing siren system criteria, one utility and a utility industry group recommended that field survey ambient sound level measurements include the full (rather than the one-third) octave band in which the predominant siren sound occurs. One local government group also recommended that siren systems be required to have backup power. Concerning tone alert radios, two

utilities and a utility industry group contended that the development and maintenance of a tone alert radio address register was overly burdensome and should be required only if public surveys indicate a problem with tone alert radio distribution. These groups also thought the requirement for annual written instructions was excessive. However, a local government commented that more frequent written instructions were required and that increased training was needed for institutional tone alert radio users. Addressing the Emergency Broadcast System (EBS), three state government agencies, all four utilities, and two utility industry groups commented on the recommendation that the broadcast of EBS messages at least every 15 minutes during a general emergency was excessive, particularly if a different message had to be prepared for each broadcast. One utility industry group also noted that since individual radio station participation in the EBS is voluntary, it may not be possible to obtain the formal participation agreements required in FEMA–43.

In response to these comments, FEMA has modified the field survey ambient sound measurement recommendations to permit use of the full octave band in which the predominant siren sound level occurs, and replaced the requirement for written agreements that individual broadcasting stations will participate in the EBS with a requirement for documentation indicating that they are able to participate in the EBS.

FEMA has not included a specific requirement that backup power be provided for siren systems for the following reasons. Due to electric power grid interconnections, the loss of normal power to a significant number of sirens would most likely occur coincident with a power outage covering the entire EPZ. Such large power losses are infrequent and are usually caused by adverse weather conditions. Since nuclear power plant general emergencies are extremely unlikely, the likelihood that these two events will occur simultaneously is extraordinarily small. A power outage may prompt many people to turn on their battery-powered radios in an attempt to determine its cause. In light of those considerations, FEMA does not believe it necessary to specifically require backup power for siren systems.

FEMA has not modified the guidance concerning tone alert registers and instructions. Several electric utilities have already developed tone alert radio registers without any apparent excessive burden. FEMA reviews of alert and notification systems have not identified any concerns about distribution of instructional materials. Should such concerns be identified during the public surveys conducted as a part of these reviews, FEMA will address them on a case-by-case basis.

The recommended minimum broadcast interval has not been changed because FEMA believes that frequent broadcasts are necessary to be certain that the public remains adequately informed during an emergency. However, FEMA notes that this broadcast interval is recommended rather than required and that, if no significant new information has developed during the 15-minute interval, it would be appropriate to rebroadcast the preceding message.

Drills and Exercise—The comments addressed four areas on the conduct and evaluation of drills and exercises. Four utilities and two utility industry groups commented that the purpose of communication drills was to test the equipment and system rather than to determine that specific individuals were available for a drill. One state agency commented that the maintenance of drill records for at least 5 years seemed excessively burdensome. One state agency, four utilities, and two utility industry groups disagreed with the exclusion of individuals with direct or supervisory responsibility for planning or operation of the alert and notification system from the exercise critique evaluation process. Finally, one state agency took exception to consideration of Planning Standard N in FEMA–43 since NUREG–0654/FEMA–REP–1, Rev. 1, makes no direct mention of its applicability to alert and notification systems.

In response to those comments, FEMA included modifications in FEMA–REP–10 to indicate that decision makers need not participate in communication drills, to eliminate the 5-year retention requirement for exercise and drill records, and to permit individuals with direct and supervisory responsibility for planning or operation of the alert and notification system to participate in the exercise criteria evaluation process. However, FEMA regards communication drills as more than mere tests of equipment. As stated in NUREG–0654/FEMA–REP–1, Rev. 1, "a drill is a supervised instruction period aimed at testing, developing, and maintaining skills." The skills referred to are those of the personnel responsible for operating the equipment. FEMA also believes that consideration of Planning Standard N in FEMA–REP–10 is appropriate since exercising the alert and notification system is an integral part of the exercise of overall emergency response capability.

Public Surveys—Six of those who provided comments addressed the public survey techniques that FEMA–43 specifies for use during the alert and notification system demonstration. Three utilities and a utility industry group recommended that the guide make it clear that the public survey will be conducted only for initial system approval and will not be repeated unless significant system design changes are made. One local government organization suggested that the survey include a determination of what the respondent in fact knows about the meaning of the alerting signal and what he or she was instructed to do on perceiving the signal. Finally, one state government agency suggested that the survey sample size be re-examined.

In response to these comments, the discussion of survey sample size in FEMA–REP–10 has been clarified. The survey sample size is determined using accepted standard statistical techniques discussed in numerous texts covering sampling theory. The specific derivation for this application is presented in Appendix 3 of FEMA–REP–10. However, FEMA has decided that once an alert and notification system has been officially approved under the FEMA–REP–10 process, future public surveys will not be required unless one of the following conditions is encountered:

—there is significant change in the emergency planning zone population around the nuclear power plant;
—there is significant modification to the physical components of the alert and notification system; or
—there is a serious problem identified in some aspect of the alert and notification system.

FEMA also notes that the Office of Management and Budget, in approving the public survey program, stated that FEMA should not be expected to make certain that the public has read or understands the alert and notification information provided to it.

Siren Testing and Operability—Two utilities and two utility industry groups recommended that the guide be modified to indicate that scheduled testing programs differing from the one specified in FEMA–43 may be acceptable.

In response to these comments, FEMA has adopted a less prescriptive approach to evaluating routine siren testing and operability that is described in Appendix 4 of FEMA–REP–10.

FEMA–43 Scope—Three state government agencies, one local

government organization, two utilities, and two utility industry groups commented on the scope of FEMA–43. One of the state government organizations, two utilities, and two utility industry groups objected to the statement in the introduction to FEMA–43 that "this evaluation guide may be expanded to encompass the review of the total state plan." These commenters felt that the guidance provided in NUREG–0654/FEMA–REP–1, Rev. 1, has been sufficient to date for reviewing state plans and it should be adequate for the future. However, two state government agencies and one local government organization favored some expansion of FEMA–43. One state agency noted that "it would be more practical to provide to the states a guide which addresses all 16 planning and evaluation standards." Other commenters recommended extending the guide to discuss portions of planning standards A, B, C, D, G, H, I, J, M, O, and P of NUREG–0654/FEMA–REP–1, Rev. 1, in order to fully address the alert and notification system.

In response to these comments, FEMA reviewed the scope of FEMA–REP–10 and determined that those NUREG–0654/FEMA–REP–1, Rev. 1, planning standards that are appropriate to an alert and notification system evaluation had been addressed. Since FEMA provides elaboration on standards and criteria of NUREG–0654/FEMA–REP–1, Rev. 1, other than those applicable to alert and notification, as needed, the statement that the evaluation guide may be expanded to encompass a review of total state plans has been deleted.

Clarifications—FEMA–REP–10 also incorporates numerous clarifications and editorial changes from FEMA–43 that were prompted by the public comments. The most significant of these were made to indicate clearly that alert and notification system communication links may involve emergency response facilities other than the Emergency Operations Facility and that only the NRC has legal authority to make determinations regarding overall public health and safety during operation of nuclear facilities.

Dated: October 16, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Research on the Impact of Deinstitutionalization of Status Offenders; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Research on the Impact of the Deinstitutionalization of Status Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of solicitation of applications to conduct research on the impact of the deinstitutionalization of status offenders.

SUMMARY: This notice announces a new Office of Juvenile Justice and Delinquency Prevention (OJJDP) research program entitled, "Research on the Impact of Deinstitutionalization of Status Offenders."

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." The removal of minor, non-criminal juvenile offenders from secure detention and correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth and to reserving the resources of the juvenile justice system for dealing with more serious offenders.

It has been approximately 20 years since the movement to deinstitutionalize status offenders (DSO) began. As each state moved to DSO there were legislative changes, policy development and revision, and practice changes in various sequences. These changes, in most cases, led to changes in the way in which youth who committed status offenses were responded to by different systems in the community.

Given the tremendous amount of energy and resources that have been committed to DSO, OJJDP feels it is necessary to systematically examine the positive and negative impact that deinstitutionalization of status offenders has had on youth, both in terms of exploitation and subsequent delinquency and on youth-serving public institutions and private agencies.

Public or private, not-for-profit and for-profit, organizations are invited to submit applications to receive a grant from OJJDP. Applicants are invited to present alternative design strategies to that proposed in this solication.

OJJDP will select the applicant which presents the soundest and most cost-effective approach, and which best demonstrates the organizational capability to conduct large scale, multi-site research; and policy analysis and research on the juvenile justice system and other public and private youth serving systems and/or the criminal justice system. The project period is for thirty-six months. OJJDP has allocated up to $800,000 for the first twenty-four months budget period. Up to $200,000 will be made available for the third year. Applicants are encouraged to present cost-competitive proposals. The deadline for submission is January 10, 1986.

This competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A, published August 2, 1985 at 50 FR 31365–31367.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, NIJJDP, OJJDP, 633 Indiana Avenue, NW., Room 778, Washington, D.C. 20531; telephone (202) 724–5929.

SUPPLEMENTARY INFORMATION:

Request for Proposals—Research on the Impact of Deinstitutionalization of Status Offenders

I. Introduction

This solicitation to conduct research on the Impact of Deinstitutionalization of Status Offenders is issued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. The OJJDP was established by the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. This program is pursuant to Part C, Section 243, of the JJDP Act which authorizes OJJDP to "conduct encourage and coordinate research and evaluation into any aspect of juvenile delinquency, . . ." and ". . . provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and effectiveness of such programs."

Public or private agencies are invited to submit applications proposing research designs to examine the impact of a major policy thrust in juvenile justice: deinstitutionalization of status offenders. The approved funding level will be based on the scope of work. One project will be funded as a result of this competition. The project period is three years. Based on the need for additional research or refinement and the availability of funds, a six month project period extension may be considered.

II. Background

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." By the late 1960's, there was growing concern over the capability of the juvenile justice system to serve the needs of children and protect the public. The removal of minor, non-criminal juvenile offenders from correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth, and to reserving the resources of the system for dealing with more serious offenders.

The movement to remove non-criminal offenders from secure detention and correctional facilities began at the state and local level, and was embraced at the Federal level by the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415). A major mandate of the Act was to encourage the deinstitutionalization of status offenders and the development of community-based alternatives to secure detention and correctional facilities for these youth.

There has been considerable debate over the concept and definition of a "status offender." Most of the recent research suggests that juvenile offenders engage in a variety of delinquent and non-delinquent, but socially troublesome, acts. This program will focus on youth who come to the attention of the juvenile justice system for acts which would not be criminal if committed by an adult: e.g., running away, curfew violation, incorrigibility, alcohol consumption and truancy.

The National Academy of Sciences (NAS) conducted a major assessment of the development and implementation of the deinstitutionalization policy (National Academy Press, Washington, D.C. 1982). The NAS concluded that while the Federal government served as a significant catalyst and provided resources; legislation, policies and programs were developed primarily at the state and local levels. Deinstitutionalization of status offenders assumed different forms. The major strategies consisted of: decarceration (removal of status offenders from secure detention and correctional facilities); diversion (prevention of status offenders from entering secure detention or correctional facilities); divestiture (removal of status offenders from court jurisdiction); and "no arrest" policy (police policy to ignore or divert status offenders). States

have implemented various strategies or combinations of these strategies.

Each strategy may have involved all or some of the following changes, in varying sequence: Legislative changes, policy development and revision, and changes in operational practices. These changes, in most cases, led to changes in the way in which youth who commit status offenses are responded to by different systems in the community today.

All of the strategies generally reduced the role of one or more parts of the juvenile justice system in dealing with these youth and thereby had implications for families, and public and private youth-serving agencies including welfare, mental health, education, volunteer organizations, etc. While a major goal of the deinstitutionalization movement was to "help" status offenders, there is considerable debate as to whether or not this policy has inadvertantly created problems for many of the youth it was designed to help. There is concern that children who are victims of neglect, chronic runaways who become exploited and non-serious offenders are often diverted away from the system or released with no requirement to be involved in programs they need to be safe and become productive citizens. Without adequate self-control, discipline or structure in their lives, many of them continue committing status and more serious offenses until they ultimately penetrate the system as delinquents.

There was considerable variation in the amount of existing and new resources available to other organizations to handle new clientele. It is assumed that the particular deinstitutionalization strategy, the process through which deinstitutionalization was implemented, and the resources and response of other youth-serving agencies, independently and jointly affect the juveniles they are aimed at helping.

National data on juvenile detention and correctional facilities indicates that the number of status offenders in public correctional institutions decreased by 67% from 1974 to 1983. However, there has been an increase in commitments to private facilities. OJJDP has also sponsored several studies which focused on legislative and policy-based efforts to document and assess the process of deinstitionalization. These included an evaluation of a multisite demonstration program to deinstitionalize status offenders and develop alternatives to secure confinement *(National Evaluation of the Deinstitutionalization of Status Offender Programs,* Kobrin and Klein, 1982); an assessment of the reform of the Washington juvenile justice code *(An Assessment of Juvenile Justice Reform in Washington State,* Schneider and Schram, grant #79–JN–AX–0028); and an assessment of California's AB3121 legislation *(Implementation of New Juvenile Justice Legislation,* Teilman et. al., grant #78–JN–AX–0034). A recent review entitled *The Impact of Deinstitutionalization on Recidivism and Secure Confinement of Status Offenders* (Schneider, A.L., 1985) revealed that deinstitutionalizing status offenders had virtually no effect on recidivism. (Recidivism was not a primary focus of most evaluations, and there were serious methodological flaws in those that analyzed recidivism.) Note: Copies of these materials are available from the Juvenile Justice Clearinghouse, NCJRS, at (800) 638–8736.

Overall, there have been relatively few attempts to systematically evaluate the *impact* of a policy which has been, at least in many jurisdictions, central to the recent development of the juvenile justice system in this country. Moreover there is a growing concern regarding the potential unintended consequences of deinstitutionalization of status offenders, and particularly chronic status offenders. For example, are there some juveniles who need protection or services who, at least in part as a result of DSO, are "falling through the cracks"? Have alternative service networks developed and how do they identify potential clients? Are providers being held accountable for meeting the needs of these youth? Do children who commit status offenses become involved in more serious crime because of a lack of appropriate intervention? Is the extent of their involvement related to the level of supervision or services they receive?

Given the tremendous amount of energy and resources that has been committed to DSO and the development of alternatives, OJJDP feels it is essential to systematically examine the impact that deinstitutionalization of status offenders has had on youth, and on youth-serving public institutions and private agencies.

III. Program Goal

To determine the impact that DSO has had on youth, the juvenile justice system, other youth-serving agencies, and the public.

Major Objectives

- To identify the range of current philosophies, policy (legislative, judicial and administrative), and practice with regard to deinstitutionalization of status offenders in the country.
- To select a number of local jurisdictions representative of the range of philosophies and implementation strategies and to document the extent to which the policies are being implemented.
- To identify the perceived and actual barriers to effective implementation and significant unanticipated consequences of the policy for justice and service agencies, parents, youth and the public.
- Within these communities, determine the extent to which youth involved in non-criminal misbehavior are viewed by parents, the public and personnel in justice agencies, schools and youth-serving agencies, to be at risk of exploitation and therefore in need of protection, and/or at risk of involvement in delinquent or criminal activities and therefore in need of control and supervision.
- To examine the availability and appropriateness of resources devoted to these populations and to assess the effectiveness of alternative dispositions on recividism and exploitation among youth who commit status offenses.
- To identify and assess the adequacy of the community accountability structure for ensuring that the needs of youth who commit status offense are being met.
- To identify exemplary strategies which have sufficiently addressed the underlying issue of child protection without reverting to the indiscriminate detention and incarceration of children for troublesome but noncriminal misbehavior in secure facilities.

IV. Strategy

The research should be designed to determine the effects, positive and negative, that deinstitutionalization of status offenders has had on youth, the juvenile justice system, other public and private youth serving agencies, and the public. It should be designed to assess current policy and practice, in different states with local jurisdictions that are representative of the wide range of philosophies and implementation strategies. States and jurisdictions should be selected based on well-justified criteria. Consideration should be given to variation in: (1) Philosophy and policy, (2) strategies of implementation, (3) the level of resources committed to DSO, and (4) population density. The nature and quality of available case data should be carefully considered when selecting states and jurisdictions for this research.

First, an analysis of current state legislation and policy should be undertaken to finalize study site selection. Second, the extent to which

legislation and policy is translated into practice at the local program level should be examined. Third, the impact of policy and practice at the local level on exploitation and recidivism among juvenile status offenders, victims and society, the justice system, and on other serving agencies should be examined. This should include an assessment of the anticipated and unanticipated consequences of full, partial, or selective implementation of codes and/or policies. The component focused or impact on juvenile deliquency, crime and exploitation may be retrospective and prospective and should include a minimum of three years of data.

Efforts should be made to identify DSO strategies which have effectively addressed the issues of appropriate handling of status offenders, particularly chronic status offenders, *and* child protection.

The selection and justification of the research strategy should take into account the controversial nature of deinstitutionalization, that Federal philosophy has changed significantly over the past decade, and that this is a federally-funded study.

V. Eligibility Criteria

Eligible applicants include public and private not-for-profit and for profit research agencies or organizations. Applicant agencies or organizations may submit joint proposals with other organizations provided one is designated in the application as the applicant and any co-applicants are designated as such. Together co-applicants must meet the eligibility requirements specified below.

The applicant must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of large scale, multi-site research, policy analysis, and research on the juvenile justice system, the criminal justice system, and other related public systems.

B. Demonstrated knowledge of the issues associated with the deinstitutionalization of status offenders.

C. Prior experience in the development, maintenance and analysis of a large computerized data base.

D. The applicant must have the management and financial capability to effectively implement a project of this scope and complexity.

In order to maximize competition in the award of this research grant, for profit organizations are eligible to apply, provided that they certify compliance with the following two agency policy requirements:

A. The OJJDP grant award must not be used to support the normal profit making operations of the organization, but must serve to stimulate the legislatively authorized research and evaluation objectives of OJJDP.

B. For at least one year following the termination of this award the recipient will not compete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

VI. Minimum Program Application Requirements

Applicants must complete all parts of the Application for Federal Assistance, (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. All applications must also include the information described in this section of the solicitation. The program narrative shall not exceed 70 *double-spaced* pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000. The budget must include funds for a three person project advisory committee to meet three times during the study. Applicants should highlight cost effective features of their proposals.

In submitting applications which contain more than one organization, the applicant must clarify the relationships among the parties in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsive for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the program application:

(1) A concise description of your organizational experience which would qualify you to achieve the goal and objectives of this research and demonstrates substantive and financial capability to effectively administer the project.

(2) A succinct statement of your understanding of the goal and objectives of research on the impact of deinstitutionalization of status offenders. Potential threats to validity of the research, including the issues of credibility and objectively, should be addressed.

(3) Analytical review of the relevant theoretical and empirical research.

(4) The conceptual framework which will guide the proposed approach to the research.

(5) A detailed description of the research design should be presented including state and jurisdiction selection criteria, sampling plans, data collection activities, written verification of data access and cooperation from proposed study sites and preliminary analysis plans.

(6) An implementation plan which describes how the research will be managed and includes an organizational chart depicting the roles of key staff (and subcontractors, if relevant); a list of key personnel responsible for conducting the study. Detailed position descriptions, qualifications and selection criteria must be presented for each position. Individuals' resumes may be submitted as appendices. Please note that OJJDP will attach a special condition that requires prior OJJDP approval for hiring all key project personnel.

(7) A discussion of how data access and privacy issues will be addressed including a Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, examples of which are available on request.

(8) A detailed time-task plan which includes major milestones and a schedule for product completion.

(9) A description of interim and final products, including purpose, audience, and usefulness to the field.

(10) Description of sampling techniques with justification that sample size is adequate for the project.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In

general all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in research implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 341366–31367. The selection criteria and their point values (weights) are as follows:

(1) The problem to be addressed by the project is clearly stated—(5 points)
(2) Understanding of the goal and objectives of the DSO research project uncluding threats to the credibility of the research—(10 points)
(3) Soundness of the research design—appropriateness and innovativeness of the research design and data collection strategy for meeting the goals and objectives. Potential utility of proposed products—(30 points)
(4) Qualifications of key staff-extent and relevance of the qualifications and experience of key staff to manage and conduct this research—(15 points)
(5) Organizational capability—The extent and quality of experience in conducting policy impact research. Experience in conducting multi-site research of similar scope—(10 points)
(6) Budget—completeness, reasonableness, and appropriateness of the costs in relation to the proposed strategy—(10 points)
(7) Clarity and appropriateness of the implementation plan—soundness of project management structure and feasibility of the time-task plan—(10 points)
(8) Evidence of knowledge of related theoretical and empirical research—(10 points)

The results of peer review will be a relative aggregate ranking of applications in the form of "Summary Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selecting of the application for funding.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by November 15, 1985. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist NIJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

3. The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as April, 1986.

4. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on January 10, 1986. Those applications sent by mail should be addressed to Richard Sutton NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC. 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP, Room 780, 633 Indiana Avenue, NW., Washington, DC. between the hours of 8:00 a.m. and 5:30 p.m. except Saturdays, Sundays or federal holidays.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention, Request for Proposals—Program of Research on the Impact of the Deinstitutionalization of Status Offenders.

[FR Doc. 85-25282 Filed 10-22-85; 8:45 am]
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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 139
Revision of Airport Certification Rules; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 24812; Notice No. 85-22]

Revision of Airport Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise and reorganize Part 139 of the Federal Aviation Regulations (FAR) which sets standards for the certification of airports serving certain air carriers. The FAA's experience in the airport program, together with recommendations from the National Transportation Safety Board, comments from the public sector, and a study commissioned by the FAA, show that Part 139 should be amended to clarify certain provisions, change some requirements which are unduly costly, add some safety requirements, and reorganize the part so that it may be better understood. This notice contains a proposed revision of Part 139 which should make it more easily understood and, therefore, less burdensome to comply with and enforce, and which alters certain requirements.

DATE: Comments must be received on or before January 21, 1986.

ADDRESS: Send comments on this proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24812, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Jr., Safety and Compliance Division (AAS-300), Office of Airport Standards, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-3087.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before January 21, 1986, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket.

Commenters wishing the FAA 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 Number 24812." The postcard will be date and time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-3058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Discussion of the Proposed Rule

Background

Since 1970, section 612 of the Federal Aviation Act of 1958 (FA Act) (49 U.S.C. 1432) has empowered the Administrator to issue airport operating certificates to airports serving certain air carriers and to establish minimum safety standards for the operation of those airports. Part 139 of the FAR, adopted on June 12, 1972, effective July 21, 1972 (37 FR 12278; June 21, 1972), as amended, prescribes rules governing the certification and operation of land airports serving any passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers.

With experience gained and advancements made since the adoption of Part 139, with recommendations made by the National Transportation Safety Board (NTSB), and with comments offered by various segments of the public, it has become apparent that substantial revisions of Part 139 are needed. First, the organization of the part is at times cumbersome and confusing. Second, certain sections require clarification so that airports can better understand the requirements and the FAA can better enforce them. Third, some items require revision to make them more cost beneficial or to address safety problems which have been identified.

The FAA has had substantial input from the public and the NTSB in developing this proposal. Recognizing the need for reconsideration of the crash, fire and rescue requirements, the FAA contracted with H. H. Aerospace Design Company, Inc., to study this area and make recommendations for changes. H. H. Aerospace produced a four-volume report and offered a number of recommendations. A public meeting was held on August 10, 1982, at which the contractor presented a briefing to the public on its findings. Comments were invited, and many were received. On June 12, 1980, the FAA published a notice of proposed rulemaking, proposing, in part, to amend the crash, fire and rescue equipment requirements in Part 139. (48 FR 39858). These proposals were later withdrawn because of the FAA's ongoing analysis of the problem. See 48 FR 25211 (June 6, 1983). However, a number of comments were received which were considered in connection with this proposal.

On November 22 and 23, 1982, the FAA held listening sessions with representatives of a number of groups interested in the airports program. The purpose was for the FAA to present problem areas and possible solutions, and to obtain input which would assist the FAA in considering future rulemaking, relating to such areas as crash, fire and rescue requirements and fuel handling problems.

On July 14, 1983, the FAA held a public meeting to discuss airport certification problems and possible solutions, and solicited comments and suggestions. A number of interested persons participated, offering oral and written statements.

The NTSB has issued safety recommendations with suggestions for improving safety at certificated airports in several areas.

The comments received in each of these cases represent views from a Federal agency, airport management, pilots, airlines, professional firefighters, consumer groups, state and local governments, and other concerned persons. It is from analysis of these

comments, together with experience gained over the years, that the FAA developed the proposals contained in this notice.

Organization

Part 139 currently sets forth in Subpart D the equipment, procedures, personnel and facilities needed to be eligible for certification. Section 139.81 then requires that the airport must be maintained in at least the condition in which it was certificated. Subpart E contains operations rules relating to ongoing maintenance of the airport. This organization has resulted in some difficulty in using Part 139. In some cases there are two sections dealing with the same subject. Certain physical specifications for pavement areas, for instance, are set out in § 139.43 of Subpart D, while the requirements for maintaining these pavement areas are in § 139.83 of Subpart E. Also, it is a bit awkward to apply Subpart D rules, which generally begin "the applicant for an airport operating certificate must show . . .," to airports which already have certificates. In addition, a separate subpart, Subpart G, addresses requirements for heliports, although there are no certificated heliports and few, if any, are expected to be certificated in the future, and the requirements are largely the same as those for other airports.

The FAA proposes to substantially reorganize Part 139. All of the requirements for equipment, facilities, maintenance procedures, and personnel would be found in Subpart D—Operations. Subpart A—General, would contain general rules such as definitions. Subpart B—Certification, would state which airports must be certificated, and would contain general rules relating to the issuance of certificates. Subpart C—Certification Eligibility, would contain rules for the preparation and maintenance of the operations manual or operations specifications. The requirements for heliports would be integrated into those for other airports.

The following is a description of each proposed section. The corresponding current section is entered in brackets beside the proposed rule, and any changes proposed are explained.

Subpart A—General

Section 139.1 Applicability [§ 139.1(a)]

This section would be unchanged, except that definitions would be moved to a separate section.

Section 139.3 Definitions [§ 139.1(b)]

"Air operations area" would no longer be used in the proposed rule. The term "movement area" would be used instead.

"Air carrier aircraft" would be used to refer only to aircraft with more than 30 passenger seats which are operated by an air carrier, consistent with the applicability of this part.

"Air carrier user" would be unchanged.

"Airport" currently is defined in Part 139 as an area used "regularly," and "regularly" is defined in terms of the frequency of aircraft operations. However, it is the FAA's policy that no air carrier aircraft with a seating capacity of more than 30 passengers should operate into an uncertificated airport, regardless of the frequency with which that airport serves aircraft. This policy is currently indicated in § 121.590, which prohibits any air carrier from operating such an aircraft into an uncertificated airport, unless otherwise authorized by the Administrator. The proposal would delete the word "regularly" from the definition of airport, making clear FAA policy.

"AFFF" means aqueous film forming foam, a chemical used in fire fighting. This material is widely used and understood in the industry.

"Certificate holder" would be used throughout the part to refer to the holders of both airport operating certificates and limited airport operating certificates. The definition makes clear, however, that while many sections in Subpart D state that "each certificate holder shall" comply with certain requirements, the holder of a limited airport operating certificate is not a "certificate holder" for purposes of that section unless its operations specifications require compliance with that section.

"Certificated airport" would no longer be used.

"Heliport" would be defined consistently with "airport."

"Index" is a term used in the crash, fire and rescue equipment requirements found in proposed § 139.313. The term is used in the current rule but is not specifically defined.

"Movement area" is a new term introduced that would help define those areas of an airport which must conform to certain rules, such as those relating to pavement areas found in proposed § 139.305.

"Operation" would remain unchanged.

Section 139.5 Airport certification standards and procedures. [None]

This section would point out that FAA Advisory Circular series 150 provides standards and procedures which are acceptable for compliance with certain of the requirements in this part. An applicant or certificate holder would meet the requirements of Subpart C and D by adhering to these Advisory Circulars or by using standards or procedures deemed by the Administrator to provide an equivalent or superior level of safety. Paragraphs throughout the proposed part would identify where a specific Advisory Circular is available for guidance.

Subpart B—Certification

Section 139.101 Certification: General. [§§ 139.3, 139.12a]

There essentially would be no change from the corresponding current regulation. An airport cannot accept passenger operations of air carrier aircraft having a seating capacity of more than 30 passengers unless it holds either an airport operating certificate or a limited airport operating certificate, as appropriate, and meets the requirements of its certificate, the applicable sections of Part 139, and its operations manual or operations specifications.

Section 139.103 Application for certificate. [§ 139.13]

This section essentially would be unchanged from current § 139.13, except that this section would delete the current requirement that the applicant submit its application at least 120 days prior to the intended date of operation. The FAA does request that applicants give it as much notice as possible prior to intended dates of operation. It may take a significant period of time for the FAA to identify all problem areas and for the airport to have them corrected. However, the FAA has worked with applicants to bring the airport into compliance with all necessary safety rules on a few weeks' or even a few days' notice when necessary for special situations. The FAA tries to be as responsive as possible to the needs of applicants to at times certify airports on short notice, and does not wish applicants to believe that certification is not possible in less than 120-days' notice. On the other hand, there have been times when certification has not been accomplished within 120 days. For these reasons, the 120-day notice requirement would be deleted from the rule.

Section 139.105 Inspection authority. [§ 139.5]

This provision would be essentially unchanged from the corresponding current regulation, except that it would be clarified to specify that holders of limited airport operating certificates are

subject to inspection by the Administrator.

Section 139.107 Issuance of certificates. [§§ 139.11, 139.12a]

Essentially, the requirements would be unchanged from the current corresponding sections. The requirements for the issuance of a limited airport operating certificate are clarified to explain that, with this certificate, the Administrator makes an individual determination as to what is needed to provided a sufficient level of safety for the airport and operations involved. For instance, on airport with a short runway on a plateau was not required to fully comply with the safety area rules, but was limited to accepting only short takeoff and landing aircraft under its certificate.

Section 139.109 Contents of certificate. [§ 139.15]

The effective date would be added.

Section 139.111 Duration of certificate. [§ 139.17]

Instead of the current wording, which provides for suspension or revocation for any cause that would have been grounds for denying a certificate, the proposed rule would provide for suspension or revocation if the certificate holder fails to comply with any requirement for the FA Act, Part 139, the certificate, or the operations manual or operations specifications. This is a less awkward manner of stating the possible grounds for suspension or revocation, and makes more clear the requirements with which the certificate holder is expected to comply. The proposal would also permit the Administrator to reduce an airport operating certificate to a limited certificate if it appears that the airport is not and will not be serving scheduled operations. This would allow the FAA to reduce its workload associated with the airport, yet would ensure that the airport continued to comply with those safety rules considered necessary for current air carrier operations taking place at the airport.

Section 139.113 Exemptions. [§ 139.19]

The procedures for petitioning for an exemption would not be changed.

Section 139.115 Deviations. [§139.21]

This provision would not be changed.

Subpart C—Certification Eligibility

Section 139.201 Airport operating certificate: Airport operations manual. [§ 139.31(a)]

The proposal essentially would be the same as the corresponding current section. The rule would make clear that, if any items are in the manual which are not required by the Administrator to be included, those items would not be deemed to be part of the approved airport operations manual and the Administrator would not require compliance with those standards. For instance, some airports include in their operations manual not only items required under Part 139, but also many other items related to the operation of the airport, such as police procedures and baggage handling procedures. Under the proposal, it would be clear that FAA would not require the certificate holder to comply with such items.

Section 139.203 Preparation of airport operations manual. [§ 139.33 (a), (b), (c), (f), (g)]

Minor clarifications would be made, including that the manual must be in writing and signed by the applicant, must contain each current exemption issued for the airport under this part, and be organized in a specified manner.

Section 139.205 Contents of airport operations manual. [§ 139.33 (d), (e)]

This section would be considerably expanded over the current rule. In addition to the general requirement of proposed §139.203 that the manual contain all procedures, facilities and equipment used to comply with Subpart D, §139.205 would provide a list of sections and subjects, which the manual must address. This would assist applicants in understanding what must be included in the manual.

Current §139.33(d) requires in part that the manual include a description of arrival and departure routes. This would be deleted because such information has not been found to be needed in connection with certification under Part 139.

The description of the terrain features of the airport would be expanded to include the access roads, as described in §139.315(g), which are designated for use by firefighting and rescue vehicles.

Section 139.207 Maintenance of airport operations manual. [§ 139.31 (b), (c)]

The proposed section would clarify the certificate holder's responsibility to provide the Administrator with a current copy of the airport operations manual. When initially applying for a certificate a copy is provided to the FAA. The proposal makes clear that a copy of each change made thereafter must also be provided.

Section 139.221 Limited airport operating certificate: Airport operations specifications. [§ 139.12(a)]

The current rule does not specifically require that the applicant must prepare the operations specifications. The proposed rule would clarify that such action is required. The FAA does work closely with applicants, particularly those who need a certificate on short notice, to quickly develop acceptable operations specifications. As with proposed §139.201, the Administrator would only approve those items required under this part.

Section 139.223 Preparation of airport operations specifications. [None]

This section would provide clarification as to the contents of the operations specifications, similar to the requirements for operation manuals.

Section 139.225 Contents of airport operations specifications. [None]

This section would provide additional clarification as to what is required in operations specifications.

Section 139.227 Maintenance of airport operations specifications. [None]

These provisions would be the same as those for operations manuals.

Section 139.229 Amendment of airport operations manual or airport operations specifications. [§139.9]

This section essentially would be unchanged from the current rule, except that it would clarify the certificate holder's right to petition the Associate Administrator for Airports for reconsideration of an emergency amendment.

Subpart D—Operations

Section 139.301 Operations rules: General. [§139.81]

The intent of the section would be unchanged. However, instead of stating that the certificate holder must have sufficient personnel and require the personnel to comply with the approved airport operations manual or operations specifications, the rule would simply require the certificate holder to operate in accordance with those documents.

Section 139.303 Personnel. [§ 139.23]

This section would be identical to the current rule.

Section 139.305 Pavement areas. [§§ 139.43, 139.83, 139.123]

The requirements regarding pavement areas would be consolidated into one section, except that a separate section would be devoted to snow and ice

removal. The current rule requires the certificate holder to repair each "crack, hole or rough area" in a runway pavement on the airport that exceeds 3 inches across or 3 inches deep. The NTSB and others have stated that there has been some confusion as to how to apply this standard. For instance, if a crack is 2 inches wide and 6 inches long, is it more than 3 inches across? The proposed rule would specify a maximum surface area of 12 square inches to more specifically identify the conditions which must be repaired. In addition, it would refer only to holes, which includes cracks and rough areas that meet the stated dimensions.

Section 139.307 Safety areas. [§ 139.45]

Currently, Part 139 does not require that an airport maintain safety areas around its runways or taxiways. The proposed rule would require that each runway and taxiway available for air carrier use has a safety area, to the extent practicable. If a full safety area was not practicable or economically feasible the certificate holder could be relieved from this requirement. The Administrator could then provide whatever limitations were necessary to maintain safety.

The current rule provides that those safety areas that do exist must conform to criteria in effect at the time of construction of the runway. The proposal would, in addition, require that the safety areas conform to criteria in effect at the time of an expansion of a runway, or at the time of airport certification. This provision would reduce the extent to which certificate holders would be relieved from complying with new safety criteria as it is developed by the Administrator. An exemption would be available if full compliance would not be practicable or would be unduly costly.

The proposed paragraph (d) would specify a certificate holder's duty when there is any change in a safety area or when a new movement area or extension of a movement area is constructed. In these situations the certificate holder would not be allowed to permit air carrier use of the movement area until the Administrator approves of such use.

Section 139.309 Lighting and marking of movement areas. [§§ 139.47, 139.87, 139.103]

The proposal would merge the rules for lighting and marking into one section.

The current rule does not require an airport to have any particular lighting or marking, but does require that the certificate holder maintain the specified lighting and marking if it is on the airport. Proposed § 139.309(a) would require that each airport have certain minimum lighting and marking systems, including signs to identify taxiing routes, runway marks appropriate to runway use, taxiway centerline and edge markings, and holding position markings. Proposed § 139.309(b) would require that each airport that is available to air carrier users during hours of darkness or conditions below VFR minimums have appropriate lighting and marking systems to support its approved approach procedures, as well as a rotating beacon. This change is needed to ensure that certificated airports have at least the minimum marking and lighting considered essential for safe operations. The marking and lighting which would be required by this proposal are basic developmental items which have been eligible items under grant programs for many years. Therefore, the vast majority of affected airports now have these lighting and marking systems. The FAA would work with airports whose lighting and marking systems do not comply with current standards to bring them into compliance over a 4 to 5-year period. It is expected that the economic impact of this proposal would be minimal.

The terms used to describe the lighting would be changed to conform to currently used terminology. The marking provisions would be essentially unchanged except to make clear that the runway markings must be appropriate for whatever approaches have been assigned.

Section 139.311 Snow removal. [§§ 139.83(b), (d), 139.85, 139.123, 139.125]

The current rules provide that snow and ice shall be removed promptly, describe the sand to be used on ice, and regulate the height of drifted and piled snow. They do not specifically require that the airport have a snow removal plan or specify at what point snow removal operations must begin.

Although current Part 139 requires that the airport operations manuals address the means of compliance with each certification rule, there has been some confusion in the industry as to whether a snow removal plan specifically is required. The proposal would clarify that a written snow removal plan is required at locations where snow conditions are likely to exist. In many cases where there is not a written plan, there is an informal plan which airport operators have developed based on years of experience. The proposal would require the plan to be written down. The FAA could review the plan to make sure that it is adequate, and the plan would be available for the use of airport employees in carrying out their duties under the plan.

In response to an NTSB recommendation, the proposed rule would contain more definite standards as to when snow, ice, and slush removal must begin. The proposal would add the requirement that ice removal begin as soon as its presence is identified, and that snow and slush removal would commence as prescribed under the airport's snow removal plan. There should be no ice on movement areas used by air carrier aircraft. The amount of snow and slush which may be tolerated varies widely according to such factors as how wet the snow is, the condition of the movement area surfaces, and local weather conditions. The snow removal plan would specify when the certificate holder must begin to remove the snow, taking into account these individual factors.

The proposal would continue the current rule regarding the height of drifted or piled snow, with one exception. The current rule provides that an aircraft must be able to clear the piled or drifted snow when the aircraft's most critical landing gear is located at any point of the full strength edge of the runway or taxiway. The proposal would refer simply to the landing gear, not the most critical landing gear, because there has been confusion over the definition of critical landing gear.

The current rule provides that if any sand is used on ice on a runway, it must be free of corrosive salts, and must adhere to snow or ice sufficiently so as to minimize aircraft engine ingestion of the sand. The proposed rule expands this to refer not only to sand, but to apply to any material used for snow and ice removal. This change would ensure the use only of materials which would not create an undue hazard.

Other than the items mentioned above, the proposed rule would not contain detailed requirements for snow removal plans. There is a very wide variety of snow and icing conditions encountered throughout the country, and it would be impractical to write a detailed standard which could apply to each airport. Further, many certificate holders over the past years have developed snow removal plans which work well on their own airports. The proposed rule would require certificate holders to have a written plan and comply with the standards in the rule, but would also leave them with significant flexibility to determine, subject to approval by the FAA, the

procedures and equipment which work best for their individual airports.

Section 139.313 Airport firefighting and rescue equipment and service: Index determination. [139.49, 139.89, 139.105, 139.127]

Currently, the level of firefighting or rescue equipment and service required on certificated airports is determined by the length and frequency of air carrier aircraft being served. This basic scheme would not be changed under the proposed rule. Proposed § 139.313 (a), (b), and (c) would reword the provisions as to how to determine the applicable index, to make the provisions more easily understood.

The current rule is based in part on the average scheduled departures of large air carrier aircraft. The proposed rule would be based on the average scheduled departures during the busiest three months of the year. This would ensure that airports have an adequate level of service during high-use periods, and is consistent with the guidance issued by the International Civil Aviation Organization (ICAO). Note that, at times when the actual air carrier aircraft being served are less than the assigned airport Index, the certificate holder could reduce its firefighting service accordingly under proposed § 139.313(e).

The proposed rule would contain slight changes in the length of aircraft in each Index. For instance, current Index A includes aircraft not more than 90 feet long (up to and including 90 feet), while proposed Index A includes aircraft less than 90 feet long (up to but not including 90 feet). These changes would make the rule consistent with the lengths used in the rules of the International Civil Aviation Organization. It is not anticipated that any airport's index would change as a result of these changes.

Proposed § 139.313(f) would provide the equipment and chemical requirements for certificated airports. Some terms would be changed to conform to current usage: Instead of "Light weight vehicle," the rule would specify a "rapid intervention vehicle." Instead of a "self-propelled fire extinguishing vehicle," the proposal would specify an "aircraft firefighting and rescue vehicle." In addition, the current rule states the requirements in terms of protein foam, although most airports use the more modern aqueous film forming foam (AFFF). The proposal would state requirements in terms of AFFF.

As was mentioned earlier, a study was conducted by H. H. Aerospace Design Company, Inc. The study concluded, in part, that the crash, fire and rescue equipment requirements were not cost beneficial for the smaller airports, and recommended deleting those requirements for Index A and B airports. Numerous comments have been submitted to the FAA from many sources on this recommendation, with some commenters agreeing, some disagreeing, and some suggesting alternatives. After carefully considering these comments, the FAA has determined that there may be some justification to the complaint that the current crash, fire and rescue service requirements are unduly costly to the smaller airports. However, the FAA is required to promote the highest standard of safety in air carrier operations. Eliminating the requirements for the smaller airports would be inconsistent with this duty. The FAA is, therefore, proposing to reduce but not eliminate the requirements at smaller airports.

Instead of specific requirements for Index A airports, the FAA would approve on a case-by-case basis the crash, fire and rescue needs of each individual airport. This is the same requirement to which airports with limited airport operating certificates are now subject. Index B airports would need only one vehicle under the proposal instead of the two currently required.

The requirements for production of firefighting foam currently found in Indexes B, C, D, and E are well below the levels recommended by ICAO, and are minimal considering the potential fires which might be experienced on the airports. The proposed rule would increase these requirements, making them closer to levels recommended by ICAO. Current Index B requires a total of 1,500 gallons for protein foam production, or 1,050 gallons for AFFF (when the 1,500 gallons is reduced by 30 percent under § 139.49(c)(1)). Proposed Index B would require 1,500 gallons for AFFF. Current Index C requires 3,000 gallons for protein foam or 2,100 gallons for AFFF; proposed Index C would require 3,000 gallons for AFFF. Current Index D requires 4,000 gallons for protein foam or 2,800 gallons for AFFF; proposed Index D would require 4,000 gallons for AFFF. Current Index E requires 6,000 gallons for protein foam or 4,200 gallons for AFFF; proposed Index E would require 6,000 gallons for AFFF. As a practical matter, this should have little actual effect on airports because many airports currently maintain more foam than the rule requires, and because the increases in tank capacity which would be required would not greatly increase the cost of the fire trucks. Similarly, the premixed AFFF required on the rapid intervention vehicle for these airports would be increased from 50 gallons to 100 gallons. However, to avoid expense to any airport which meets the current rule, proposed § 139.313(h) would "grandfather" in these airports: any airport meeting the current rule would not be required to increase the capacity of its fire trucks until it purchases new equipment. Thus, no airports would be required to purchase new equipment in order to meet the increased AFFF requirements in the proposed rule.

The current rule indicates that fire vehicles need carry only the amount of foam concentrate needed to mix with the water carried. Proposed § 139.313(g) would require that twice the amount of AFFF be carried. This would permit the fire fighters to refill the vehicle with water from a tank truck at the scene of the accident and continue to fight the fire without interruption. Vehicles which do not now have the capacity to carry the extra concentrate would be "grandfathered in" under proposed § 139.313(h), similar to § 139.313(f), explained above.

Proposed § 139.313(i) would specify, to a greater extent than the current rule, allowable substitutions of the various fire fighting chemicals. The intent of these sections is to ensure that an adequate level of firefighting capability is maintained. Any combination of chemicals which will provide that level of safety is acceptable.

Proposed § 139.313(j) would provide special rules for heliports, consistent with the requirements currently found in § 139.105(a).

Section 139.315 Airport firefighting and rescue service: Operational requirements. [§§ 139.49, 139.89, 139.105, 139.127]

This section would contain rules for equipment, personnel, and operations, which would be largely unchanged from the current rules.

Proposed § 139.315(a) would require that all airport firefighting and rescue equipment vehicles used for Index B, C, D, and E airports be equipped with turrets. Turrets can be operated by the vehicle driver while the vehicle is being operated, and, therefore, allow the application of AFFF more quickly and with fewer firefighters than using hoses. Inasmuch as most modern vehicles have turrets, it is not expected that this requirement will force many airports to spend extra money on vehicles.

The current rule provides that each vehicle must be capable of discharging its tank in 2¼ minutes. The proposal would, instead, specify the gallons per

minute turret output. Such a standard more clearly speaks to the desired result—the amount of foam applied to the fire. The discharge capacities proposed in § 139.315(a) would require turret output to be high enough to efficiently fight a fire, but not so high that the foam would be discharged too fast to be used efficiently. The proposed rates are consistent with current industry standards.

To avoid expense to any airport which meets the current rule, proposed § 139.315(a)(3) would "grandfather" in these airports: Any airport meeting the current rule would not be required to increase the discharge capacity of its fire trucks or equip them with turrets until it replaces the noncomplying vehicles. Thus, no airport would be required to purchase new equipment in order to meet the increased discharge capacity or turret requirement.

Current § 139.49(g)(4) requires radios on vehicles only if the airport has a control tower or is equipped with a radio communications system used for ground vehicle traffic management. Proposed § 139.315(b) would provide that all emergency vehicles be equipped with radios, linking the vehicles to each other and to the command post. Communication among all persons concerned is essential for a rapid and effective response to an emergency. Requiring radios on vehicles is a relatively low-cost means to promote good communications.

Current §§ 139.89(c) and 139.127(b) provide that if a firefighting or rescue vehicle becomes inoperable and is not replaced within 8 hours, a Notice to Airmen must be issued. If service is not restored within 10 days, air carrier operations can only be accepted which are consistent with the remaining equipment capability. Proposed § 139.315(d)(3) would require, instead, that the air carrier users be notified immediately if a vehicle becomes inoperable and that air carrier operations be restricted after 8 hours, rather than 10 days. The risks associated with airport having substandard equipment for more than 8 hours are too great for air carrier operations.

The proposed rule would change the current response times. Currently, § 139.49(e) requires that a first vehicle must arrive at a designated point within 3 minutes of an alarm, that a second vehicle must arrive within 4 minutes, and that all other required vehicles arrive within 4½ minutes. Data developed in the industry reveals that these response times may be inadequate. Basically, all required vehicles must be applying chemical at once for at least one minute in order to adequately extinguish the fire. Each vehicle, however, empties out in about 2 minutes. In order to ensure that all vehicles are applying chemicals together for one minute the last vehicles must arrive no later than one minute after the first. Proposed § 139.315(e), therefore, would require Index B, C, D, and E airports to be capable of having at least one vehicle arrive within 3 minutes, and the rest arrive within 4 minutes. The response times for Index A airports would be determined for each airport, similar to the equipment and agent requirements. This would allow the Administrator to make an individual determination for these smaller airports, based on the aircraft the airport serves and its resources. It is anticipated that a relaxed response time would permit some airports to reduce personnel costs.

Current § 139.49(i) provides that firefighting and rescue personnel must be "familiar with the operation of the firefighting and rescue equipment and understand the basic principles of firefighting and rescue techniques." Many certificate holders have complained that this standard is too vague and gives inadequate guidance as to the level of training required. The proposed rule would identify the subject areas in which the personnel must be trained. An understanding of the listed subjects should enable the personnel to respond to an alarm and use the airport's equipment to deal with an emergency.

The H. H. Aerospace study recommended that airports be required to have at least one emergency medical technician. The FAA agrees that it would be beneficial to require that, during all air carrier operations, a person be on duty who is trained in emergency medical care. There are many different types of courses in emergency medical care, which may take up to several months to complete. The FAA is proposing to require that the person have at least 40 hours of training which includes specified subject areas. The National Highway Traffic Safety Administration (NHTSA) has developed such a course, the First Responder Training Course. Many other organizations, including state agencies, have developed courses which may be suitable. Such training, while not as extensive as emergency medical technician training, should enable the individual to take some basic action to stabilize a patient's condition until more sophisticated help arrives.

The current rule does not contain any provisions for the maintenance of access roads used by emergency vehicles to travel on the airport. Based on accident data, the NTSB has recommended all access roads be kept useable. It is proposed in § 139.315(g), therefore, that each certificate holder be required to maintain in a useable condition all surfaces adjacent to movement areas which are designated for use by firefighting and rescue vehicles. In a complementary proposal, the description of the terrain features of the airport in the airport operations manual would include a description of these designated access roads. This proposed rule would not require that each existing access road be maintained by the certificate holder. The FAA is aware that there are many access roads on airports which are not used or intended to be used by emergency vehicles, and that it would be a burden to maintain each of these roads. However, requiring that all access roads designated for such use be identified in the operations manual, and requiring that these roads be maintained, would ensure that the firefighters would know which roads could be relied on to gain rapid access to various parts of the airport.

Section 139.317 Handling and storing of hazardous substances and materials. [§ 139.51]

The rules relating to the transportation of hazardous materials and substances would remain essentially unchanged. Instead of naming the materials specifically, however, the proposed rule would simply identify them as materials regulated by the Hazardous Materials Regulations of the Materials Transportation Bureau (49 CFR Part 171, *et seq.*), which were adopted after current § 139.51 was adopted.

Current § 139.51(b) provides that the certificate holder must have, and require that its tenant fueling agent have, a sufficient number of personnel and procedures to safely handle fuel. The FAA does not directly regulate fueling operations on certificated airports conducted by tenant fuelers.

Comments from the public and from other governmental sources indicate that revisions to the current rule may be needed.

First, the FAA has received complaints that the certificate holders' responsibilities as to tenant fuelers are not clear. A number of certificate holders have requested clarification of the existing rule as to the extent to which they must monitor their tenant fuelers' personnel and procedures.

On April 16, 1984, the NTSB issued Safety Recommendations A–84–21 through –41. Citing certificate holders' complaints that they should not be held

responsible for fueling done by their tenants, and the fact that responsibility for aviation safety is shared by pilots, mechanics, and fuelers, the NTSB recommended that the FAA certificate fueling personnel at airports.

A number of Congressmen and Senators have written the FAA expressing concern that fueling operations on airports may not be as safe as they should be, because fuelers are not directly regulated. They have requested the FAA to consider directly certificating fuelers.

In the Conference Report on the Aviation Drug-Trafficking Control Act (H. Rept. No. 1085, 98th Cong., 2d Sess. (1984), *reprinted in* 130 Cong. Rec. H10354 at H10357 (daily ed. Sept. 26, 1984)) the conferees expressed concern that the FAA regulates fuelers indirectly through airport operators rather than directly. They desired the FAA to adopt an alternative approach to deal with this problem so that aircraft fueling is monitored more effectively. They further suggested that FAA, to the maximum extent feasible, encourage voluntary industry efforts to address these concerns.

In November, 1984, the FAA conducted two industry meetings on this problem. Representatives of many different interested parties attended. Two written comments were submitted pursuant to this meeting. The National Air Transportation Association (NATA) cited a number of procedures now being introduced by industry which should reduce the risks of misfueling and the use of contaminated fuel. NATA concluded: "Governmental oversight is important to this effort, but additional regulation is not required." The Airport Operators Council International (AOCI) also submitted a comment. AOCI suggested that current § 139.51(b) be changed to read as follows:

> (b) The applicant for an airport operating certificate must show that it has established adequate controls and standards for the construction and maintenance of fuel, lubricant and oxygen storage facilities (other than articles and materials that are, or are intended to be, aircraft cargo), and for the transport of such on the airport, for on-airport operational safety purposes including—
>
> (1) Grounding and fire protection;
>
> (2) Public protection; and
>
> (3) Control of access to storage areas.

AOCI stated that its draft "recognizes the continuing responsibility of airport proprietors under the Federal regulation and under common law to take reasonable actions designed to foster the physical safety of persons and property on the airport or on immediately adjacent property, such as fire and police protection." AOCI further suggested that the problems of misfueling and contaminated fuel be addressed through FAA-monitored industry self-regulation.

On May 16, 1985, the FAA again met with representatives of AOCI, the American Association of Airport Executives (AAAE) and NATA. These groups cited industry efforts to develop and encourage the use of procedures and equipment designed to reduce the risks of misfueling and dispensing contaminated fuel. Based on these industry initiatives, these groups concluded that governmental intervention in the fueling area is not needed. At the May 16 meeting they recommended the following division of responsibility for aircraft fueling operations:

1. NATA will develop a comprehensive line technician training program.

2. FAA will publish a general advisory circular detailing acceptable training programs for fueling operations.

3. AAAE/AOCI will encourage airports to require acceptable training programs in all new bid specifications for fueling operations.

4. AAAE/AOCI will urge airports to encourage existing fueling tenants to adopt acceptable training programs.

5. FAA will revised FAR 139 to eliminate all references to fueler training and fuel quality, including dispensing.

Under this approach, misfueling and fuel contamination precautions would be undertaken on a voluntary basis by the fuelers (including airport operators which conduct their own fueling operations) at certificated airports, as is presently the case at non-certificated airports.

The FAA is seeking a way to ensure an appropriate level of fueling safety on certificated airports without adding an undue regulatory burden. Safe fueling operations must provide protection against fire and explosions, prevent the use of contaminated fuel and prevent misfueling, that is, placing the wrong type of fuel in an aircraft. Each of these concerns is addressed by a combination of appropriate equipment, trained personnel and proper procedures. Safe operations require the efforts of those who own and control the physical plant and those who actually conduct the fueling of aircraft.

The FAA believes that fueling agents have the fundamental responsibility for providing clean, dry fuel, and that the certificate holder, as the operator of the airport, also has some oversight responsibilities regarding the safety of airport operations.

The industry initiatives cited by many of the commenters are directed at reducing risks of misfueling and contaminated fuel. They do not address risks of fire, although AOCI agrees that airports have responsibility in this area. There seems to be little argument that airports must take reasonable steps to reduce risks of fire and explosions, which could endanger everyone on or near the airport. Further, many, if not most, fire safety precautions are inextricably linked with the owner and controller of the physical plant and the land. For instance, the airport operator generally owns the fuel farm and thus has some responsibility for its equipment. It therefore appears to be appropriate to maintain the certificate holders' responsibility to exercise some control of their tenant fuelers with respect to safety from fire and explosion.

With respect to the risks of misfueling and fuel contamination, the FAA has several rulemaking options available. One option would be to directly certificate fuelers, and relieve airport operators from all responsibility for these hazards, while retaining airport operator responsibility for exercising some control with respect to safety from fire and explosion. A second option would be to rely on a voluntary program of industry self-regulation of tenant fueling practices and procedures to protect against misfueling and fuel contamination, with a FAA Advisory Circular on recommended practices and procedures serving as a guide, while retaining airport operator responsibility for exercising some control with respect to safety from fire and explosion. A third option would be to continue to require airport operators to exercise general oversight of fueling activities, including risks of fire, contamination and misfueling.

Concerns have been raised about each of these rulemaking options. To certificate fuelers directly in a manner suggested by the NTSB and some other commenters would be very costly and time consuming for both the FAA and industry. There are about 700 certificated airports in the United States, many with more than one tenant fueler. On the other hand, while it would appear to satisfy the Congressional request for an alternative approach set forth in the conference report mentioned above, the option of relying solely on voluntary industry self-regulation currently causes the FAA safety concerns regarding misfueling and fuel contamination. Continuing to require airport operators to exercise general oversight of fueling activities imposes or

the airport operators a responsibility many of them believe is inappropriate given their level of technical knowledge on the subject, and this approach does not address any fueling problems which may exist at noncertificated airports.

Despite the above-mentioned concerns, all three rulemaking options noted above have some merit. For the purposes of this NPRM, however, this proposal contains drafts of the second and third rulemaking options.

The second option would continue to require certificate holders to exercise general oversight of fueling facilities and some oversight with respect to tenant fuelers' precautions against fire and explosions, but would not require them to oversee misfueling and contamination precautions. The rule would encourage certificate holders and their tenants to voluntarily adhere to recommended industry safety standards, including those described in the FAA's Advisory Circular on aircraft fuel storage, handling, and dispensing on airports. This second option responds to the Congressional request for an alternative approach set forth in the Conference Report mentioned above.

Under this second option the FAA believes it would have no means of requiring fuelers to take any precautions against misfueling or contamination. Comments on this view are invited. While the FAA is encouraged by the industry's efforts to develop a voluntary program, the FAA still has substantial reservations as to whether this approach would provide adequately for the high level of safety required. The FAA encourages comments as to whether this option could provide an acceptable level of safety. The FAA further requests comments as to whether, under this option, certificate holders who conduct fueling operations should be required to take appropriate precautions against misfueling and contamination.

The third option would continue to require certificate holders to exercise general oversight of all fueling activities. This option represents an attempt to reconcile the competing concerns, while maintaining an acceptable level of safety on certificated airports. While this option appears at this time to efficiently provide for an adequate level of safety in fueling operations, the FAA encourages comments as to how the first or second option, or any other approach, might accomplish these goals as effectively or more efficiently.

Under the third option, the certificate holder would continue to be responsible for general oversight of fueling activities. It would not be required to monitor the day-to-day activities of its tenant fuelers, but would be required to obtain assurances that the fuelers have adequate training and procedures. Compliance would be facilitated for many certificate holders because they have expertise available on fueling matters. For example, a city-owned airport may rely on the city's fire marshall or other public safety official, or on its own personnel who conduct its fueling operations. The proposal also would permit certificate holders to rely to a large extent on a third party, such as an insurance company, to make the necessary inspections.

Moreover, it appears that mechanisms exist—and currently are being used in other areas—that enable the certificate holder to require and enforce minimum safety practices by tenants. The tentant selling fuel on the airport is doing so with the permission of the certificate holder, whom the tenant pays for that privilege. Contracts with tenants and their ancillary agreements commonly contain, in addition to rental and sales revenue percentages, stipulations for such things as hours of operation, limits to areas of activity, vehicular or aircraft routes for surface movement, and industrial waste limitations. Violations of these provisions constitute breaches of contract with attendant penalties. In addition, certain tenant activities may be subject to various municipal ordinances such as occupancy limits, flammable substances control and fire supression equipment availability. The airport operator must monitor compliance with these provisions.

The proposed third option would clarify the responsibilities of the certificate holder for fueling activities on the airport. Proposed § 139.317(b) would contain a more detailed list of the subjects for which the certificate holder would have to adopt standards that must be approved by the Administrator. These subjects are considered to be very basic and essential for safely handling fuel.

Proposed § 139.317 (c) and (d) would require the certificate holder to require compliance with the adopted standard. In the case of fueling tenants, these could be accomplished through leases or other arrangements. Airport operators have been very concerned with this requirement, arguing that it would necessitate that they become fueling experts. Indeed, it is recognized that not all certificate holders may have the expertise, training, or personnel available to monitor day-to-day tenant fueling operations. This proposal is intended to limit their responsibility under Part 139 by requiring them to undertake reasonable precautions through quarterly "walk around" inspections of the physical facilities and reviewing the quality control records of tenant fueling agents. These inspections could be undertaken by any acceptable independent organization instead of the certificate holder, as long as sufficient records were made to assure that the inspection was adequate.

Proposed § 139.317 (e) and (f) would add the requirement that at least one supervisor of the fueling activity must have taken a course in aviation fueling. Other employees would have to receive on-the-job training from the trained supervisor. To minimize the oversight burden and yet fulfill its obligation under this paragraph, the certificate holder could accept certification by a tenant fueler that the training requirements have been or are being met.

Proposeds 139.317(g) specifies the content of the fueling records and requires them to be maintained for 12 months and be available for inspection by the certificate holder and the FAA.

Proposed § 139.317(h) would require that the certificate holder require its tenant fueling agents to take appropriate corrective action whenever noncompliance with a standard is discovered. It is anticipated that there would be times when such corrective action could not be accomplished within a reasonable period of time. In such cases, the certificate holder could notify the FAA and a course of action would jointly be agreed upon and authorized by the Administrator. The certificate holder's responsibility therefore would be limited to assuring that such a course of action was followed and completed.

Proposed § 139.317(i) would give certificate holders the option of not requiring Part 121 air carriers to comply with the standards required by proposed § 139.317(b) (7), (8) and (9) relating to quality control procedures for fuel handling and testing, training of fueling personnel and recordkeeping. Part 121 air carriers are currently required under § 121.133 to prepare and keep current a manual for the use and guidance of flight and ground operations personnel in conducting their operations. Under § 121.135 (b)(18) the manual must contain procedures for refueling aircraft, eliminating fuel contamination, protection from fire (including electrostatic protection), and supervising and protecting passengers during refueling. In view of the air carriers' responsibilities which these provisions highlight, the FAA is proposing to relieve airport operators of these areas of responsibility.

The proposed second option (in brackets following the third option) would contain those provisions in the

third option which address certficate holders' responsibilities for facilities and fire safety. It should be noted that some of the items which were deleted do have implications in fire safety, but were omitted because their main use is in misfueling and contamination safety. As with the third option, this proposal would provide more detailed guidance as to the level of oversight which certificate holders would be expected to exercise over tenant fuelers.

The FAA requests comments on the extent to which airport operators should be responsible under Part 139 for overseeing the activities of their tenant fuelers and the extent to which Part 139 should regulate fueling activities conducted by the certificate holders themselves. The FAA further requests comments on the extent to which a voluntary program of industry self-regulation, with an FAA advisory Circular on recommended practices and procedures serving as a guide, could replace airport operator oversight responsibility while still addressing adequately the safety concerns regarding misfueling and fuel contamination. These comments will assist the FAA in determining what type and degree of responsibility to place on certificate holders in the final rule.

Section 139.319 Traffic and wind direction indicators. [§§ 139.53, 139.107]

These provisions would be essentially unchanged, except that the proposed rule would provide an alternate means of compliance to airports in terminal control areas. Such airports would be able to provide wind direction information by a combination of electronic means and windcones at each runway end or at a point visible to the pilot while on final approach or prior to takeoff.

Section 139.321 Emergency plan. [§ 139.55]

The proposed rule would require certificate holders to address four additional situations in their emergency plans: power failures, water rescue, care of accident survivors and an annual review of the plan.

The emergency plan would include provisions for responses to failure of power to navaids, movement area lighting, and air traffic control tower operations. The rule would require only that procedrues be established for response to power failures; it would not require that the airport obtain emergency generators or other equipment. To a large extent, it simply would involve inserting in the operations manual or operations specifications procedures now existing for such actions as starting an emergency generator which is now installed.

The water rescue provisions are proposed based on recommendations of the NTSB. The proposed rule would require the certificate holder to attempt to locate, and coordinate with, organizations which would agree to provide water rescue service. It is anticipated that often there would be, for instance, a local law enforcement agency which would agree to provide such service. If such an organization is available, the certificate holder would include provisions in its emergency plan to coordinate with that organization in the event that water rescue operations were needed. The proposed rule would require prior coordination with available resources; it would not require the certificate holder to provide for water rescue if such services were not available in the community.

The proposal also would require that provisions be made for the marshalling, transportation and care of ambulatory injured and uninjured accident survivors. This is in response to an NTSB recommendation based on incidents in which survivors were left, for instance, standing out on a runway after being rescued from water, because there was no procedure for handling them.

Proposed § 139.321(g)(4) would require the certificate holder to, at least once every twelve months, review the plan with each of the law enforcement agencies, firefighting and rescue agencies, medical resources, the principal tenants of the airport, and all others with responsibilities under the plan. The review would ensure that all participants understood their responsibilities under the plan and were sufficiently aware of the other participants' responsibilities to be able to efficiently carry out their own. The review would also include updating such information as telephone numbers and contact individuals in the organizations involved, which may change from year to year. Such a "table top demonstration" would help to assure that in an actual emergency all persons would be able to carry out their responsibilities as efficiently as possible.

There have been suggestions that certificate holders be required to conduct a full-scale demonstration every three or four years, in which a mock disaster is planned and a response executed with all emergency plan participants taking part. Such a demonstration might include firefighters putting out a staged or mock fire, emergency medical personnel attending to mock "victims" and transporting them to participating hospitals, and having the whole response coordinated as required by the emergency plan. It appears that such a demonstration would provide a very useful training tool for both the certificate holder and participating organizations. It also appears that such a demonstration may be a costly undertaking. The FAA intends to consider whether a requirement for full-scale demonstrations of the emergency plan should be adopted in this rulemaking action. In order to evaluate this possible rulemaking, the FAA is requesting comments on the following:

1. Costs to the certificate holder and the participants, including the number and positions of people and organizations involved, the vehicles and other equipment used, and the travel required.

2. The extent to which the communities which the airports serve already conduct mock disasters in which the airport might be able to participate, thus mitigating costs to the certificate holder.

3. The extent to which airports now conduct such demonstrations.

4. The extent to which such demonstrations are necessary or useful in ensuring that an efficient response would be made to a real emergency.

5. If such a demonstration is believed to be necessary or useful, a description of suggested standards which should be incorporated in the regulation.

Comments from certificate holders and other organizations and individuals who actually have planned or participated in such a demonstration would be very useful to the FAA in evaluating this proposal.

Section 139.323 Self-inspection program. [§§ 139.57, 139.91]

The requirements of this section would not be substantially changed.

Section 139.325 Ground vehicles. [§139.59]

In addition to the current provisions for control of ground vehicles, the proposal would require the certificate holder to limit access to movement areas only to those ground vehicles necessary for airport operations. This provision would reduce unnecessary ground traffic and, therefore, reduce the risk of ground vehicles interfering with aircraft operations. Of course, vehicles involved in inspection, construction, fueling, baggage handling, and other activities normal and necessary to operate the airport and to service

aircraft would continue to be permitted on movement areas.

The proposal would also require that the certificate holder ensure that each person who operates a ground vehicle on a movement area is familiar with the airport's rules and equipment relating to such operation. Some airports currently have provisions, such as drivers permits, which ensure that the drivers understand the rules. The proposal would allow each certificate holder to determine what system is most appropriate for controlling such drivers. The proposal would add a requirement that the certificate holder make available to the Administrator any records regarding accidents or incidents involving ground vehicles. Such records would enable the FAA to better monitor the safety of the airport's ground vehicle rule, and determine whether changes in the rules are necessary.

Section 139.327 Obstructions. [§ 139.61]

The current section essentially would not be changed.

Section 139.329 Protection of navaids. [§ 139.63]

This section would not be changed in substance.

Section 139.331 Public protection. [§ 139.65, 139.109]

Currently § 139.65 requires, in part, that the airport have safeguards against the inadvertent entry of "large domestic animals" onto airport operations areas. It is proposed to remove the word "domestic" and to require safeguards against the entry of all large animals. Those airports with a proven safety hazard from such animals as deer would be required to take steps to prevent the animals from entering areas where they could create a hazard. This may involve, for instance, installing a low-cost electric fence around movement areas. Airports at which animals have not been shown to be a problem would not be required to take any action.

There have been occasions in which persons or property have been subject to aircraft blast. Under the proposed rule, the certificate holder would be required to take steps to protect the public from such a hazard. Often this may be as simple as arranging for air carrier users to maneuver aircraft so as to avoid blasting, for instance, a public parking lot. In some cases, a blast fence would be needed.

Section 139.333 Bird hazard management. [§ 139.67]

The proposal would clarify what the FAA requires in a bird management plan, and would formalize the procedures now recommended by the FAA.

Proposed § 139.333(a) would identify the type of study needed if a bird hazard exists on the airport. Basically, the study identifies the specifics of the bird problem so that plans for controlling the hazard may be developed. The FAA can arrange for the Fish and Wildlife Commission to conduct the study at no cost to the certificate holder.

Proposed § 139.333 (b) and (c) would clarify the certificate holder's responsibilities if a bird hazard exists. To the extent practicable, the certificate holder would establish priorities for modifying bird habitats and changing land use. The certificate holder would also be required to establish bird patrols and bird disposal operations, and plan for equipment, personnel and training as needed to cope with the bird hazard. These provisions are acceptable methods of compliance with the current rule, and it is not anticipated that the proposal would require any airport to change or expand its bird management program.

Section 139.335 Airport condition reporting. [§§ 139.69, 139.111]

Instead of requiring a certificate holder to report the presence of a large number of birds, the proposed rule would require a report of a bird hazard or potential bird hazard. This is a more accurate way to describe the information needed by pilots who wish to use the airport. The proposal would also make clear in this section, as is stated in current § 139.89, that reductions in the crash, fire and rescue service must be reported. No other substantial changes are proposed.

Section 139.337 Identifying, marking, and reporting construction and other areas. [§§ 139.71, 139.113]

This section substantially would not be changed, except that the proposal would add the requirement to mark or light areas adjacent to navaids, which, if traversed, could interfere with the navaid. This could give added assurance that navaids would not be compromised.

Section 139.339 Noncomplying conditions. [None.]

Currently, Part 139 requires that airports be maintained in the condition described in their operations manual or operations specifications. The part implicitly requires that the airport (or a portion of the airport) not continue to be used for air carrier operations if it does not meet the applicable standards. However, there has been some confusion in the industry as to the appropriate action when a noncomplying condition develops, such as damaged pavement areas or inoperative lighting systems.

Proposed § 139.339 would make it clear that, when any of the specified conditions exist, the certificate holder is required to prevent air carrier use of the affected area until the condition is corrected. For example, when a portion of a pavement area does not meet the standards in Part 139, air carrier aircraft must be prohibited from using that portion of the pavement area. However, the proposed rule provides that the Administrator may authorize the use of such an area under appropriate circumstances. For instance, the certificate holder must prohibit air carrier use of a runway at night or in IFR conditions when the required lighting system has failed, unless otherwise authorized by the Administrator. Often such authorization will involve some temporary measure to provide an acceptable level of safety, such as by providing an alternate lighting system. Or, a certificate holder who is unable to comply with the rule regarding the height of piled or drifted snow might comply with this proposed section by arranging for aircraft to be routed well clear of the snow.

Regulatory Evaluation

The following is a summary of the preliminary cost impact and benefit assessment for the regulatory changes proposed in this notice. A full regulatory evaluation has been prepared and placed in the regulatory docket. A copy may be obtained by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

Assumptions used in the analysis to prepare economic estimates for the various changes to Part 139 have been developed by the FAA. The estimates of economic impacts for the proposed changes have been constructed from unit cost and other data obtained from airport operators, industry trade associations, and manufacturers. These estimates are subject to change before the final regulatory evaluation, based on public comment and other information that becomes available.

With the exception of four proposals, all of the proposed changes have been determined to have a negligible or no cost impact. The four proposed amendments found to have an economic impact are a reduction in the number of firefighting vehicles, the added requirement for emergency medical training, additional aviation fuel handling training, and improved

protection against the entry of large wildlife onto airport movement areas.

Proposed § 139.313(f)(2) would require that Index B airports be equipped with only one firefighting and rescue vehicle carrying at least 1,500 gallons of water for Aqueous Film Forming Foam (AFFF) production and 500 pounds of dry chemical must be reconciled or halon 1211. The FAA has determined that this proposal will not reduce safety and therefore will not impose a cost. The 72 airports currently subject to the firefighting and rescue provisions of Index B would realize annualized individual savings of $124,000 or a combined annualized saving of $8,928,000 as a result of not being required to maintain and replace of one the two firefighting vehicles required by the current rule.

Proposed § 139.315(f)(3) would require that during air carrier operations at least one person on duty has been trained in basic emergency medical care. The proposal would impose a one-time individual training cost of $850 or a combined cost of $310,000 on the 365 Index A and limited certificate airports which would each be required to train two persons in basic emergency medical services. Undetermined benefits are expected to accrue to travelers and airport personnel from the provision of emergency medical services in the event of sudden illness or accident. The FAA estimates that the proposed rule would have to prevent only one fatality valued at $650,000 in 1983 dollars within 7½ years following its adoption for the benefits of the rule to justify the $310,000 cost of the proposal. The FAA requests comments as to whether more than two trained persons would be required to be trained for each airport to provide coverage during all air carrier operations, including the identity of airports which would require more than two trained persons.

Proposed § 139.317(c) would require that a supervisor must complete an aviation fuel training course which is acceptable to the Administrator; each other employee who fuels aircraft, accepts fuel shipments, conducts quality control procedures, or otherwise handles fuel, would have to receive at least on the job training from a trained supervisor. Compliance with the proposed § 139.317(c) is estimated at $968,036 discounted cost over the ten year period of 1985 thru 1994. The FAA has not been able to accurately estimate the effectiveness of the proposed amendment. The value of future accidents prevented is $20,515,603. If the proposed rule were 100 percent effective its benefit to cost ratio would be 21 to 1. The proposed rule would have to be 4.72 percent effective for its benefits to equal its costs.

Since the FAA has not been able to estimate the accident prevention effectiveness of the training required by proposed § 139.317(c), the FAA requests specific information, data, views, etc., regarding the following:

1. Estimates of the accident prevention effectiveness of aviation fuel training programs.

2. The type of training programs which may be effective in reducing accidents attributed to contaminated or improper grade fuel.

3. Suggestions regarding alternative methods of upgrading the skill of fueling personnel (to improve safety by reducing fueling errors).

Proposed § 139.331(a) would require that each certificate holder provide safeguards against inadvertent entry onto any airport movement area by persons and by large animals that may endanger aircraft operations. The proposal deletes the current language which specifies "domestic large animals," including cattle and horses, but not wild animals such as deer, elk, antelope, etc. The change, therefore, would require that airports take appropriate safeguards against large wildlife. Compliance with the proposed amendment to § 139.331(a) is estimated to have a $1,244,872 discounted cost over the 20-year period following enactment of the regulation. The proposed rule is expected to result in the avoidance of accidents having a present value of $124,738 per year or a discounted value of $2,494,762 over the 20-year economic life of the fencing project.

For the purpose of this analysis, the FAA has calculated the cost of damage to aircraft from collisions with large wildlife on the basis of one-tenth of substantial damage restoration cost. FAA believes it needs more detailed information regarding the actual cost of aircraft repairs and other factors for the evaluation of any final rule that may result from this proposal.

Therefore, the FAA requests data, views, etc., relating to the cost of damage form collisions with large wildlife. Specific comments are requesting as follows:

1. Actual cost of additional aircraft maintenance, repair and overhaul.

2. Estimates of costs of delays and effect on schedules and crews.

3. Estimates of costs of cancellation.

4. Estimates of equipment substitution costs.

5. Additional insurance premiums.

Record Keeping

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), any new reporting or record keeping provisions in this proposal, not already contained in Part 139, have been submitted for approval to the Office of Management and Budget (OMB). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone: 202-395-7313). A copy should be submitted to the FAA Docket.

Conclusion

Proposed § 139.313(f)(2) would provide a potentially significant cost saving from fire and rescue equipment reduction to only 16 of 72 airports that are affected small entities. Proposed §§ 139.315(f)(2) would impose only a one-time cost of $850.00 per airport. Proposed 139.317(c) would impose only an annualized cost of $2,000 per airport. Proposed § 139.331(a)(1) would affect only 23 out of 241 airports that are affected small entities. Therefore, it is certified that this proposed amendment would not have a significant economic impact on a substantial number of small entities. The preliminary evaluation further indicates that the above amendments would provide either cost savings or would provide a benefit to society by reducing losses due to accidents and loss of lives. All other amendments would have no or negligible cost impact. In addition, the amendments would have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291. However, because of the substantial public interest generated by some of the subjects addressed in this proposal and the potentially controversial nature of these proposals, the FAA has determined that this proposed amendment is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A preliminary regulatory evaluation has been prepared and placed in the regulatory docket. A copy may be obtained by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 139

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air

carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

The Proposed Amendment

Accordingly, the FAA proposes to revise Part 139 of the Federal Aviation Regulations (14 CFR Part 139) to read as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

Authority: 49 U.S.C. 1354, 1429, 1430 and 1432; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Subpart A—General

§ 139.1 Applicability.

This part prescribes rules governing the certification and operation of land airports which serve any scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers.

§ 139.3 Definitions

The following are definitions of terms used in this part:

"Air carrier aircraft" means an aircraft with a seating capacity of more than 30 passengers which is operated by an air carrier.

"Air carrier user" means an air carrier while operating an aircraft having a seating capacity of more than 30 passengers.

"Airport" means an area of land that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.

"AFFF" means aqueous film forming foam.

"Certificate holder" means the holder of an airport operating certificate or a limited aiport operating certificate, except that as used in Subpart D "certificate holder" does not mean the holder of a limited airport operating certificate whose operation specifications do not require compliance with the section in which it is used.

"Heliport" means an area of land or a structure used or intended to be used for the landing and takeoff of helicopters.

"Index" means the type and quantity of firefighting and rescue equipment required according to the length of air carrier aircraft served by the airport as determined in Subpart D of this part.

"Movement area" means a part of the airport intended for the surface movement of aircraft, including the maneuvering area and apron.

"Operation" means a landing or takeoff of an aircraft.

§ 139.5 Airport certification standards and procedures.

Certain standards and procedures prescribed by Subparts C and D of this part must be complied with in a manner acceptable to the Administrator. FAA Advisory Circular 150 series contains details of standards and procedures that are acceptable to the Administrator. These, or standards and procedures deemed by the Administrator to provide an equivalent or superior level of safety, are acceptable for compliance with Subparts C and D. Advisory Circular 150 series may be obtained free of charge by writing to the Department of Transportation Publications Section, M-443.1, 400 7th Street, SW., Washington, D.C. 20590.

Subpart B—Certification

§ 139.101 Certification: General.

(a) No person may operate a land airport in the United States serving any scheduled passenger operation of an air carrier with an aircraft having a seating capacity of more than 30 passengers without or in violation of an airport operating certificate, the applicable provisions of this part, or the approved airport operations manual for that airport.

(b) No person may operate a land airport in the United States serving any unscheduled passenger operation of an air carrier with an aircraft having a seating capacity of more than 30 passengers without or in violation of a limited airport operating certificate, the applicable provisions of this part, or the approved airport operations specifications for that airport.

§ 139.103 Application for certificate.

(a) Each applicant for an airport operating certificate or a limited airport operating certificate under this part must submit an application, in a form and in the manner prescribed by the Administrator, to the FAA Airports office having responsibility for the area in which the airport is located. The application must be accompanied by two copies of the airport operations manual or airport operations specifications prepared in accordance with the applicable sections of Subpart C of this part.

(b) Each application submitted under paragraph (a) of this section must contain a signed statement showing—

(1) The name and address of the airport;

(2) The name and address of the owner of the airport; and

(3) The name and address of the operator of the airport.

§ 139.105 Inspection authority.

(a) Each applicant for an airport operating certificate or a limited airport operating certificate shall allow the Administrator to make any inspection or test to determine compliance with—

(1) The Federal Aviation Act of 1958, as amended; and

(2) The requirements of this part.

(b) Each certificate holder shall allow the Administrator to make any inspection or test to determine compliance with—

(1) The Federal Aviation Act of 1958, as amended;

(2) The requirements of this part;

(3) Its airport operating certificate or limited airport operating certificate; and

(4) Its airport operations manual or airport operations specifications.

§ 139.107 Issuance of certificate.

(a) An applicant for an airport operating certificate is entitled to a certificate if—

(1) The applicant submits an application and an airport operations manual in compliance with the requirements of this part; and

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to conduct a safe operation in accordance with Subpart D and any limitations which the Administrator finds necessary in the public interest, and approves that airport operations manual.

(b) An applicant for a limited airport operating certificate is entitled to a certificate if—

(1) The applicant submits an application and airport operations specifications in compliance with the requirements of this part; and

(2) The Administrator, after investigation, determines the extent to which compliance with the requirements of Subpart D of this part is necessary in the public interest, determines any limitations necessary in the public interest, determines that the airport is otherwise properly and adequately equipped and able to conduct a safe operation for the air carrier service expected, and approves the airport operations specifications.

§ 139.109 Contents of certificate.

Each airport operating certificate, and each limited airport operating certificate, issued under this part contains—

(a) The names of—

(1) The airport;

(2) The owner of the airport; and

(3) The operator of the airport; and

(b) The effective date of the certificate.

§ 139.111 Duration of certificate.

(a) An airport operating certificate or a limited airport operating certificate issued under this part is effective until it is surrendered by the certificate holder or is suspended or revoked by the Administrator.

(b) The Administrator may suspend or revoke an airport operating certificate, or a limited airport operating certificate, under Section 609 of the Federal Aviation Act of 1958 (14 U.S.C. 1429) and the applicable procedures of Part 13 of this chapter if the certificate holder fails to comply with any requirement of the Federal Aviation Act of 1958, as amended, this part, or the certificate holder's certificate or approved airport operations manual or approved airport operations specifications.

(c) The Administrator may reduce an airport operating certificate to a limited airport operating certificate if the airport no longer serves and no longer is expected to serve any scheduled operations of air carrier aircraft.

§ 139.113 Exemptions.

(a) An applicant for an airport operating certificate or a certificate holder may petition the Administrator, under § 11.25 of this chapter (petition for rulemaking or exemptions), for an exemption from any requirement of this part.

(b) An applicant for an airport operating certificate or a certificate holder, enplaning annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports, may petition the Administrator, under § 11.25 of this chapter (Petitions for rulemaking or exemptions), for an exemption from all of part of the firefighting and rescue equipment requirements of this part on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical.

(c) Each petition filed under this section must be submitted in duplicate to the appropriate FAA Airports office having responsibility for the area in which the airport is located.

§ 139.115 Deviations.

In emergency conditions a certificate holder may deviate from any requirement of Subpart D of this part if those conditions require the transportation of persons or supplies for the protection of life or property. Each certificate holder who deviates from a requirement under this paragraph shall, as soon as practicable, report in writing to the appropriate FAA Airports field office in whose area the airport is located, stating the nature, extent, and duration of the deviation.

Subpart C—Certification Eligibility

§ 139.201 Airport operating certificate: Airport operations manual.

An applicant for an airport operating certificate must prepare, and submit with an application, an airport operations manual for approval by the Administrator. Only those items required by the Administrator for certification under this part are deemed approved by the Administrator.

§ 139.203 Preparation of airport operations manual.

(a) Each airport operations manual required by this part shall—

(1) Include the operating procedures and a description of the facilities and equipment used to satisfy the requirements of Subpart D of this part;

(2) Include instructions and information necessary to inform personnel concerned with operating the airport as to their duties and responsibilities under the requirements of the approved operations manual and Subpart D of this part;

(3) Be in writing and signed by the applicant;

(4) Include operational lines of succession;

(5) Be in a form that is easy to revise;

(6) Have the date of initial approval or approval of the latest revision on each page or item in the manual;

(7) Contain each current exemption issued for the airport from compliance with the requirements of this part;

(8) Contain any limitations approved by the Administrator; and

(9) Be organized so that the portions required by this part are consolidated and presented separately and distinctly to assist in the preparation, review and approval processes.

(b) FAA Advisory Circular 150 series contains additional advice and procedures for airport operations manuals which are acceptable to the Administrator. These, or standards and procedures deemed by the Administrator to be their equivalent or superior, are acceptable for compliance with this subpart.

§ 139.205 Contents of airport operations manual.

Each airport operations manual required by this part shall include the following:

(a) A grid map or other means of describing locations on the airport, and a description of the terrain features of the airport, the means of runway identification, each obstruction on the airport, each movement area and safety area, and each access road described in § 139.315(g). This description shall identify those movement areas available for air carrier use.

(b) Procedures for avoidance of interruption or failure of utility facilities or navaids during construction work.

and an indication of the existence and location of the current utility layout plan including the actual as-built wiring diagram.

(c) Procedures for maintaining the pavement areas as required by § 139.305.

(d) Procedures for maintaining the safety areas as required by § 139.307.

(e) A description of, and procedures for maintaining, the lighting and marking systems as required by § 139.309.

(f) A snow removal plan as required by § 139.311.

(g) A description of the facilities, equipment, personnel and procedures for meeting the firefighting and rescue requirements in §§ 139.313 and 139.315.

(h) Procedures for complying with the requirements of § 139.317 relating to hazardous substances and materials.

(i) A description of, and procedures for maintaining, the traffic and wind direction indicators required by § 139.319.

(j) An emergency plan as required by § 139.321.

(k) Procedures for conducting the self-inspection program as required by § 139.323.

(l) Procedures for controlling ground vehicles as required by § 139.325.

(m) Procedures for complying with § 139.327 relating to obstructions.

(n) Procedures required by § 139.329 relating to protection of navaids.

(o) A descrption of the public protection provided as required by § 139.331.

(p) A bird management plan as required by § 139.333.

(q) Procedures for airport condition reporting as required by § 139.335.

(r) Procedures for identifying, marking, and reporting construction and other areas as required by § 139.337.

(s) Procedures for complying with § 139.339 regarding noncomplying conditions.

(t) Any other item which the Administrator finds is necessary in the public interest.

§ 139.207 Maintenance of airport operations manual.

Each holder of an airport operating certificate shall—

(a) Keep its airport operations manual current at all times;

(b) Maintain at least one complete current copy of its approved airport operations manual at its principal operations office;

(c) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request; and

(d) Provide the Administrator with one complete current copy.

§ 139.221 Limited airport operating certificate: Airport operations specifications.

An applicant for a limited airport operating certificate must prepare, and submit with an application, airport operations specifications for approval by the Administrator. Approval of the airport operations specifications is approval of only those items required by this part.

§ 139.223 Preparation of airport operations specifications.

(a) Each airport operations specifications required by this part shall—

(1) Include the operating procedures and a description of the facilities and equipment used to satisfy those portions of Subpart D of this part which the Administrator determines are necessary in the public interest;

(2) Include instructions and information necessary to inform personnel concerned with operating the airport of their duties and responsibilities under the requirements of the approved airport operations specifications and the applicable portions of Subpart D of this part;

(3) Be in writing and signed by the applicant;

(4) Include operational lines of succession;

(5) Be in a form that is easy to revise; and

(6) Have the date of initial approval or approval of the latest revision on each page or item in the specifications.

(b) FAA Advisory Circular 139.12–1 contains additional standards and procedures for airport operations specifications which are acceptable to the Administrator. These, or standards and procedures deemed by the Administrator to be their equivalent or superior, are acceptable for compliance with this subpart.

§ 139.225 Contents of airport operations specifications.

The airport operations specifications required by this part shall contain the following:

(a) Procedures for ensuring that at least the level of safety at the airport at the time of certification will be maintained.

(b) The names and addresses of the owner and operator of the airport.

(c) A description of the types of aircraft and frequency of air carrier operations the airport serves.

(d) A description of the physical layout of movement areas on the airport.

(e) A description of the marking and lighting of movement areas and obstructions on the airport.

(f) A description of firefighting and rescue equipment and service provided for the airport.

(g) A description of the traffic and wind direction indicators on the airport.

(h) A description of the means used for safety inspection of the airport.

(i) Any additional information that the Administrator may require.

(j) A description of the procedures, facilities and equipment used to comply with any additional standards which the Administrator determines are necessary to cover a particular situation.

§ 139.227 Maintenance of airport operations specifications.

Each holder of a limited airport operating certificate shall—

(a) Keep its airport operations specifications current at all times;

(b) Maintain at least one complete copy of its approved airport operations specifications at its principal operations office; and

(c) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request.

§ 139.229 Amendment of airport operations manual or airport operations specifications.

(a) The FAA Airports office having responsibility for the area in which the airport is located may amend any airport operations manual or any airport operations specifications approved under this part, either upon application by the certificate holder, or on its own initiative if the FAA Airports office determines that safety in air transportation or air commerce and the public interest require the amendment.

(b) In the case of amendments initiated by the FAA Airports office, the office notifies the certificate holder of the proposed amendment, in writing, fixing a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the FAA Airports office notifies the certificate holder of any amendment adopted, or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, except that prior to the effective date the certificate holder may petition the Associate Administrator for Airports to reconsider the amendment, in which case its effective date is stayed pending a decision by the Associate Administrator. However, if the FAA Airports office finds that there is an emergency requiring immediate action

with respect to safety in air transportation or air commerce that makes the procedure in this paragraph impracticable or contrary to the public interest, it may issue an amendment, effective without stay on the date the certificate holder receives notice of it. In such a case, the FAA Airports office incorporates the finding of the emergency, and brief statement of the reasons for the finding, in the notice of the amendment. Within 30 days after the issuance of such an emergency amendment the certificate holder may petition the Associate Administrator for Airports to reconsider either the finding of an emergency or the amendment itself or both. This petition does not automatically stay the effectiveness of the emergency amendment.

(c) An applicant for an amendment to its airport operations manual or its airport operations specifications must file its application with the FAA Airports office having responsibility for the area in which the airport is located at least 15 days before the proposed effective date of the amendment, unless a shorter filing period is allowed by that office.

(d) At any time within 30 days after receiving a notice of refusal to approve the application for amendment, the certificate holder may petition the Associate Administrator for Airports to reconsider the refusal to amend.

Subpart D—Operations

§ 139.301 Operations rules: General.

Each certificate holder shall—

(a) Operate and maintain the airport, and provide facilities, equipment, systems, and procedures for the airport, at least equal in condition, quality, and quantity to the standards currently required for the issuance of the airport operating certificate or limited airport operating certificate, as appropriate, for that airport;

(b) Operate the airport in accordance with the approved airport operations manual or airport operations specifications for that airport; and

(c) Comply with the applicable rules of this part.

§ 139.303 Personnel.

Each certificate holder shall maintain sufficient qualified personnel to comply with the requirements of its airport operations manual or airport operations specifications and the applicable rules of this part.

§ 139.305 Pavement areas.

Each certificate holder shall maintain, and promptly repair the pavement of, each operational movement area on the airport which is available for air carrier use as follows:

(a) The pavement edges shall not exceed 3 inches difference in elevation between full strength pavement and abutting shoulders.

(b) The pavement shall have no holes which exceed 3 inches in depth or have a surface area in excess of 12 square inches.

(c) The pavement must be free of cracks and surface variations which could impair directional control of aircraft.

(d) Mud, dirt, sand, loose aggregate, debris, foreign objects, rubber deposits, and other contaminants promptly shall be removed as completely as practicable.

(e) Any chemical solvent used to clean any pavement area shall be removed as soon as possible, consistent with the instructions of the manufacturer of the solvent.

(f) The pavement must be well drained and free of depressions so that there is no ponding of a depth that obscures markings or impairs safe operations.

§ 139.307 Safety areas.

(a) As used in this section, a safety area is a cleared area abutting the edges of a movement area.

(b) Each certificate holder shall provide a safety area for each runway and taxiway which is available for air carrier use.

(c) To the extent practicable, each safety area required under this section shall conform to FAA criteria in effect at the time of construction or expansion of the runway or taxiway or at the time the airport was certificated, whichever is later.

(d) Each certificate holder shall maintain its safety areas such that—

(1) Each safety area is cleared and has no potentially hazardous ruts, depressions, humps, or other surface variations;

(2) No object is located in any safety area, except for objects that must be located in a safety area because of their functions and are constructed on frangible mounted supporting structures of minimum practical height;

(3) Water will run off of the safety area by means such as grading or storm sewers; and

(4) Each safety area is at least the dimensions which existed at the time the Administrator approved the movement area for air carrier use, or approved an extension of the movement area for air carrier use, whichever is later.

(e) No certificate holder shall permit the following:

(1) Continued air carrier use of a runway or taxiway, otherwise available for such use under the airport operations manual or airport operations specifications, unless the associated safety areas are preserved to at least the dimensions which existed at the time of airport certification or expansion of the runway or taxiway, whichever, is later, and are maintained in a manner acceptable to the Administrator.

(2) Any air carrier use of a movement area unless the movement area, including any extensions or additions, and its associated safety areas, have been approved by the Administrator.

(f) FAA Advisory Circular 150 series contains standards and procedures for the configuration and maintenance of safety areas acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this part.

§ 139.309 Lighting and marking of movement areas.

(a) Each certificate holder shall provide at least the following lighting and marking systems on the airport:

(1) Signs needed to identify taxiing routes between the aprons and the runways.

(2) Runway markings appropriate to the operations authorized for each runway.

(3) Taxiway centerline markings and taxiway edge markings.

(4) Holding position markings, including signs, for each ILS and runway critical area.

(b) If the airport is open for air carrier operations during hours of darkness or during conditions below VFR minimums, the certificate holder shall provide, during these hours and conditions, appropriate lighting systems to support its approved approach procedures, as well as the following systems.

(1) On taxiways serving runways which support night operations, taxiway centerline lights, taxiway centerline reflectors, taxiways edge lights, or taxiway edge reflectors.

(2) An airport rotating beacon.

(c) Each certificate holder shall properly maintain each lighting or marking system installed on the airport which is owned by the certificate holder. As used in this section, to "properly maintain" includes to clean, replace, or repair any faded, missing, or nonfunctional item of lighting, to keep each item unobscured and clearly visible, and to ensure that each item provides an accurate reference to the user.

(d) Each certificate holder shall ensure that any lighting, including that for aprons, vehicle parking areas, roadways, fuel storage areas, and buildings on the airport, is adequately adjusted or shielded to prevent interference with air traffic control and aircraft operations.

(e) FAA Advisory Circular 150 series contains standards for equipment, installation, and maintenance of lighting systems listed in this section which are acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this part.

§ 139.311 Snow removal.

(a) Each certificate holder in locations where it is likely that snow conditions will exist shall maintain a snow removal plant which states the procedures and equipment to be used for complying with this section.

(b) Each certificate holder shall, as completely as practicable remove from each movement area which is available for air carrier use, ice, snow and slush.

(c) Each certificate holder shall, except as provided in paragraph (e) of this section, begin ice removal operations as soon as the presence of ice is identified, and begin snow and slush removal operations as prescribed under its snow removal plan.

(d) Each certificate holder shall, except as provided in paragraph (e) of this section—

(1) Move any drifted or piled snow from movement areas available for air carrier use; and

(2) Unless otherwise authorized in the airport operations manual or airport operations specifications, position any snow off those surfaces so that all aircraft propellers, engine pods, rotors, and wingtips will clear each snowdrift and snowbank when the aircraft's landing gear traverses any full strength portion of the movement area;

(e) Each certificate holder shall, when unable to comply with paragraphs (b), (c) or (d) of this section, notify each air carrier user in accordance with procedures in § 139.335.

(f) Each certificate holder shall use only materials for snow and ice removal that are noncorrosive to aircraft parts and adhere to snow and ice sufficiently to minimize engine ingestion.

(g) FAA Advisory Circular 150 series contains recommended standards and procedures for snow and ice removal which are acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this section.

§ 139.313 Airport firefighting and rescue equipment and service: Index determination.

(a) Each certificate holder shall provide on the airport, during air carrier operations at the airport, not less than the firefighting and rescue equipment specified for the applicable Index as defined in this section. As used in this section—

(1) "Average daily departures" means the current average number of scheduled departures per day of air carrier aircraft as computed on the basis of the busiest three months of the year; except if the average daily departures are expected to increase, then "average daily departures" may be determined by planned rather than current activity in a manner acceptable to the Administrator; and

(2) "Air carrier operations" includes the period of time from 15 minutes prior to 15 minutes after each operation of an air carrier aircraft.

(b) The following are the firefighting and rescue index groups referred to in this section:

(1) Index A includes aircaft less than 90 feet in length overall.

(2) Index B includes aircraft at least 90 feet but less than 126 feet in length overall.

(3) Index C includes aircraft at least 126 feet but less than 160 feet in length overall.

(4) Index D includes aircraft at least 160 feet but less than 200 feet in length overall.

(5) Index E includes aircraft at least 200 feet in length overall.

(c) The required Index is determined as follows:

(1) If there are five or more average daily departures of aircraft in a single index group, the longest index group with an average of 5 or more daily departures is the Index required for the airport.

(2) If there are five or more average daily departures of all air carrier aircraft but less than five average daily departures in a single index group, the next lower Index from the longest index group with aircraft in it is the required Index for the airport.

(3) If there are less than five average daily departures of all air carrier aircraft at the airport, Index A is required for the airport.

(d) If an increase in the number of departures or length of aircraft at an airport causes an increase in the Index required by this section, the certificate holder shall comply with the increased requirements.

(e) Notwithstanding the other requirements of this section, during operations of air carrier aircraft shorter than the required airport Index, the available firefighting and rescue service may be reduced to the Index corresponding to the length of air carrier aircraft being operated.

(f) The following firefighting and rescue equipment and materials are required for the Indexes referred to in this section:

(1) *Index A:* The firefighting and rescue equipment to be provided are the minimum acceptable to the Administrator based on the needs of the airport and its air carrier operations, except that the equipment capability need not exceed that of one rapid intervention vehicle carrying at least 500 pounds of dry chemical or halon 1211, or 450 pounds of dry chemical and at least 100 gallons of premixed AFFF solution.

(2) *Index B:* One aircraft firefighting and rescue vehicle carrying at least 1,500 gallons of water for AFFF production and 500 pounds of dry chemical or halon 1211.

(3) *Index C:* Either—

(i) One rapid intervention vehicle carrying at least 500 pounds of dry chemical or halon 1211, or 450 pounds of dry chemical and at least 100 gallons of premixed AFFF solution; two additional aircraft firefighting and rescue vehicles; and a total quantity of water for AFFF production carried by all vehicles of at least 3,000 gallons; or

(ii) Two aircraft firefighting and rescue vehicles with one carrying at least the extinguishing agents prescribed for Index B and the second carrying at least 2,000 gallons of water for AFFF production.

(4) *Index D:* One rapid intervention vehicle carrying at least 500 pounds of dry chemical or halon 1211, or 450 pounds of dry chemicals and at least 100 gallons of premixed AFFF solution; two additional aircraft firefighting and rescue vehicles; and a total quantity of water for AFFF production carried by all vehicles of at least 4,000 gallons.

(5) *Index E:* One rapid intervention vehicle carrying at least 500 pounds of dry chemical or halon 1211, or 450 pounds of dry chemical and at least 100 gallons of premixed AFFF solution; two additional aircraft firefighting and rescue vehicles; and a total quantity of water for AFFF production carried by all vehicles of at least 6,000 gallons.

(g) In addition to the quantity of water required, each required vehicle shall carry AFFF concentrate in an appropriate amount to mix with twice the water required to be carried by the vehicle.

(h) Notwithstanding the provisions of paragraphs (f) and (g) of this section, any certificate holder whose vehicles met the requirements of this part for carriage of water and foam concentrate on [day before effective date], may comply with paragraphs (f) and (g) of this section by carrying water and AFFF to the full capacity of those vehicles. Whenever one of those vehicles is replaced, the capacity of the replacement vehicle shall be sufficient to effect compliance with paragraphs (f) and (g).

(i) The following extinguishing agent substitutions may be made:

(1) Protein of fluoroprotein foam concentrates may be substituted for AFFF. When either of these options are selected, the volume of water to be carried for foam production shall be calculated by multiplying the volume of water required for AFFF by the factor 1.5.

(2) Up to 30 percent of the amount of water specified for AFFF production may be replaced by dry chemical or halon 1211, except that for airports where extreme climatic conditions exist, such as arctic or desert regions, up to 100 percent of the required water may be replaced by dry chemical or halon 1211 as follows:

(i) 12.7 pounds of dry chemical or halon 1211 may be substituted for one gallon of water for AFFF foam production.

(ii) 8.4 pounds of dry chemical or halon 1211 may be substituted for one gallon of water for protein or fluoroprotein foam production.

(3) For airports where meteorological conditions frequently might prevent the effective use of dry chemical or halon, up to 50 percent of such agent may be replaced by water for additional AFFF production capacity.

(4) Other extinguishing agents acceptable to the Administrator in an amount that would provide an equivalent firefighting capability.

(j) At heliports, one of the following may be substituted for a required vehicle if the extinguishing agent and response time requirements are met:

(1) A fixed installation.

(2) A wheeled vehicle other than a self-propelled vehicle.

(3) Off-airport firefighting and rescue equipment.

§ 139.315 Airport firefighting and rescue service: Operational requirements.

(a) *Discharge capacity.* Except as provided in paragraph (3) of this paragraph, each aircraft firefighting and rescue vehicle used to comply with Index B, C, D, or E requirements with a water capacity of at least 500 gallons shall be equipped with a turret. Vehicle turret discharge capacity shall be as follows:

(1) Each vehicle with a minimum rated vehicle water tank capacity of at least 500 gallons but less than 2,000 gallons shall have a turret discharge rate of at least 500 gallons per minute but not more than 1,000 gallons per minute.

(2) Each vehicle with a minimum rated vehicle water tank capacity of at least 2,000 gallons of water shall have turret discharge rate of at least 600 gallons per minute but not more than 1,200 gallons per minute.

(3) Notwithstanding the requirements of this paragraph, any certificate holder whose aircraft firefighting and rescue vehicles met the requirements of this part on [day before effective date], and whose vehicles are not equipped with turrets or do not have the discharge capacity required in this paragraph, need not comply with this paragraph for a particular vehicle until that vehicle is replaced.

(b) *Vehicle communications.* Each required vehicle shall be equipped with two-way voice radio communication linking it with the alerting authority, all other required vehicles, and the designated command post.

(c) *Vehicle marking and lighting.* Each required vehicle must in a manner acceptable to the Administrator—

(1) Have a flashing beacon;

(2) Be marked in contrasting colors to ensure rapid and positive identification; and

(3) Be of a color that ensures contrast with the background environment and has high night visibility characteristics.

(d) *Vehicle maintenance.* Each required vehicle shall be maintained as follows:

(1) Each vehicle shall be maintained in operable condition.

(2) If the airport is located in a geographical area subject to prolonged temperatures below 33 degrees Fahrenheit, each vehicle shall be provided with cover or other means to ensure equipment operation and discharge under freezing conditions.

(3) Any required vehicle that becomes mechanically inoperable shall be replaced with appropriate equipment immediately. If appropriate replacement equipment is not available immediately, the certificate holder shall so notify each air carrier user in accordance with § 139.335. If the service level is not restored within 8 hours, the operator shall (unless otherwise authorized by the Administrator) limit air carrier operations on the airport, until that service level is restored, to aircraft operations compatible with the Index prescribed in § 139.313 that corresponds to the operator's remaining equipment.

(e) *Response times.*

(1) Each certificate holder required to maintain Index B, C, D, or E shall maintain required equipment and personnel such that, and shall show by a demonstration run on request by the Administrator that—

(i) At least one required airport firefighting and rescue vehicle with at least 1,500 gallons of water and the appropriate amount of AFFF concentrate can reach the midpoint of the farthest runway serving air carrier aircraft from its assigned post and begin application of foam, dry chemical, or halon 1211 within 3 minutes from the time of alarm; and

(ii) All other required vehicles can reach the midpoint of the farthest runway serving air carrier aircraft from their assigned post and begin application of foam, dry chemical, or halon 1211 within 4 minutes from the time of alarm.

(2) Each certificate holder required to maintain Index A shall maintain required equipment and personnel such that, and show by a demonstration run on request by the Administrator that, it can meet the response times which the Administrator determines are necessary in the public interest.

(f) *Personnel.* Each certificate holder shall ensure the following:

(1) All firefighting and rescue personnel are equipped in a manner acceptable to the Administrator with protective clothing and equipment needed to perform their duties.

(2) All firefighting and rescue personnel are properly trained to perform their duties in a manner acceptable to the Administrator. Such training shall include participation in at least one live fire drill per year, and instruction in the following areas:

(i) Airport familiarization.

(ii) Aircraft familiarization.

(iii) Rescue personnel and firefighter safety.

(iv) Familiarization with the emergency communications system on the airport, including fire alarms.

(v) Use of the fire hoses, nozzles, turrets, and appliances used by the airport for compliance with this part.

(vi) Types and application of the extinguishing agents used by the airport for compliance with this part.

(vii) Forced entry into aircraft, ventilation of aircraft, extraction of persons from aircraft, and evacuation assistance.

(viii) Firefighting operations.

(ix) Adapting and using structural firefighting and rescue equipment for aircraft rescue and firefighting service.

(x) Aircraft cargo hazards and considerations.

(xi) Familiarization with the firefighters' duties under the airport emergency plan.

(3) During air carrier operations, at least one person on duty has been trained and is current in basic emergency medical care. This training shall include at least forty hours of training covering at least the following areas: bleeding, cardiopulmonary resuscitation, shock, primary patient survey, injuries to the skull, spine, chest, and extremities, internal injuries, moving patients, burns, and triage.

(4) Sufficient firefighting and rescue personnel are available to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required for the airport in this part.

(5) It maintains procedures and means for alerting firefighting and rescue personnel by siren, alarm, or other means acceptable to the Administrator, of any existing or impending emergency that may require their assistance.

(g) *Access roads.* Each certificate holder shall ensure that surfaces adjacent to movement areas that are designated for use as access roads by required vehicles are maintained in a useable condition.

§ 139.317 Handling and storing of hazardous substances and materials.

(a) Each certificate shall ensure that, whenever the certificate holder acts as a cargo handling agent, persons and property on the airport are protected during the handling and storing of any material regulated by the Hazardous Materials Regulations of the Materials Transportation Bureau (49 CFR Part 171, *et seq.*), that is, or is intended to be, transported by air. These procedures must provide for the following:

(1) Designated personnel to receive and handle hazardous substances and materials.

(2) Assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety.

(3) Special areas for storage of hazardous materials while on the airport.

Option 1

(b) Each certificate holder shall establish and maintain standards acceptable to the Administrator covering facilities, procedures, and personnel training for safely storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover at least the following:

(1) Grounding or bonding, and fire protection.

(2) Public protection.

(3) Control of access to storage areas.

(4 Marking and color coding of storage tanks and tank trucks.

(5) Fuel farm and storage areas.

(6) Mobile fuelers, fueling pits, and fueling cabinets.

(7) Quality control procedures for fuel handling and testing.

(8) Training of fueling personnel.

(9) Recordkeeping.

(c) Except as provided in paragraph (i) of this section, each certificate holder shall require all fueling agents on the airport to comply with the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport. The certificate holder shall inspect the physical facilities and records of each airport tenant fueling agents, including its quality control records, at least once every three months, and maintain a record of that inspection for at least 12 months. The certificate holder may use an independent organization to perform this inspection if—

(1) It is acceptable by the Administrator; and

(2) It prepares a record of its inspection sufficiently detailed to assure the certificate holder and the FAA that the inspection is adequate.

(d) The quarterly inspection of a tenant's quality control records required by paragraph (c) of this section satisfies the certificate holder's duty to ascertain that tenant is complying with the quality control standards established under paragraph (b)(7) of this section.

(e) The training required in paragraph (b)(8) of this section shall include at least the following:

(1) At least one supervisor must have completed an aviation fuel training course which is acceptable to the Administrator.

(2) Each other employee who fuels aircraft, accepts fuel shipments, conducts quality control procedures, or otherwise handles fuel, shall receive at least on-the-job training from such a supervisor.

(f) Certification by an airport tenant that it has accomplished the training required by paragraph (e) of this section satisfies the certificate holder's duty to ascertain the adequacy of the tenant's personnel training.

(g) The recordkeeping required by paragraph (b)(9) of this section shall provide that the records be maintained for at least 12 months, be available for inspection by the certificate holder and the FAA, and specify at least the following:

(1) The results of any physical inspection conducted.

(2) The date, nature, and results of any quality control test and procedure undertaken and any corrective action.

(3) The name and signature of each person conducting any test, procedure, or inspection.

(h) Unless otherwise authorized by the Administrator, each certificate holder shall require each of its tenant fueling agents to take appropriate corrective action whenever an inspection required by this section indicates noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA office immediately when significant noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(i) A certificate holder need not require an air carrier operating under Part 121 of this chapter to comply with the standards required by paragraph (b)(7), (8), and (9) of this section.

(j) FAA Advisory Circular 150 Series contains standards and procedures for the handling and storing of hazardous substances and materials which are acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this section.

Option 2

(b) Each certificate holder shall establish and maintain standards acceptable to the Administrator covering facilities, procedures, and personnel training for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover at least the following:

(1) Grounding or bonding, and fire protection.

(2) Public protection.

(3) Control of access to storage areas.

(4) Fire safety in fuel farm and storage areas.

(5) Fire safety in mobile fuelers, fueling pits, and fueling cabinets.

(6) Training of fueling personnel in fire safety.

(c) Except as provided in paragraph (g) of this section, each certificate holder shall require all fueling agents on the

airport to comply with the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport with respect to those standards. The certificate holder shall inspect the physical facilities of each airport tenant fueling agents at least once every three months, and maintain a record of that inspection for at least 12 months. The certificate holder may use an independent organization to perform this inspection if—

(1) It is acceptable by the Administrator; and

(2) It prepares a record of its inspection sufficiently detailed to assure the certificate holder and the FAA that the inspection is adequate.

(d) The training required in paragraph (b)(6) of this section shall include at least the following:

(1) At least one supervisor must have completed an aviation fuel training course in fire safety which is acceptable to the Administrator.

(2) Each other employee who fuels aircraft, accepts fuel shipments, or otherwise handles fuel, shall receive at least on-the-job training in fire safety from such a supervisor.

(e) Certification by an airport tenant that it has accomplished the training required by paragraph (d) of this section satisfies the certificate holder's duty to ascertain the adequacy of the tenant's personnel training.

(f) Unless otherwise authorized by the Administrator, each certificate holder shall require each of its tenant fueling agents to take appropriate corrective action whenever an inspection required by this section indicates noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA office immediately when significant noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(g) A certificate holder need not require an air carrier operating under Part 121 of this chapter to comply with the standards required by paragraph (b)(6) of this section.

(h) FAA Advisory Circular 150 Series contains standards and procedures for the handling and storing of hazardous substances and materials which are acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this section.

(i) The Administrator encourages each certificate holder and its tenant fuelers to follow accepted industry practices designed to address all aspects of fueling safety (including precautions against misfueling and contamination), including the guidance contained in FAA Advisory Circular 150 Series.

§ 139.319 Traffic and wind direction indicators.

Each certificate holder shall provide the following on its airport:

(a) Wind direction indicators, including wind tees or wind cones, that provide appropriate wind direction information visually to pilots and, if the airport is open for air carrier operations during hours of darkness, are lighted. For each airport in a terminal control area, the requirements of this paragraph may be satisfied by a system that provides wind direction information to pilots by electronic means and supplemental lighted wind cones at each runway end or at a point visible to the pilot while on final approach and prior to takeoff which provide surface wind direction information.

(b) For airports other than heliports, if the airport serves any air carrier operations when there is no control tower operating, a segmented circle around at least one wind direction indicator and a landing strip and traffic pattern indicator for each right-hand traffic pattern.

§ 139.321 Emergency plan.

(a) Each certificate holder shall provide and maintain an emergency plan designed to minimize the possibility and extent of personal injury and property damage on the airport that—

(1) Ensures prompt response to all of the emergencies listed in paragraph (b) of this section; and

(2) Is sufficiently detailed to provide adequate guidance to persons who must implement it.

(b) The emergency plan required by this section must contain instructions for response to—

(1) Aircraft incidents and accidents;

(2) Bomb incidents, including designated parking areas for the aircraft involved;

(3) Structural fires;

(4) Natural disasters;

(5) Radiological incidents or nuclear attack;

(6) Sabotage and other unlawful interference with operations;

(7) Failure of power for navaids, movement area, lighting, or air traffic control tower operations; and

(8) Water rescue situations.

(c) The emergency plan required by this section must address—

(1) To the extent practicable, provisions for medical services including transportation and medical assistance for the maximum number of persons that can be carried on the largest air carrier aircraft that the airport reasonably can be expected to serve;

(2) The name, location, and emergency capability of each hospital and other medical facility, and the business address of medical personnel on the airport and in the communities it serves, that agree to provide medical assistance or transportation;

(3) The name and location of each rescue squad, ambulance service, and military installation, on the airport or in the communities it serves, that agrees to provide medical assistance or transportation;

(4) Surface vehicles and aircraft that the facilities, agencies, and personnel included in the plan under paragraphs (c)(2) and (c)(3) of this section will provide to transport injured and deceased persons to locations on the airport and in the communities it serves;

(5) Each hangar or other building on the airport or in the communities it serves that will be used to accommodate uninjured, injured, and deceased persons; and

(6) Provision for the marshalling, transportation, and care of ambulatory injured and uninjured accident survivors.

(d) The emergency plan required by this section must provide for—

(1) Crowd control, specifying the name and location of each safety or security agency that agrees to provide assistance for the control of crowds in the event of an emergency on the airport;

(2) The removal of disabled aircraft;

(3) Emergency alarm systems;

(4) Mutual assistance with local safety and security agencies; and

(5) A description of control tower functions relating to emergency actions.

(e) The emergency plan must contain procedures for notifying the facilities, agencies, and personnel who have responsibilities under the emergency plan, of the location of an aircraft accident, the number of persons involved in that accident, or any other information necessary to carry out their responsibilities, as soon as that information is available.

(f) The emergency plan shall contain provisions, to the extent practicable, for the rescue of accident victims from bodies of water adjacent to the airport. To the extent practicable, this shall provide for rescue vehicles with a capacity for handling the maximum number of persons that can be carried on board the largest air carrier aircraft

that the airport reasonably can be expected to serve.

(g) Each certificate holder shall—

(1) Coordinate its emergency plan with law enforcement agencies, firefighting and rescue agencies, medical resources, the principal tenants at the airport, and all other persons who have responsibilities under the plan;

(2) To the extent practicable, provide for participation by all facilities, agencies, and personnel specified in paragraph (g)(1) of this section in the development of the plan;

(3) Ensure that all airport personnel having duties and responsibilities under its emergency plan are familiar with their assignments and are properly trained; and

(4) At least once every 12 months, review the plan with all of the people with whom the plan is coordinated as indicated in (1) of this paragraph, to ensure that all people know their responsibilities and all information in the plan is current.

§ 139.323 Self-inspection program.

(a) Each certificate holder shall inspect the airport—

(1) Daily;

(2) When required by any unusual condition such as construction activities or meteorological conditions affecting or possibly affecting safe aircraft operations;

(3) Immediately after an accident or incident; and

(4) As otherwise required by the airport operations manual or airport operations specifications.

(b) Each certificate holder shall provide the following:

(1) Facilities and equipment for use in conducting safety inspections of the airport.

(2) Procedures and a description of the facilities and equipment used for reliable and rapid dissemination of information between airport personnel and its interested tenants.

(3) Procedures to ensure that qualified inspection personnel are used to make the inspections.

(4) A reporting system to ensure prompt corrective action for unsafe conditions on the airport.

(c) Each certificate holder shall prepare, and keep for at least 6 months, a record of each inspection prescribed by this section showing the conditions found and all corrective action taken.

§ 139.325 Ground vehicles.

Each certificate holder shall—

(a) Limit access to movement areas only to those ground vehicles necessary for airport operations;

(b) Provide adequate procedures for the safe and orderly operation of ground vehicles on movement areas and safety areas;

(c) On an airport with an operating air traffic control tower, ensure that each ground vehicle operating on a movement area is controlled by—

(1) Two-way radio communications between each vehicle and the tower;

(2) An escort vehicle with two-way radio communications with the tower to accompany any vehicle without a radio; or

(3) Measures acceptable to the Administrator for controlling vehicles crossing usable movement areas or safety areas, such as signs, signals, or guards, when it is not operationally practical to have two-way radio communications with the vehicle or an escort vehicle.

(d) On an airport without an operating air traffic control tower, provide adequate procedures to control ground vehicles through prearranged signs or signals;

(e) Ensure that each person who operates a ground vehicle on a movement area is familiar with the airport's rules and equipment relating to the safe operation of ground vehicles; and

(f) On request by the Administrator, make available for inspection by the Administrator any record of accidents or incidents on the airport involving ground vehicles.

§ 139.327 Obstructions.

Each certificate holder shall ensure that each object in any area within its authority that is identified as an obstruction to air navigation in Part 77 of this chapter is either removed or marked and, if appropriate, lighted. However, removal, marking, and lighting is not required if it is determined to be unnecessary by an FAA aeronautical study.

§ 139.329 Protection of navaids.

Each certificate holder shall—

(a) Prevent the construction of facilities on its airport that, as determined by an FAA study, would derogate the operation of a navaid thereon; and

(b) Protect, or provide assistance to the owner of a navaid (if other than the certificate holder) in protection of navaids on its airport against vandalism and theft.

§ 139.331 Public protection.

(a) Each certificate holder shall provide—

(i) Safeguards against inadvertent entry onto any airport movement area by persons and by large animals that may endanger aircraft operations; and

(ii) Protection of persons and property from aircraft blast.

(b) Compliance with fencing requirements in Part 107 of this chapter meets the requirement of paragraph (a)(1) of this section as to persons.

§ 139.333 Bird hazard management.

(a) Each certificate holder shall indicate to the Administrator whether or not a bird hazard exists on the airport. If a hazard exists, an ecological study shall be conducted by a qualified biologist. The study shall—

(1) Identify the species, numbers, locations, local movements, and daily and seasonal occurrence of birds observed in the airport area; and the species that have been or are likely to be involved in bird/aircraft strikes;

(2) Identify and locate features on and near the airport that attract birds, such as garbage disposal and water areas; and

(3) Assess the potential hazard from various bird species within the airport area.

(b) The results of the ecological study shall be the basis for the development by the certificate holder, with technical assistance from the Administrator, of an airport bird management plan. The plan shall provide measures to alleviate bird hazards at the airport and shall include the following:

(1) To the extent practicable, priorities for needed habitat modification and changes in land use, with target dates for completion.

(2) Procedures for:

(i) The operation of bird patrols, and for coping with daily and seasonal high-hazard periods.

(ii) Communications between air traffic control towers, pilots, and airport bird-management personnel.

(iii) Evaluation and review of the bird-management plan.

(3) Personnel and equipment needs.

(4) Training programs.

(c) When a bird hazard exists, the certificate holder shall show that it has the capability and equipment for dispersing potentially hazardous birds. When such occasions arise, the certificate holder shall comply with the following:

(1) For an airport with an operating air traffic control tower, conduct physical inspections of a runway and adjacent areas prior to that runway being designated the active runway or prior to aircraft operations on other than the active runway. Bird dispersal procedures shall be carried out as often as necessary to minimize the hazard.

(2) For airports with no operating air traffic control tower, inspect runways and adjacent areas as required by local conditions, and carry out bird dispersal procedures as often as necessary to minimize the hazard.

§ 139.335 Airport condition reporting.

(a) Each certificate holder shall provide at least one of the following means for disseminating to pilots who may wish to use the airport information concerning conditions on, and in the vicinity of, the airports that affect, or may affect, the safe operation of aircraft:

(1) The Notice to Airmen System.

(2) Any other means acceptable to the Administrator.

(b) Each certificate holder shall report the following conditions:

(1) Construction or maintenance work on movement areas or safety areas.

(2) Rough or wavy portions of movement areas or safety areas.

(3) The presence and depth of snow, slush, ice, or water on movement areas.

(4) The presence of snow drifted or piled on, or next to, movement areas that does not comply with the standards in § 139.311.

(5) The presence of parked aircraft or other objects that affect or may affect the safe movement of aircraft on, or next to, active movement areas or on safety areas of active movement areas.

(6) The failure or irregular operation of part or all of any airport lighting system specified in § 139.309.

(7) The presence of a bird hazard or potential bird hazard.

(8) Any reduction in required firefighting and rescue service required in §§ 139.313 and 139.315.

§ 139.337 Identifying, marking, and reporting construction and other areas.

(a) Each certificate holder shall—

(1) Mark and, if appropriate, light in a manner acceptable to the Administrator—

(i) Each construction area and unserviceable area which is on or adjacent to any movement area;

(ii) Each item of construction equipment and each construction roadway, which affects or may affect the safe movement of aircraft on the airport; and

(iii) Any area adjacent to a navaid that, if traversed, could cause emission of a false signal or the failure of the navaid; and

(2) Provide procedures for avoiding existing utilities, cables, wires, conduits, pipelines or other underground facilities within each construction area on the airport.

(b) FAA Advisory Circular 150 series contains standards and procedures for identifying and marking construction areas which are acceptable to the Administrator and they, or standards and procedures deemed by the Administrator to be at least their equivalent, are acceptable for compliance with this part.

§ 139.339 Noncomplying conditions.

Unless otherwise authorized by the Administrator, whenever one or more of the conditions listed in (b) of this section exist on the airport, the certificate holder shall take action immediately to prohibit air carrier use of each affected part of the movement area or areas until the condition is corrected

(b) Each certificate holder shall take action as specified in paragraph (a) of this section when one or more of the following conditions is present:

(1) An inoperable lighting system.

(2) The certificate holder is unable to comply with the provisions of § 139.311 regarding the removal of snow, slush and ice.

(3) A pavement area is not maintained in accordance with § 139.305.

(4) A safety area is not maintained in accordance with § 139.307.

(5) An obstruction, such as a ground vehicle, is present on a movement area.

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Raymond T. Ubl,

Acting Director, Office of Airport Standards.

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